

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
AT LEXINGTON

CIVIL ACTION NO. 5:11-CV-428-KKC

FIFTH THIRD BANK,

PLAINTIFF

v.

**OPINION AND ORDER**

GULF COAST FARMS, LLC,  
GULF COAST FARMS BLOODSTOCK, LP,

DEFENDANTS

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This matter is before the Court on the Motion for Clerk's Entry of Default (DE 33) filed by the Defendant Gulf Coast Farms Bloodstock, LP (the "Gulf Coast Partnership")<sup>1</sup> and the Motion for Leave to file Reply to the Gulf Coast Partnership's Counterclaim (DE 35) filed by the Plaintiff Fifth Third.

In its Motion for Entry of Default, the Gulf Coast Partnership states that it filed a counterclaim against Fifth Third on February 13, 2012 but that Fifth Third has not yet filed an answer to it. Federal Rule of Civil Procedure 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

While Fifth Third may have not filed an answer to the counterclaim, it cannot be said that it has failed to "plead or otherwise defend" in this action. Thus far, Fifth Third has filed a Motion to Remand (DE 3); joined with the Gulf Coast Partnership in a motion

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<sup>1</sup> The caption on the motion for entry of default indicates it is filed by Defendant Gulf Coast Farms, LLC.

to dismiss a former defendant in this action, Winstar Farm, LLC (DE 16); filed a motion to compel (DE 24); and responded to the Motion for Summary Judgment (DE 26) filed by Defendant Gulf Coast Farms, LLC. Fifth Third has also filed a Motion for Leave to file a reply to the Gulf Coast Partnership's Counterclaim and has tendered its reply.

Given Fifth Third's actions to date in this case including its tender of a reply to the Counterclaim and this Court's preference for resolving matters on their merits, the Gulf Coast Partnership's counterclaim is not a claim that this Court will resolve by a default judgment. Further, the Gulf Coast Partnership has not indicated any prejudice it will suffer if the Court orders the reply tendered by Fifth Third to be filed in the record.

For these reasons, the Court hereby ORDERS as follows:

- 1) the Motion for Entry of Default (DE 33) is DENIED;
- 2) the Clerk of the Court SHALL NOT enter Fifth Third's default in this action; and
- 3) Fifth Third's Motion for Leave to File Reply to Counterclaim (DE 35) is GRANTED and the Clerk of the Court SHALL FILE the tendered reply in the record.

Dated this 16<sup>th</sup> day of May, 2012.



**Signed By:**

**Karen K. Caldwell**

A handwritten signature in black ink, appearing to be "K.K.C.", written over the printed name.

**United States District Judge**