

IN THE SUPREME COURT OF OHIO

**THE MINSTER FARMERS  
COOPERATIVE EXCHANGE  
COMPANY, INC.**

Appellee/Cross-Appellant,

vs.

**ROBERT H. DUES**

Appellant/Cross-Appellee.

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**Supreme Court Case No. 06-1069  
Trial Court Case No. 05 CV 48**

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**MEMORANDUM CONTRA OF MINSTER FARMERS COOPERATIVE EXCHANGE  
COMPANY, INC. TO MOTION TO CALCULATE, SETTLE AND CLOSE THE OPEN  
BOOK ACCOUNT OF ROBERT H. DUES**

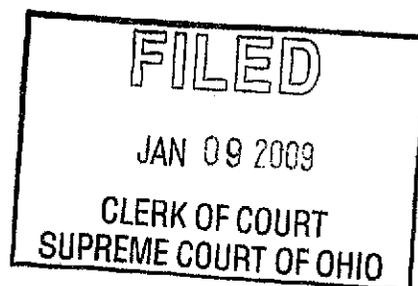
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Robert H. Dues  
6052 Short Road  
Houston, Ohio 45333  
937/295-3065  
937/295-2350 (fax)

Robert H. Dues  
Pro Se

Michael A. Burton (0064921)  
JAUERT & BURTON LLP  
Fifth Third Bank Building, Second Floor  
10 W. Auglaize Street, PO Box 1957  
Wapakoneta, Ohio 45895  
419/738-9275  
419/738-3403 (fax)  
[mike@burtonlawoffice.com](mailto:mike@burtonlawoffice.com)

Counsel for Minster Farmers Cooperative  
Exchange Company, Inc.



**I. Procedural Posture:**

Now comes Minster Farmers Cooperative Exchange Company, Inc. ("Minster Farmers") and files this Memorandum Contra to the Motion to Calculate, Settle and Close the Open Book Account ("Motion") filed herein by Robert H. Dues on December 30, 2008. As stated in the Entry filed by this Court on December 11, 2008, see a copy attached as Exhibit A, this Court's opinion filed March 26, 2008 returned jurisdiction over this cause to the trial court.

Minster Farmers initially filed its Complaint on February 4, 2005. Dues filed his answer on March 14, 2005. No counterclaim was ever filed by Dues, at any time, during this extensive litigation, which has now taken almost four years. See the docket which is attached to the Motion which Dues recently filed in this Court, for support that a counterclaim was never filed.

By Judgment Entry of Dismissal with Prejudice filed October 2, 2008, the trial court dismissed this case with prejudice. The parties were advised the Court's October 2, 2008 judgment entry was a final appealable order. See the Exhibit 6 attached to Dues' Motion, as well as another copy of the October 2, 2008 Judgment Entry of Dismissal with Prejudice attached hereto as Exhibit B. To the best of the undersigned's knowledge, the trial court's October 2, 2008 Judgment Entry of Dismissal with Prejudice was not appealed by Dues to the Court of Appeals.

**II. Argument**

**A. No Counterclaim was ever filed by Dues. Therefore the trial Court's October 2, 2008 Judgment Entry of Dismissal with Prejudice was proper.**

During the almost four years of this litigation Dues has represented himself largely pro se. Attorney Bryan Niemeyer did represent Dues during the Supreme Court proceedings. During this entire time, no counterclaims were ever filed. The only issue pending before the trial court was Minster Farmer's complaint, as remanded by this court. As such, the trial court's October 2, 2008 Judgment Entry of Dismissal with Prejudice, based upon Minster Farmers' Motion to Dismiss, was proper.

**B. Dues did not appeal the trial court's October 2, 2008 Judgment Entry of Dismissal with Prejudice on a timely basis and should not be permitted to end run the proper appellate procedure by filing his Motion.**

The trial court, by its October 2, 2008 Judgment Entry of Dismissal with Prejudice informed Dues this was a final appealable order. See Exhibit B attached hereto and Exhibit 6 attached to Dues' Motion. Dues did not take advantage of the thirty days after October 2, 2008, during which time he could have filed a Notice of Appeal with the Court of Appeals for the Third Appellate Judicial District of Ohio. See, Appellate Rule 4. Dues' Motion attempts to end run his missed deadline.

**III. Conclusion**

Based upon the trial court's proper dismissal with prejudice and Dues' failure to meet the thirty day appellate deadline, Dues' Motion should be denied.

Respectfully submitted,

JAUERT & BURTON LLP

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Michael A. Burton (0064921)  
Fifth Third Bank Building, Second Floor  
10 W. Auglaize Street, PO Box 1957  
Wapakoneta, Ohio 45895  
419/738-9275 Telephone  
419/738-3403 Facsimile  
[mike@burtonlawoffice.com](mailto:mike@burtonlawoffice.com)  
Attorney for Minster Farmers Cooperative  
Exchange Company, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify a true copy of the foregoing has been served upon **Robert H. Dues**, 6052 Short Road, Houston, Ohio 45333, via regular U.S. mail, postage prepaid, **this 7<sup>th</sup> day of January, 2009.**

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Michael A. Burton (0064921)  
Attorney for Minster Farmers Cooperative  
Exchange Company, Inc.

*Due Demand Case File*

**FILED**

# The Supreme Court of Ohio

DEC 11 2008

CLERK OF COURT  
SUPREME COURT OF OHIO

Minster Farmer's Cooperative Exchange  
Company, Inc.

Case No. 2006-1069

## ENTRY

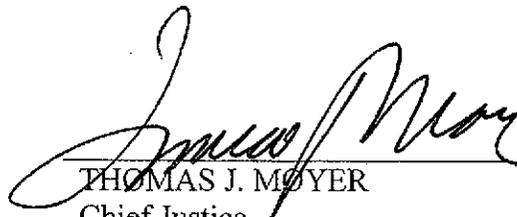
v.

Robert H. Dues

This cause came on for further consideration upon appellant/cross-appellee's pro se notice of violation of due process by officers of the court, proposed notice of hearing, and notice to the court of continuing violation of due process by officers of the court,

It is ordered by the Court that the request for an order to the trial court is denied because this Court's judgment entry and opinion filed March 26, 2008, returned jurisdiction over this cause to the trial court.

(Shelby County Court of Appeals; No. 170528)

  
THOMAS J. MOYER  
Chief Justice

**EXHIBIT**  
A  
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08 OCT -2 AM 9:33

MICHELE K. MUMFORD  
SHELBY COUNTY CLERK

**IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO  
CIVIL DIVISION**

**THE MINSTER FARMERS  
COOPERATIVE EXCHANGE  
COMPANY, INC.**

Plaintiff,

vs.

**ROBERT H. DUES**

Defendant.

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**CASE NO. 05CV000048**

**JUDGMENT ENTRY OF DISMISSAL  
WITH PREJUDICE**

Based upon Plaintiff's Motion to Dismiss, and for good cause shown, and the resolution of all issues pending herein, Plaintiff's Complaint hereby is dismissed with prejudice.

**IT IS FURTHER ORDERED** any additional court costs herein shall be paid by Plaintiff.

**IT IS FURTHER ORDERED** Attorney Michael A. Burton and Defendant, Robert H. Dues, pro se, shall be supplied file-stamped copies of this Judgment Entry of Dismissal, by regular United States mail.

**ORIGINAL SIGNED**

Shelby County Common Pleas Court  
Sidney, Ohio

X \_\_\_\_\_  
James F. Stevenson, Judge

**Take Notice**

On 10/2/08

A final appealable order was filed in case number

05CV48

**Michele K. Mumford**  
Shelby County Clerk of Courts

*Sue White*

