

COURT OF COMMON PLEAS  
FULTON COUNTY, OHIO

The Farmers & Merchants State Bank, ) Case No. 11CV000128  
)  
Plaintiff, ) Judge Barber  
)  
-vs- ) **PLAINTIFF'S ANSWER TO**  
) **COUNTERCLAIM OF**  
Archbold Elevator Inc., et al., ) **DEFENDANT D&D INGREDIENT**  
) **DISTRIBUTORS, INC.**  
)  
Defendants. )  
) David J. Coyle (0038966)  
) Nathan A. Hall (0077014)  
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For its Answer to the Cross Claims and Counterclaims of Defendant D&D Ingredient Distributors, Inc. ("D&D") (the "Counterclaim"), Plaintiff Farmers & Merchants State Bank ("Farmers") states as follows:

1. No response is required from Farmers. To the extent a response is required, 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. No response is required from Farmers. To the extent a response is required, 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. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 3 of the Counterclaim, and therefore denies them.

4. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 4 of the Counterclaim, and therefore denies them.

5. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 5 of the Counterclaim, and therefore denies them.

6. Farmers restates and incorporates by reference paragraphs 1 through 5 above.

7. Farmers states that it has the first priority security interest in all of Defendant Archbold Elevator, Inc.'s assets, denies that D&D has an interest in Defendant Archbold Elevator, Inc.'s assets that is superior to Farmers' interest, and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 7 of the Counterclaim, and therefore denies them.

8. Farmers states that it has the first priority security interest in all of Defendant Archbold Elevator, Inc.'s assets, denies that D&D has an interest in Defendant Archbold Elevator, Inc.'s assets that is superior to Farmers' interest, and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 8 of the Counterclaim, and therefore denies them.

9. Farmers states that it has the first priority security interest in all of Defendant Archbold Elevator, Inc.'s assets, denies that D&D has an interest in Defendant Archbold Elevator, Inc.'s assets that is superior to Farmers' interest, and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 9 of the Counterclaim, and therefore denies them.

10. Farmers restates and incorporates by reference paragraphs 1 through 9 above.

11. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 11 of the Counterclaim, and therefore denies them.

12. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 12 of the Counterclaim, and therefore denies them.

13. No response is required from Farmers. To the extent a response is required, Farmers is without information or knowledge sufficient to form a belief as to

the truth of the averments contained in paragraph 13 of the Counterclaim, and therefore denies them.

14. Farmers restates and incorporates by reference paragraphs 1 through 13 above.

15. Farmers is without information or knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 15 of the Counterclaim, and therefore denies them.

16. Farmers admits that the Ohio Department of Agriculture suspended the grain handling license of Defendant Archbold Elevator, Inc.

17. Farmers admits that a receiver was appointed over the assets and operations of several of the Defendants, including Defendant Archbold Elevator, Inc.

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 denies the averments contained in paragraph 20 of the Counterclaim.

21. Farmers admits that it has the first priority security interest in the subject goods, livestock, and proceeds, denies that D&D has an interest in the subject goods, livestock, and proceeds that is superior to Farmers' interest, and is without information or knowledge sufficient to form a belief as to the truth of the remaining averments contained in paragraph 21 of the Counterclaim, and therefore denies them.

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

**AFFIRMATIVE DEFENSES**

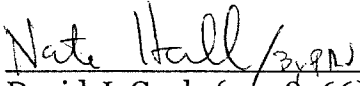
23. D&D fails to state a claim against Farmers upon which relief can be granted.

24. Farmers has the first and best lien on all assets of Defendants Archbold Elevator, Inc., Kainos Operations, Ltd., O-MI-O, Inc., Henry Pig, Inc., William L. Fricke and Lynette K. Fricke, including the subject goods, livestock, and proceeds.

25. D&D's claims are barred, in whole or in part, by accord and satisfaction, assumption of risk, estoppel, the statute of frauds, and the statute of limitations.

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

**WHEREFORE**, Plaintiff Farmers & Merchants State Bank demands that Defendant D&D Ingredient Distributors, Inc.'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.

  
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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 **Plaintiff's Answer to Counterclaim of Defendant D&D Ingredient Distributors, Inc.** was sent on May 25, 2011, by first class United States mail, postage prepaid, upon the following:

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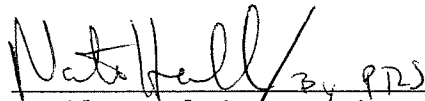
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A handwritten signature in black ink that reads "Nathan A. Hall" followed by a diagonal slash and the initials "D.J.C.".

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