

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DISCOVER BANK, C/O DISCOVER	:	
FINANCIAL SERVICES, INC.,	:	
	:	Civil Action No. C2-3-686
Plaintiff,	:	
	:	Judge Gregory L. Frost
v.	:	
	:	Magistrate Judge Mark R. Abel
NEW VISION FINANCIAL, LLC,	:	
	:	
Defendant.	:	

**NEW VISION FINANCIAL, LLC’S MOTION TO STRIKE PLAINTIFF  
DISCOVER BANK’S MEMORANDUM OPPOSING ORAL ARGUMENT**

Defendant New Vision Financial LLC (“New Vision”) hereby moves to strike plaintiff Discover Bank’s purported memorandum opposing oral argument (the “Second Opposition Memorandum”) as a sur-reply filed without leave of Court and filed out of rule. New Vision respectfully requests that this Court find that “argument or a conference” would be helpful, pursuant to S.D. Ohio Civ. R. 7.1(b)(2), and that oral argument be scheduled. A memorandum in support of this motion is attached hereto.

Respectfully submitted,

**s/Rodney A. Holaday**  
Rodney A. Holaday (0068018)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
Telephone: (614) 464-6400  
Facsimile: (614) 464-6350  
E-mail: [raholaday@vssp.com](mailto:raholaday@vssp.com)

Attorneys for Defendant,  
New Vision Financial, LLC

**MEMORANDUM IN SUPPORT**

S.D. Ohio Civ. R. 7.2(a) specifically allows a supporting memorandum, an opposing memorandum and a reply memorandum. “No additional memorandum beyond those enumerated will be permitted except upon leave of court for good cause shown.” *See* S.D. Ohio Civ. R. 7.2(a)(1) and (2).

New Vision filed its motion to dismiss for lack of jurisdiction or in the alternative, to transfer venue with oral argument requested on September 2, 2003, and succinctly explained the grounds for its oral argument request pursuant to S.D. Ohio Civ. R. 7.1(b)(2). Discover Bank filed its twenty-three page, first opposition memorandum to New Vision’s motion on September 26, 2003. Discover Bank either strategically elected at this stage not to oppose New Vision’s request for oral argument, failed to issue spot, forgot to take a position on the issue, or believed that the scope of the local civil rules of this Court are inapplicable to Discover Bank, regardless of the test of S.D. Ohio Civ. R. 1.1(c).

Instead, Discover Bank filed a second opposition memorandum. Regardless of the conclusory title given by Discover Bank, this Second Opposition Memorandum is, in substance, nothing more than sur-reply filed out-of-rule and without leave of Court. Indeed, the Memorandum acknowledges that it is responding “to New Vision’s reply papers,” and purports to “make two additional points” to Discover Bank’s first opposition memorandum. *See* Second Opposition Memorandum at pp. 1-2.

Because Discover Bank did not seek leave of this Court to file its Second Opposition Memorandum, the Second Opposition Memorandum and its additional or new arguments contained therein must be entirely stricken.

In contrast, New Vision's positions are accurate, and its request for oral argument abides by the civil rules. Rather than reward an apparent attempt to circumvent and eviscerate the effect of the civil rules, Discover Bank's Second Opposition Memorandum should be stricken, with New Vision's request for oral argument deemed unopposed. New Vision respectfully requests that this Court find that "argument or a conference" would be helpful, pursuant to S.D. Ohio Civ. R. 7.1(b)(2), and that oral argument be scheduled as to New Vision's motion to dismiss or in the alternative, to transfer venue.

Respectfully submitted,

**s/Rodney A. Holaday**

Rodney A. Holaday (0068018)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
Telephone: (614) 464-6400  
Facsimile: (614) 464-6350  
E-mail: [raholaday@vssp.com](mailto:raholaday@vssp.com)

Attorneys for Defendant,  
New Vision Financial, LLC

Of Counsel:

E. Scott Dosek, Esq.  
Kutak Rock LLP  
8601 North Scottsdale Road  
Suite 300  
Scottsdale, AZ 85253  
Telephone: (480) 429-5000  
Facsimile: (480) 429-5001  
E-Mail: [e.scott.dosek@kutakrock.com](mailto:e.scott.dosek@kutakrock.com)

Gregory R. Crochet, Esq.  
Kutak Rock LLP  
Suite 2100 Peachtree Center South Tower  
225 Peachtree Street NE  
Atlanta, GA 30303  
Telephone: (404)222-4600  
Facsimile: (404) 2224654  
E-mail: [gregory.crochet@kutakrock.com](mailto:gregory.crochet@kutakrock.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2003, I electronically filed the forgoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

Craig A. Smith, Esq.  
Gamble Hartshorn Johnson, LLC  
One East Livingston Avenue  
Columbus, Ohio 43215  
E-Mail: [smith@ghjlaw.com](mailto:smith@ghjlaw.com)

Attorneys for Plaintiff,  
Discover Bank

**s/Rodney A. Holaday**  
Rodney A. Holaday (0068018)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
Telephone: (614) 464-6400  
Facsimile: (614) 464-6350  
E-mail: [raholaday@vssp.com](mailto:raholaday@vssp.com)

Attorneys for Defendant,  
New Vision Financial, LLC