

IN THE SUPREME COURT OF OHIO

ROBERT H. DUES

Appellant/Cross-Appellee,

vs.

MINSTER FARMERS COOPERATIVE  
EXCHANGE COMPANY, INC.

Appellee/Cross-Appellant.

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Ohio Supreme Court  
Case No. 06-1069

On Appeal from the Court of Appeals of  
the Third Appellate Judicial District of  
Ohio, Shelby County

Court of Appeals  
Case No. 17-05-28

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REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

MINSTER FARMERS COOPERATIVE EXCHANGE COMPANY, INC.

TO APPELLANT/CROSS-APPELLEE ROBERT H. DUES' RESPONSE

TO MERIT BRIEF IN SUPPORT OF CROSS-APPEAL

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**TABLE OF AUTHORITIES**

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## STATEMENT OF FACTS

The clear terms on the hundreds of delivery tickets, regular invoices, finance charge invoices, and monthly statements, exchanged between the parties are rewritten here. They state:

1. Delivery Ticket – “1% Cash discount on balance over \$25.00 if paid by the 15<sup>th</sup> of the month following purchases. Net due last day of the month. 2% finance charge per month after 30 days. (24% Annual).”
2. Regular Invoice – “**1% CASH DISCOUNT ON CURRENT BALANCE OVER \$25.00, IF PAID BY THE 15<sup>TH</sup> OF THE MONTH FOLLOWING PURCHASES. NET DUE LAST DAY OF THE MONTH. 2% FINANCE CHARGE PER MONTH AFTER 30 DAYS. (24% ANNUAL)**” (bold in original).
3. Finance Charge Invoice – “**DEDUCT CASH DISCOUNT SHOWN ABOVE IF PAID BY TERMS LISTED. NET DUE LAST DAY OF MONTH. 2% FINANCE CHARGE PER MONTH AFTER 30 DAYS. (24% ANNUAL)**” (bold in original).
4. Monthly Statement – “ACCOUNTS ARE SUBJECT TO F/C 2.0% PER MONTH-ANNUAL RATE 24% ON AMOUNTS NOT PAID BY [each month end statement contains a date which is 30 days after the month end statement date]”.

## ARGUMENT REGARDING CROSS-APPEAL

**Cross-Appeal Proposition of Law No. I:** A contract for goods between merchants governed by Ohio’s Uniform Commercial Code bearing a finance charge at the rate of 2% per month on all amounts not paid after 30 days is not usurious, although it stipulates that the monthly unpaid finance charges shall also bear a finance charge at the same rate of 2% per month if not paid when due.

In his Reply Brief to Minster Farmer’s Cross-Appeal, Dues continues to omit material language contained in the delivery tickets, regular invoices, finance charge invoices, and monthly statements. Dues continues to use misstatements such as “2% per month (24% annual)” when arguing regarding the compounding cross-appeal.

Minster Farmers acknowledges the compounding cross-appeal argument need only be considered if Dues’ appeal is denied. Once this Court affirms the Court of Appeals’ decision

and permits Minster Farmers to charge 2% per month, the only issue remaining is compounding. If this Court determines the parties agreed to a finance charge of 2% per month, this Court should also hold the parties agreed to compounding. The case of *Taylor v. Hiestand & Co.* (1889), 47 Ohio St. 345 does not stand for the proposition that compounding can only occur if there is a written contract. Rather, the parties can charge interest upon interest if the parties agree all amounts, including monthly finance charges, are due within 30 days any amounts at the end of said 30 days will be included in the account balance and will be subject to a future finance charge of 2% per month. This was clearly the contract and agreement between these parties based upon the full language from the delivery tickets, regular invoices, finance charge invoices, and monthly statements.

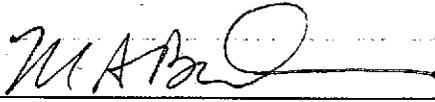
#### CONCLUSION

The trial court correctly granted judgment for Minster Farmers against Dues in the sum of \$40,990.00 as of April 30, 2005, plus a finance charge of 2% per month thereafter, to the date of judgment, which was October 13, 2005. The trial court also correctly permitted finance charges on top of finance charges for all amounts due not paid after 30 days. The court of appeals correctly affirmed the trial court's decision on the finance charge of 2% per month. The appellate court incorrectly reversed the trial court on the compounding issue, because it did not consider the *Taylor* case.

This Court should affirm the appellate court's decision regarding the 2% per month. This Court should reverse the appellate court's decision on the compounding issue because finance charges can be assessed on unpaid finance charges where this is a term of the parties' contract.

This Court should then remand this case to the trial court for calculation of the balance due, plus finance charges, consistent with the properly decided Trial Court Decision dated October 13, 2005.

Respectfully submitted,

By   
Michael A. Burton

COUNSEL FOR  
APPELLEE/CROSS-APPELLANT,  
MINSTER FARMERS COOPERATIVE  
EXCHANGE COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief of Appellee/Cross-Appellant has been sent to counsel for Appellant/Cross-Appellee, by regular United States Mail, postage prepaid, this 21<sup>st</sup> day of February, 2007.

  
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