

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

BMO Bank N.A. v. SBFS Trucking Inc., et al.

BMO Bank · No. 1:24-cv-01260-KES-SAB · Decided March 6, 2025

SUMMARY

The court set aside the Clerk’s entries of default against SBFS Trucking Inc. and Barinder Singh Gill after finding good cause based on Gill’s apparent intent to defend the action. The court disregarded the defendants’ filings because the corporation appeared without counsel and Gill’s filing did not comply with Federal Rule of Civil Procedure 8. The court granted the defendants thirty days to file responsive pleadings, directed the clerk to provide Gill with an answer form, and continued the scheduling conference.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 6, 2025
DOCKET	1:24-cv-01260-KES-SAB
DISPOSITION	other
PROCEDURAL POSTURE	After defendants filed documents labeled as separate statements of disputed material facts and supporting evidence in support of summary judgment, the plaintiff sought entry of default. The clerk entered default against both defendants. The court sua sponte considered whether the filings constituted responsive pleadings and whether the defaults should be set aside.
STANDARD OF REVIEW	An entry of default may be set aside for good cause under Federal Rule of Civil Procedure 55(c). The court also evaluated the filings for compliance with Federal Rule of Civil Procedure 8(b) and applicable local rules.
PRECEDENTIAL VALUE	unpublished district court order; persuasive authority only

TOPICS

- default
- pleadings
- civil procedure
- summary judgment
- commercial litigation

PRACTICE AREAS

civil procedure

commercial litigation

corporate law

QUESTIONS PRESENTED

1. Whether the clerk's entries of default should be set aside for good cause when a pro se defendant's improperly titled filing clearly denied allegations and indicated an intent to defend.
2. Whether SBFS Trucking Inc. could appear through Defendant Gill rather than through licensed counsel.
3. Whether the defendants' separate statements should be disregarded because they were not proper motions under Federal Rule of Civil Procedure 56 or Local Rule 230 and did not comply with Federal Rule of Civil Procedure 8(b).

HOLDINGS

1. The entries of default against SBFS Trucking Inc. and Barinder Singh Gill were set aside because good cause existed under Federal Rule of Civil Procedure 55(c).
2. SBFS Trucking Inc. may not proceed pro se or be represented by Defendant Gill unless he is a licensed attorney; the corporation must appear through counsel.
3. Gill's February 28, 2025 filing was disregarded because it did not comply with Federal Rule of Civil Procedure 8(b)'s requirements for responding to a complaint.
4. The defendants' separate statements of disputed material facts and supporting evidence were disregarded because no summary-judgment motion had been filed and the documents did not comply with Federal Rule of Civil Procedure 56 or Local Rule 230.

KEY QUOTATIONS

“Given Defendant Gill’s pro se status and an apparent intent to defend this matter, the Court finds good cause to set aside the Clerk’s entries of default” (at 3)

“A corporation or other entity may appear only by an attorney.” (at 3)

“in responding to a complaint, a party must: “(A) state in short and plain terms its defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party.”” (at 5)

FACTUAL BACKGROUND

BMO Bank sued SBFS Trucking Inc. and Barinder Singh Gill. After service, Gill filed a document that denied certain allegations and stated that it was a proposed answer, although the document was captioned as a separate statement supporting summary judgment. Gill also signed a similar filing on behalf of SBFS Trucking Inc., but there was no indication that he was a licensed attorney. The clerk entered default after BMO argued that the filings were not answers.

PROCEDURAL HISTORY

BMO Bank N.A. filed a complaint against SBFS Trucking Inc. and Barinder Singh Gill on October 16, 2024. The defendants were served on February 6, 2025, and filed documents on February 27 or 28 that purported to support summary judgment but also contained denials of allegations. The clerk entered default on March 5, 2025. The court set aside the entries of default, disregarded the defendants' filings as procedurally improper, granted thirty days to file responsive pleadings, required SBFS Trucking Inc. to obtain counsel, and continued the scheduling conference.

DISPOSITION

other

CASES CITED

- D–Beam Ltd. P'ship v. Roller Derby Skates, Inc., 366 F.3d 972, 973-74 (9th Cir. 2004)
- Caveman Foods, LLC v. jAnn Payne's Caveman Foods, LLC, No. CV 2:12-1112 WBS DAD, 2015 WL 6736801, at *2 (E.D. Cal. Nov. 4, 2015)
- Davis v. Hollins Law, 25 F. Supp. 3d 1292, 1298 n.5 (2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 BMO BANK N.A., Case No. 1:24-cv-01260-KES-SAB 12 Plaintiff,
ORDER SETTING ASIDE CLERK’S ENTRIES OF DEFAULT 13 v. ORDER DISREGARDING
DEFENDANTS’ 14 SBFS TRUCKING INC., et al., SEPARATE STATEMENTS OF DISPUTED
MATERIAL FACTS AND SUPPORTING 15 Defendants. EVIDENCE IN SUPPORT OF
SUMMARY JUDGMENT 16 CONTINUING SCHEDULING 17 CONFERENCE TO APRIL 24,
2025 18 (ECF Nos. 9, 10, 11, 12, 13) 19 THIRTY DAY DEADLINE 20 21 On October 16, 2024,
Plaintiff BMO Bank N.A. filed a complaint in this action against 22 Defendants SBFS Trucking
Inc. and Barinder Singh Gill.

(ECF No. 1.) On February 14, 2025, 23 Plaintiff filed proofs of service that the complaint and
summons were served on Defendants on 24 February 6, 2025. (ECF Nos. 7, 8.) 25 On February
27, 2025, Defendants filed identical documents entitled “Defendant’s 26 separate statement of
disputed materials [sic] facts and supporting evidence in support of 27 summary judgment.” (ECF
Nos. 9, 10.)

The only apparent difference is that Defendant Barinder 1 executed the second on behalf of
Defendant “SBFS Inc.” (ECF No. 10). It is unclear what relief, 2 if any, Defendants seek from the
filings. 3 No motion for summary judgment has been filed in this action.

Although the caption 4 states the February 28, 2025 filings are in support of summary judgment,
each defendant argues 5 they are “not entitled to summary judgment against Defendant Prabhjit

Kaur, an individual.” 6 (ECF Nos. 9 at 3, 10 at 3 (emphasis added).) Prabhjit Kaur is not a named defendant nor party to 7 this action.

To the extent Defendants attempt to file a motion for summary judgment, the 8 documents do not comply with Local Rule 230 or Rule 56 of the Federal Rule of Civil 9 Procedure. 10 On March 5, 2025, Plaintiff requested that the Clerk enter default against both 11 defendants. (ECF No. 11.) Plaintiff notes that the title of the February 28, 2025 filing does not 12 comport with an answer.

Accordingly, Plaintiff requests that the Clerk substantively review the 13 filings and strike both, then enter default against each defendant in this matter. (ECF No. 11-1 at 14 3.) Default was entered against both defendants on March 5, 2025. (ECF Nos. at 12, 13.) 15 The court may set aside an entry of default for good cause. Fed. R. Civ. P. 55(c).

In his 16 February 28, 2025 filing, Defendant Gill, proceeding pro se, clearly denies certain allegations in 17 Plaintiff’s complaint. For example, Defendant summarizes allegations in the complaint and says, 18 “Barinder Singh Gill individually denies it,” or “Never entered into the agreement. Deny.” (See, 19 e.g., ECF No. 9 at 5, 6.) Further, the proof of service of the February 28, 2025 states Defendant 20 has served a “proposed answer to complaint.” (ECF No. 9 at 10.)

It therefore appears that, 21 despite the title and format, Defendant Gill, proceeding pro se, intended to file an answer to 22 Plaintiff’s complaint. 23 Given Defendant Gill’s pro se status and an apparent intent to defend this matter, the 24 Court finds good cause to set aside the Clerk’s entries of default (ECF Nos. 12, 13).

For the 25 following reasons, the Court shall also disregard Defendant’s February 28, 2025 filings, and sua 26 sponte grant a thirty day extension of time to allow each Defendant time to file responsive 27 pleadings to Plaintiff’s complaint.

To accommodate the extension, the Court shall also continue 1 shall briefly address two pertinent rules. 2 1. Local Rule 183(a) 3 SBFS Trucking Inc. may not proceed pro se in this action nor can it be represented by an 4 individual not licensed to practice law. “A corporation or other entity may appear only by an 5 attorney.” L.R. 183(a); see also D–Beam Ltd. P’ship v. Roller Derby Skates, Inc., 366 F.3d 972, 6 973–74 (9th Cir.

2004) (“It is a long-standing rule that corporations and other unincorporated 7 associations must appear in court through an attorney”) (quotations and citation omitted); 8 Caveman Foods, LLC v. jAnn Payne's Caveman Foods, LLC, No. CV 2:12-1112 WBS DAD, 9 2015 WL 6736801, at *2 (E.D. Cal. Nov. 4, 2015) (“While individuals may appear in propria 10 persona, corporations and other entities may appear only through an attorney; an unrepresented 11 entity cannot file any pleadings, make or oppose any motions, or present any evidence to contest 12 liability.”).

13 The February 28, 2025 filing was signed by Defendant Gill on behalf of Defendant 14 “SBFS Inc.” (ECF No. 10.) However, there is no indication that Defendant Gill is a licensed 15 attorney.1 A non-lawyer may only appear in this Court in propria persona on his own behalf and 16 corporations may appear only by attorney. L.R. 183(a). SBFS Trucking Inc. cannot proceed in 17 this action pro se nor can it be represented by non-attorney Defendant Gill.

The Court will 18 afford the unrepresented corporation thirty days to retain counsel, file a notice of attorney, and 19 file a response to Plaintiff’s complaint. The Court cautions that future filings by a non-lawyer 20 acting on behalf of SBFS Trucking Inc. will be disregarded. 21 2. Federal Rule of Civil Procedure 8 22 The Court shall disregard the document filed by Defendant Gill on February 28, 2025 23 because it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure.

Namely, in 24 responding to a complaint, a party must: “(A) state in short and plain terms its defenses to each 25 claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing 26 1 The Court takes judicial notice of the records of the California State Bar as state bar websites are sources whose 27 accuracy cannot reasonably be questioned.

See Fed. R. Evid. 201(b); Davis v. Hollins Law, 25 F.Supp.3d 1292, 1298 n. 5 (2014) (indicating the court may take judicial notice of the state bar’s website). No individual named 1 party.” Fed. R. Civ. P. 8(b). 2 The Court notes for Defendant’s benefit that the District Court has a webpage for 3 “Representing Yourself (Pro Se Litigant),” available on the Court’s website: 4 [https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/representing-yourself-pro-se-](https://www.caed.uscourts.gov/caednew/index.cfm/cmecf-e-filing/representing-yourself-pro-se-litigant/) 5 litigant/.

Therein, the Court provides a form entitled “The Defendant’s Answer to the 6 Complaint,” which the Court shall direct the Clerk of Court to send Defendant Gill as a courtesy. 7 Should Defendant Gill elect to use the form answer, he shall pay particular attention to the 8 directions in Section II.A., which requires that, on separate pages, that he write a short and plain 9 statement of the answer to the allegations in the complaint with enumerated paragraphs 10 corresponding to each paragraph within the complaint.

For each paragraph in the complaint, 11 Defendant Gill shall state whether he admits the allegations in that paragraph, denies the 12 allegations, lacks sufficient knowledge to admit or deny the allegations; or admits certain 13 allegations but denies, or lack sufficient knowledge to admit or deny, the rest. See Fed. R. Civ. 14 P. 8(b)(2)-(5). 15 Accordingly, IT IS HEREBY ORDERED that: 16 1.

The entries of default as to Defendants SBFS Trucking Inc. (ECF No. 12) and 17 Barinder Singh Gill (ECF No. 13) are SET ASIDE; 18 2. Defendant SBFS Trucking Inc.’s separate statement of disputed material facts 19 and supporting evidence in support of summary judgment (ECF No. 10) is 20 DISREGARDED as it was not filed through an attorney; 21 3. Defendant SBFS Trucking

Inc. shall have thirty (30) days from the date of entry 22 of this order to file a notice of attorney and file a responsive pleading to 23 Plaintiff's complaint; 24 4.

Defendant Barinder Singh Gill's separate statement of disputed material facts and 25 supporting evidence in support of summary judgment (ECF No. 9) is 26 DISREGARDED as procedurally improper; 27 5. Defendant Barinder Singh Gill shall have thirty (30) days from the date of entry 1 deficiencies identified by the Court; 2 6.

The Clerk of the Court is DIRECTED to send Defendant Barinder Singh Gill 3 "The Defendant's Answer to the Complaint" form; 4 7. The March 18, 2025 scheduling conference is CONTINUED to April 24, 2025 5 at 9:30 a.m. in Courtroom 9.

The parties shall file a joint scheduling report 6 seven (7) days prior to the scheduling conference; and 7 8. Should one or both Defendants fail to comply with the thirty day extension 8 or_ otherwise file a timely request for extension that is supported by good 9 cause, Plaintiff shall request entry of default. 10 i IT IS SO ORDERED. DAM Le 12 | Dated: _March 6, 2025 _ Of STANLEY A. BOONE 13 United States Magistrate Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28