

COURT OF COMMON PLEAS  
FULTON COUNTY, OHIO

The Farmers & Merchants State Bank,

Plaintiff,

v.

Archbold Elevator Inc., et al.,

Defendants.

) No. 11CV000128

) [Hon. James E. Barber]

) ANSWER OF WILLIAM L. FRICKE TO  
) CROSS-CLAIM OF DEFENDANT D&D  
) INGREDIENT DISTRIBUTORS, INC.

) [Brian C. Kalas (0070963)

) Sarah A. Miller (0086616)

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) Telephone: (419) 885-3597

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) Attorneys for Defendants William L.

) Fricke and Lynette K. Fricke]

For his answer to the cross-claim of defendant D&D Ingredient Distributors, Inc., defendant William L. Fricke, designated herein as "Defendant Fricke," states and avers as follows:

ANSWER

First Defense

1. Defendant Fricke states that the document speaks for itself.
2. Defendant Fricke admits the averments set forth in paragraph 2.
3. Defendant Fricke is without knowledge or information sufficient to form a

belief as to the truth of the averments contained in paragraph 3 and therefore denies same.

**MCHUGH & MCCARTHY, LTD.**  
**ATTORNEYS AT LAW**  
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**SYLVANIA, OHIO 43560-2538**  
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[M&M File No. 4080-001]

<b>TO:</b>	Gerald R. Kowalski, Esq. @ 419-720-3421 David J. Coyle, Esq. @ 419-241-6894 Elizabeth J. Hall, Esq. @ 419-891-6695 Laurie J. Pangle, Esq. @ 419-241-8599 Gregory L. Arnold, Esq. @ 419-720-1289 Michael S. Messenger, Esq. @ 419-249-7911 Steven L. Diller, Esq. @ 1-419-238-4705	<b>DATE:</b>	May 23, 2011
<b>FROM:</b>	Sarah A. Miller, Esq.	<b>NUMBER OF PAGES (INCL. COVER):</b> 6	
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**MESSAGE:**

Re: The Farmers & Merchants State Bank v. Archbold Elevator, Inc., et al.  
Fulton County Common Pleas Court; Case No. 11CV000128

Dear Counsel:

Enclosed is a copy of the *Answer of William L. Fricke to Cross-Claim of Defendant D&D Ingredient Distributors, Inc.* that is being filed with the Court in the above-referenced matter.

If you have any questions regarding the enclosed, please feel free to contact me.

BCK

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defendant William L. Fricke, designated herein as "Defendant Fricke," states and avers as follows:

ANSWER

First Defense

1. Defendant Fricke states that the document speaks for itself.
2. Defendant Fricke admits the averments set forth in paragraph 2.
3. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3 and therefore denies same.

4. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 4 and therefore denies same. Further answering, Defendant Fricke states that the document speaks for itself.

5. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5 and therefore denies same.

6. Defendant Fricke admits the incorporation by reference of paragraphs 1 through 5 of the Complaint, and in response thereto, adopts by reference paragraphs 1 through 5 above.

7. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 7 and therefore denies same.

8. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 8 and therefore denies same.

9. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 9 and therefore denies same.

10. Defendant Fricke admits the incorporation by reference of paragraphs 1 through 9 of the Complaint, and in response thereto, adopts by reference paragraphs 1 through 9 above.

11. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 11 and therefore denies same.

12. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 12 and therefore denies same.

13. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 13 and therefore denies same.

14. Defendant Fricke admits the incorporation by reference of paragraphs 1 through 13 of the Complaint, and in response thereto, adopts by reference paragraphs 1 through 13 above.

15. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 15 and therefore denies same.

16. Defendant Fricke denies the averments set forth in paragraph 16. Further answering, Defendant Fricke states that the Ohio Department of Agriculture issued an order stating all reasons for the suspension of the handler's license of defendant Archbold Elevator, Inc. and any references to such suspension shall be made in accordance with the order issued by the Ohio Department of Agriculture.

17. Defendant Fricke admits the averments set forth in paragraph 17.

18. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 18 and therefore denies same. Further answering, Defendant Fricke states that the documents speak for themselves.

19. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 19 and therefore denies same. Further answering, Defendant Fricke states that the documents speak for themselves.

20. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 20. Further answering, Defendant Fricke states that paragraph 20 calls for a legal conclusion.

21. Defendant Fricke is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 21.

22. Defendant Fricke denies each and every averment not otherwise admitted herein to be true.

#### Second Defense

23. Defendant Fricke states that the cross-claim of defendant D&D Ingredient Distributors, Inc. fails to state a claim upon which relief may be granted.

Third Defense

24. Defendant Fricke states that cross-claim defendant D&D Ingredient Distributors, Inc. has failed to join all necessary and/or indispensable parties to this action.

Fourth Defense

25. Defendant Fricke states that cross-claim defendant D&D Ingredient Distributors, Inc. has failed to mitigate its alleged damages, if any.

Fifth Defense

26. Defendant Fricke states that the claims of cross-claim defendant D&D Ingredient Distributors, Inc. are barred by the doctrines of waiver and estoppel.

Sixth Defense


27. Defendant Fricke states that cross-claim defendant D&D Ingredient Distributors, Inc. has pursued its relief through the indemnity fund set forth by Ohio Revised Code Chapter 926 *et seq.*

28. Defendant Fricke reserves the right to add additional affirmative defenses as discovery proceeds.

WHEREFORE, defendant William L. Fricke demands that the cross-claim of defendant D&D Ingredient Distributors, Inc. as filed herein against him be dismissed on the merits, and that he be permitted to go hence without delay and to recover his costs, including attorneys fees, incurred herein.

Of Counsel for Defendants William L. Fricke and Lynette K. Fricke:

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\_\_\_\_\_  
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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer of William L. Fricke to Cross-claim of Defendant D&D Ingredient Distributors, Inc.* was duly served by either facsimile or ordinary U. S. Mail this 23<sup>rd</sup> day of May, 2011 upon:

David J. Coyle, Esq.  
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An Attorney for Defendants