

COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

The Farmers & Merchants State Bank,) Case No. 11CV000128
)
Plaintiff,) Judge Barber
)
-vs-) **PLAINTIFF'S ANSWER TO**
) **COUNTERCLAIMS OF**
Archbold Elevator Inc., et al.,) **AGRICULTURAL PRODUCTS**
) **EXTENSION, LLC**
Defendants.)
) David J. Coyle (0038966)
) Nathan A. Hall (0077014)
) SHUMAKER, LOOP & KENDRICK, LLP
) 1000 Jackson Street
) Toledo, Ohio 43604
) Telephone: (419) 241-9000
) Fax: (419) 241-6894
) E-Mail dcoyle@slk-law.com
) nhall@slk-law.com
)
) Attorneys for Plaintiff

* * *

For its Answer to the Counterclaims and Cross-Claims of Agricultural Products Extension, LLC ("APEX") (the "Counterclaim"), Plaintiff The Farmers & Merchants State Bank ("Farmers") states as follows:

1. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 1 of the Counterclaim, and therefore denies them.

2. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 2 of the Counterclaim, and therefore denies them.

3. Farmers admits the averments contained in paragraph 3 of the Counterclaim.

4. Farmers admits that defendant Archbold Elevator, Inc. is an Ohio corporation with its principal place of business in Archbold, Fulton County, Ohio, admits that Archbold Elevator is a borrower of Farmers, admits that Archbold Elevator is the maker of certain promissory notes and security agreements held by Farmers, and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 4 of the Counterclaim, and therefore denies them.

5. Farmers admits the averments contained in paragraph 5 of the Counterclaim.

6. Farmers admits the averments contained in paragraph 6 of the Counterclaim.

7. Farmers admits the averments contained in paragraph 7 of the Counterclaim.

8. Farmers admits the averments contained in paragraph 8 of the Counterclaim.

9. Farmers admits the averments contained in paragraph 9 of the Counterclaim.

10. Farmers admits the averments contained in paragraph 10 of the Counterclaim.

11. Farmers admits the averments contained in paragraph 11 of the Counterclaim.

12. Farmers admits the averments contained in paragraph 12 of the Counterclaim.

13. Farmers admits the averments contained in paragraph 13 of the Counterclaim.

14. Farmers admits the averments contained in paragraph 14 of the Counterclaim.

15. Farmers admits the averments contained in paragraph 15 of the Counterclaim.

16. Farmers restates and incorporates by reference paragraphs 1 through 15 above.

17. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 17 of the Counterclaim, and therefore denies them.

18. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 18 of the Counterclaim, and therefore denies them.

19. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 19 of the Counterclaim, and therefore denies them.

20. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 20 of the Counterclaim, and therefore denies them.

21. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 21 of the Counterclaim, and therefore denies them.

22. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 22 of the Counterclaim, and therefore denies them.

23. Farmers restates and incorporates by reference paragraphs 1 through 22 above.

24. Farmers states that it has a first and best lien on and security interest in all assets of Defendant Archbold Elevator, Inc., denies that APEX has a superior lien on or interest in the assets of Defendant Archbold Elevator, Inc., and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 24 of the Counterclaim, and therefore denies them.

25. Farmers states that it has a first and best lien on and security interest in all assets of Defendant Archbold Elevator, Inc., denies that APEX has a superior lien on or interest in the assets of Defendant Archbold Elevator, Inc., and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 25 of the Counterclaim, and therefore denies them.

26. Farmers states that it has a first and best lien on and security interest in all assets of Defendant Archbold Elevator, Inc., denies that APEX has a superior lien on or interest in the assets of Defendant Archbold Elevator, Inc., and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 26 of the Counterclaim, and therefore denies them.

27. Farmers denies the averments contained in paragraph 27 of the Counterclaim.

28. Farmers admits that it has a first and best lien on and security interest in all assets of Defendant Archbold Elevator, Inc., denies that APEX has a superior lien on or interest in the assets of Defendant Archbold Elevator, Inc., and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 28 of the Counterclaim, and therefore denies them.

29. Farmers restates and incorporates by reference paragraphs 1 through 28 above.

30. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 30 of the Counterclaim, and therefore denies them.

31. Farmers denies the averments contained in paragraph 31 of the Counterclaim.

32. Farmers denies the averments contained in paragraph 32 of the Counterclaim.

33. Farmers denies the averments contained in paragraph 33 of the Counterclaim.

34. Farmers denies the averments contained in paragraph 34 of the Counterclaim.

35. Farmers restates and incorporates by reference paragraphs 1 through 34 above.

36. Farmers admits that some portion of the funds it loaned to defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., William L. Fricke, and Lynette K. Fricke may have been used to purchase livestock.

37. Farmers specifically denies that it granted or intended to grant APEX a priority or other secured position in any of the assets of defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., Williams L. Fricke, and/or Lynette K. Fricke, states that it has a first and best lien on and security interest in all assets of defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., Williams L. Fricke, and Lynette K. Fricke, denies that APEX has a superior lien on or interest in the assets of defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., Williams L. Fricke, and/or Lynette K. Fricke, and denies the remaining averments contained in paragraph 37 of the Counterclaim.

38. Farmers denies the averments contained in paragraph 38 of the Counterclaim.

39. Farmers denies the averments contained in paragraph 39 of the Counterclaim.

40. Farmers denies the averments contained in paragraph 40 of the Counterclaim.

41. Farmers denies the averments contained in paragraph 41 of the Counterclaim.

42. Farmers denies the averments contained in paragraph 42 of the Counterclaim.

43. Farmers denies the averments contained in paragraph 43 of the Counterclaim.

44. Farmers denies the averments contained in paragraph 44 of the Counterclaim.

45. Farmers restates and incorporates by reference paragraphs 1 through 44 above.

46. Farmers denies the averments contained in paragraph 46 of the Counterclaim.

47. Farmers denies the averments contained in paragraph 47 of the Counterclaim.

48. Farmers denies the averments contained in paragraph 48 of the Counterclaim.

49. Farmers denies the averments contained in paragraph 49 of the Counterclaim.

50. Farmers restates and incorporates by reference paragraphs 1 through 49 above.

51. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 51 of the Counterclaim, and therefore denies them.

52. Farmers restates and incorporates by reference paragraphs 1 through 51 above.

53. Farmers admits that it has a first and best lien on and security interest in all assets of defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., Williams L. Fricke, and Lynette K. Fricke.

54. Farmers denies the averments contained in paragraph 54 of the Counterclaim.

55. Farmers restates and incorporates by reference paragraphs 1 through 54 above.

56. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 56 of the Counterclaim, and therefore denies them.

57. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 57 of the Counterclaim, and therefore denies them.

58. Farmers restates and incorporates by reference paragraphs 1 through 57 above.

59. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 59 of the Counterclaim, and therefore denies them.

60. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 60 of the Counterclaim, and therefore denies them.

61. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 61 of the Counterclaim, and therefore denies them.

62. Farmers restates and incorporates by reference paragraphs 1 through 61 above.

63. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 63 of the Counterclaim, and therefore denies them.

64. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 64 of the Counterclaim, and therefore denies them.

65. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 65 of the Counterclaim, and therefore denies them.

66. Farmers restates and incorporates by reference paragraphs 1 through 65 above.

67. Farmers admits that it has a first and best lien on and security interest in all assets of Defendant Archbold Elevator, Inc., denies that APEX has a superior lien on or interest in the assets of Defendant Archbold Elevator, Inc., and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 67 of the Counterclaim, and therefore denies them.

68. Farmers denies the averments contained in paragraph 68 of the Counterclaim.

69. Farmers admits that APEX seeks a judgment as stated in paragraph 69 of the Counterclaim, and denies that APEX is entitled to same.

70. Farmers denies all averments contained in the Counterclaim not affirmatively admitted herein.

AFFIRMATIVE DEFENSES

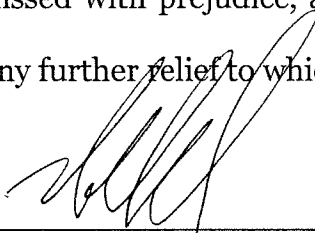
71. APEX fails to state a claim against Farmers upon which relief can be granted.

72. Farmers holds the first and best lien on and security interest in all assets of defendants Archbold Elevator, Inc., Kainos Operations Ltd., O-MI-O Inc., Henry Pig Inc., Williams L. Fricke, and Lynette K. Fricke, including any proceeds therefrom.

73. APEX's claims are barred, in whole or in part, by accord and satisfaction, payment, waiver, assumption of the risk, estoppel, the statute of frauds, and the statute of limitations.

74. Farmers reserves the right to assert additional affirmative defenses as they become known through discovery.

WHEREFORE, Plaintiff The Farmers & Merchants State Bank demands that APEX's counterclaims against Farmers be dismissed with prejudice, and that Farmers recover its costs, expenses, attorneys' fees, and any further relief to which it is entitled.



David J. Coyle (0038966)
Nathan A. Hall (0077014)
SHUMAKER, LOOP & KENDRICK, LLP

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Plaintiff's Answer to Counterclaims and Cross-Claims of Agricultural Products Extension, LLC** was sent on June 9, 2011, by first class United States mail, postage prepaid, upon the following:

Gerald R. Kowalski, Esq.
Cooper & Walinski, LPA
900 Adams Street
Toledo, Ohio 43604-5505
Receiver

Elizabeth J. Hall, Esq.
480 West Dussell Drive
Maumee, Ohio 43537

and

James R. Jeffery, Esq.
Laurie J. Pangle, Esq.
James P. Silk, Jr., Esq.
Spengler Nathanson P.L.L.
Four SeaGate, Suite 400
Toledo, Ohio 43604-2622
*Attorneys for Defendants
The Andersons, Inc. and
The Andersons Agriculture Group L.P.*

Steven L. Diller, Esq.
Dillon W. Staas, Esq.
Diller & Rice, LLC
124 E. Main Street
Van Wert, Ohio 45891
*Attorneys for Defendant
D&D Ingredients Distributors, Inc.*

James Patterson, Esq.
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068
*Attorneys for Defendant
Ohio Department of Agriculture*

Stanley R. Evans, Esq.
Elsass, Wallace, Evans, Schnelle
& Co., L.P.A.
100 South Main Avenue
Suite 102, Courtview Center
P.O. Box 499
Sidney, Ohio 45365-0499
*Attorneys for
Trupointe Cooperative, Inc.*

Brian C. Kalas, Esq.
McHugh & McCarthy, Ltd.
5580 Monroe Street
Sylvania, Ohio 43560
*Attorney for Defendants
The Archbold Entities*

Michael S. Messenger, Esq.
Mark A. Ozimek, Esq.
Robison, Curphey & O'Connell, LLC
Four SeaGate, 9th Floor
Toledo, Ohio 43604
*Attorneys for Defendant
Fenstermaker Farms, Inc.*

Gregory L. Arnold, Esq.
Daniel C. Arnold, Esq.
Law Offices of Gregory L. Arnold
& Associates, Ltd.
5749 Park Center Court
Toledo, Ohio 43615
*Attorneys for Intervener-Defendant
Agricultural Products Extension, LLC*

The Receivables Exchange, LLC
c/o Statutory Agent
National Registered Agents, Inc.
1011 N. Causeway Boulevard, Suite 3
Mandeville, LA 70471

Toyota Motor Credit Corporation
c/o Statutory Agent
CT Corporation System
1300 East Ninth Street
Cleveland, OH 44114



David J. Coyle (0038966)
Nathan A. Hall (0077014)
SHUMAKER, LOOP & KENDRICK, LLP

Attorneys for Plaintiff