

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

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DISCOVER BANK,

Plaintiff,

-against-

NEW VISION FINANCIAL, LLC., :

Defendant. :

Civil Action No. C2-3-686

Judge Gregory L. Frost

Magistrate Judge Mark R. Abel

STATE OF OHIO)
) ss.:
COUNTY OF FRANKLIN)

**AFFIDAVIT OF ROBERT DETER, SENIOR DEPARTMENT MANAGER
FOR PORTFOLIO SALES OF DISCOVER FINANCIAL SERVICES, INC.**

ROBERT DETER, being duly sworn, deposes and says:

1. I am the Senior Department Manager for Portfolio Sales of Discover Financial Services, Inc. ("Discover Financial"), the servicing agent for Plaintiff Discover Bank. I have worked for Discover Financial for 15 years and I have held this position for 5 years. My office is located in Hilliard, Ohio.

2. I am over eighteen years of age, have personal knowledge of the matters contained in this affidavit, and have given this affidavit voluntarily and without coercion. I submit this affidavit in opposition to the motion of defendant New Vision Financial, LLC. ("New Vision") to dismiss the complaint on jurisdictional grounds, or, in the alternative, to transfer venue to the Northern

District of Georgia. I refer the Court to the accompanying memorandum of law of plaintiff Discover Bank for the reasons why defendant's motion should be denied. If called as a witness, I could and would testify competently to the matters set forth herein.

A. Summary of Action and Ohio Connections

3. In this action, Discover Bank seeks approximately \$850,000 in mitigation damages for New Vision's breach of contract, plus an additional \$2 million in future lost profits. In the January 2001 contract which is the subject of this action (the "Agreement"), New Vision agreed that it would purchase a certain amount of delinquent credit card accounts from Discover Bank on a monthly basis, and that if it failed to do so, Discover Bank, among other things, had the right to resell the unpurchased accounts in order to mitigate its damages and to obtain any deficiency from New Vision, plus attorneys' fees. (A copy of the complaint in this action, with exhibits, is annexed hereto as Exhibit 1.)

4. The following is a summary of the significant and undisputed contacts between the State of Ohio and defendant New Vision as it relates to the Agreement:

- New Vision appointed an agent in Cincinnati, Ohio (Enhanced Recovery Corporation) to negotiate and to carry out the Agreement;
- The address set forth in the Agreement for New Vision is the Cincinnati, Ohio address of New Vision's agent;
- Two of the three written amendments to the Agreement were in the form of letters addressed to the Cincinnati, Ohio office of New Vision's agent;

- The accounts sold by plaintiff to New Vision were worked on for collection purposes from the Cincinnati, Ohio office of New Vision's agent;
- Meetings were held at the Cincinnati, Ohio office of New Vision's agent and in the Hilliard, Ohio office of Discover Financial to discuss the Agreement;
- Correspondence, invoices, e-mails, faxes, and other documents regarding the negotiation of the Agreement in late 2000 and early 2001, and implementation of the Agreement thereafter were sent to and from the Cincinnati, Ohio office of New Vision's agent.

5. Additionally, Ohio is a more convenient forum for this litigation than Georgia because (a) New Vision's agent (Enhanced Asset Management) is located in Cincinnati, Ohio; (b) Discover Bank's agent (Discover Financial) is located in Hilliard, Ohio; (c) the contract negotiations (including several meetings) and performance of the Agreement occurred in Ohio; (d) most, if not all, of Discover Financial's key witnesses are located in Ohio; and (e) all relevant documents are located in Ohio.

B. The Parties and the Agreement

6. Plaintiff Discover Bank is a bank organized and existing under the laws of the State of Delaware, and its principal place of business is located in the State of Delaware. Discover Bank services its credit card operations through an affiliated company, Discover Financial Services, Inc.

7. The only collection recovery center for charged-off accounts for Discover Financial ("Collection Recovery Center") is located at 3311 Mill Meadow Road, Hilliard, Ohio. All of Discover Bank's business activity with respect to

the recovery and collection of charged-off credit card debt is conducted in this Ohio facility, which employs approximately three hundred people and where my office is located. It is the only location involved in the sale of charged-off debt accounts for Discover Bank and Discover Financial. Virtually all dealings with New Vision and its agent were handled by my department at the Ohio Collection Recovery Center of Discover Financial.

8. My department at the Ohio facility of Discover Financial is responsible for selling charged-off credit card debt for Discover Bank to third parties who are interested in purchasing and collecting charged-off credit card debt. Discover Financial employs approximately twelve people in my department at its Ohio facility to conduct and manage sales of charged-off debt to third parties. One such third party who purchased charged-off credit card debt through the Ohio office of Discover Financial was Defendant New Vision.

9. As demonstrated in the copy of the Agreement that is annexed as Exhibit 1 to the complaint, in January 2001, New Vision and Discover Bank entered into a Credit Card Accounts Sale Agreement whereby New Vision agreed to purchase between \$5 million and \$15 million in delinquent credit card accounts each month through December 2001, with a renewal term of one year which was subject to cancellation upon notice. See Complaint ¶6. The address set forth in the Agreement for New Vision was in care of its Ohio agent, Enhanced Asset Management ("EAM") as follows:

New Vision Financial, LLC
c/o Enhanced Asset Management

13 Triangle Park Drive, Suite 1302
Cincinnati, OH 45246
Attention: John Schanck

Agreement ¶ 13.1

10. On January 23, 2001, in-house counsel for Discover Bank's parent company (Morgan Stanley) sent original execution copies of the signed Agreement to New Vision at the Cincinnati, Ohio address set forth in the Agreement for notices. A copy of this letter is annexed hereto as Exhibit 2. The Agreement was amended in writing on three occasions – October 1, 2001, February 8, 2002, and July 10, 2002. (Copies of these written amendments are annexed as Exhibit B to the complaint.) As the Court can see from Exhibit B to the complaint, two of the three amendments (the October 2001 and February 2002 amendments) were sent to the Cincinnati, Ohio address of New Vision's agent EAM.

C. New Vision's Ohio Agent

11. New Vision is a sophisticated, well-financed purchaser of credit card debt from various credit card issuers nationwide. In an e-mail dated August 27, 2000 (a copy of which is annexed hereto as Exhibit 3), New Vision's agent described New Vision as having "significant experience in the debt industry" and stated that New Vision has spent in excess of \$40 million over the last 2 years on purchasing credit card paper. Indeed, in the Agreement, New Vision represented that it was an "institutional and sophisticated" purchaser of credit card debt, and agreed to purchase millions of dollars of such debt

monthly. See Agreement, Sections 2.1 and 8.1.

12. New Vision does not itself attempt to collect the debts that it purchases, but does so through various agents. It is New Vision's agents which actually have collection operations which enable New Vision to enter into contracts like the one at issue in this action.

13. As made clear in paragraph 13.1 of the Agreement and in the amendments to the Agreement, New Vision's designated agent for the Agreement was EAM of Cincinnati, Ohio, which we were advised is an affiliate of Enhanced Recovery Corporation ("ERC").

14. At the time that the contract at issue was negotiated, ERC's and EAM's principal place of business was located in Cincinnati, Ohio. See letter dated September 12, 2000 from Kirk Moquin ("Moquin"), chief operating officer of ERC - whose office was located in Cincinnati, Ohio -- to Richard Springer ("Springer"), Discover Financial's Area Manager for account sales, whose office is located in Hilliard, Ohio (a copy of which is annexed hereto as Exhibit 4). See also "General Information Sheet" prepared by ERC dated December 6, 2000 (a copy of which is annexed hereto as Exhibit 5).

15. The September 12, 2000 letter from ERC's Cincinnati offices to Discover Financial's Ohio offices (Exhibit 4 hereto) described the Cincinnati operations of New Vision's agent as follows:

Enhanced Recovery Corporation is headquartered in Cincinnati, Ohio. Our current collector capacity at this location is 24 collectors and 4 supervisors. At present we have 14 collectors and 2 supervisors. The Cincinnati office has 2 support staff and 1

supervisor to oversee accounting, bookkeeping and daily clerical functions. . . .

All accounting, bookkeeping and daily clerical functions are handled from our corporate headquarters in Cincinnati, Ohio.

See Exhibit 4 hereto. The letter also contained a detailed description of how ERC was to act on behalf of New Vision:

ERC has contracted with New Vision Financial, LLC (NVF), Front Line Asset Group, LLC (FLAG) and Advantage America, LLC (AA) for the purpose to locate select and purchase debt portfolios for collection. ERC will locate, analyze, negotiate and manage the purchase along with the collection and sale of the debt portfolios.

On behalf of NVF, ERC would like to purchase consumer credit card portfolios with a wide range of geographic distribution. We are interested in early out, fresh charge off, and internal recovery unit portfolios. NVF will be funding ERC one to five million dollars per month to purchase debt on their behalf. As I mentioned in our conversations, ERC is looking to establish a forward flow relationship with Discover Financial Services, Inc.

New Vision, Financial, LLC, and Front Line Asset Group, LLC are headquartered in Atlanta, Georgia. The founders, Fred and Shelly Howard, have over 25 years experience in the financial services industry. In 1997, NVF and FLAG started to provide the funds from Limited Liability Partnerships and private placements to purchase debt portfolios. To date, NVF and FLAG have raised and spent over 40 million dollars in purchasing debt. NVF and FLAG have used Enhanced Recovery Corporation, Collect America, ReFinance America, Ameriquest Recovery Systems and Advantage America as collection agencies. (Emphasis Added)

Id. As stated in this letter, ERC contracted with New Vision to have ERC act as New Vision's collection agent with regard to credit card accounts purchased from Discover Bank, and to perform the tasks necessary for the collection of those accounts.

D. The Negotiation of the Agreement

16. The initial contacts between the parties, through their respective agents, all occurred within the State of Ohio. ERC (from its Ohio office) contacted Discover Financial (at its Ohio office) on behalf of New Vision in or about August 2000. See E-mail from Moquin to Springer dated August 27, 2000 (Exhibit 3 hereto).

17. During the course of the negotiations, New Vision confirmed in writing that ERC of Cincinnati, Ohio, was its duly authorized agent for all dealings with Discover Bank and Discover Financial Services. For example, on October 16, 2000, New Vision provided Discover Bank with a certification stating that New Vision "authorizes Enhanced Recovery Corporation to act as its agent in the purchase of debt portfolios and authorized Enhanced Recovery Corporation to negotiate and enter into purchase agreements in the corporate name." See Certificate of Shelly Howard dated October 16, 2000 (a copy of which is annexed hereto as Exhibit 6); see also Certificate of Shelly Howard dated December 15, 2000 (to the same effect, copy annexed as Exhibit 7).

18. Indeed, ERC stated to Discover Financial that the "physical address" of New Vision, for the purpose of doing business with Discover, would be "c/o Enhanced Asset Management, 13 Triangle Park Drive, Suite 1302, Cincinnati, Ohio 45246." See Facsimile from John Schanck of ERC's Ohio office to Discover Financial's Ohio office, enclosing a "pre-sale information" form completed by ERC on December 14, 2000 (a copy of which is annexed hereto as Exhibit 8).

19. As a part of our routine due diligence, Discover Financial conducted a site visit of ERC and requested additional information concerning New Vision's ability to carry out its contractual obligations. That information was provided by ERC (from its Cincinnati office) rather than New Vision. See Fact Sheet prepared by ERC, Exhibit 5 hereto. Thereafter, on December 7, 2000, I traveled to ERC's office in Cincinnati, Ohio to conduct a site visit to review ERC's operations with respect to, among other things, hiring, training, and collections, in order to determine whether ERC was capable of carrying out the collection activities necessary for any contract between Discover Bank and New Vision. See E-mail of December 4, 2000 from me to John Schanck concerning my visit to Schanck's office in Cincinnati (a copy of which is annexed hereto as Exhibit 9).

20. After determining that ERC was capable of carrying out New Vision's contractual duties, Discover Financial conducted negotiations on behalf of Discover Bank with ERC. I was the principal negotiator on behalf of Discover Bank, and John Schanck of ERC's Cincinnati office was the principal negotiator on behalf of New Vision. In fact, drafts of the Agreement were e-mailed back and forth between me in Discover Financial's Hilliard, Ohio office and ERC's Cincinnati office. See E-mail from me to ERC dated January 9, 2001, enclosing drafts of the agreement at issue here (a copy of which is annexed hereto as Exhibit 10). The Agreement was executed by the principals in late January 2001.

21. As made clear in ERC's September 12, 2000 letter (Exhibit 4 hereto), the actual collection of the credit card accounts sold to New Vision pursuant to the Agreement took place at the offices of ERC in Cincinnati, Ohio, where ERC employed collectors and supervisors to work the accounts that New Vision purchased from Discover Bank. All invoices from Discover Financial to New Vision were addressed to the Cincinnati, Ohio office of ERC and were sent from Discover Financial's Ohio facility. Several examples of these invoices are annexed hereto as Exhibit 11.

22. In June 2001, ERC instructed my office to begin faxing the monthly invoices to an office of ERC in Jacksonville, Florida (the prior five monthly invoices were faxed to ERC's Cincinnati office). Although we complied with this request, we continued to address each and every invoice to ERC's Cincinnati address at 13 Triangle Park Drive, Cincinnati, Ohio, which is the address set forth in the Agreement for notices. See Exhibit 11. In fact, I recently called ERC and verified it still has that Cincinnati location. That Cincinnati office was the principal office for dealings with Discover Financial when the Agreement was negotiated in late 2000, when the Agreement was signed in January 2001, and when the Agreement was performed during the first six months of 2001. It remained the address of record for dealings between the parties until the end of their relationship in 2003.

E. The Amendments of the Agreement

23. Following execution of the Agreement, New Vision complained to

Discover Bank about the purchase price and minimum purchase requirements that it had agreed to in the Agreement. Discover Bank accommodated New Vision by entering into a series of amendments to the Agreement, providing for different monthly purchase requirements, as well as successively lower purchase prices.

24. My office at Discover Financial in Ohio was responsible for the negotiation of all of these amendments. For example, on August 12, 2001, Fred Howard, the president of New Vision, reiterated in a letter to me that "New Vision Financial has directed Enhanced Asset Management and Enhanced Recovery Corporation to communicate directly with Discover on its behalf." (A copy of this letter is annexed hereto as Exhibit 12.) Thereafter, Mouquin of ERC's Cincinnati office met with me in my Hilliard, Ohio office to negotiate the first of these amendments. See E-mails from me to Moquin dated August 27 and 29, 2001 (a copy of which is annexed hereto as Exhibit 13).

25. As a result of these and other negotiations in which I actively participated, the parties executed written amendments to the Agreement on or about October 1, 2001, February 8, 2002 and July 10, 2002, copies of which are annexed as Exhibit B to the Complaint (Exhibit 1 hereto). As previously mentioned, two of the three amendments were addressed to New Vision in care of EAM at its Ohio address. Id.

F. The Venue Issues

26. Ohio is a far more convenient forum to litigate this dispute against New Vision than Georgia. In fact, this case has little – if any – connection to Georgia. The Agreement which is the subject of this litigation was negotiated and performed in Ohio – not Georgia. I believe that the only connection to Georgia is that it is the state where New Vision's president, Fred Howard, has his office.

27. Most, if not all, of plaintiff Discover Bank's key witnesses -- all employees of Discover Financial, its servicing agent -- are located within the State of Ohio and work in the Hilliard, Ohio, Collection Recovery Center of Discover Financial. These witnesses include, for example, Gary Harris (a manager responsible for account sales and post-sale issues) and Richard Springer (currently a Senior Department manager who was actively involved in the negotiations with ERC, New Vision's Ohio agent).

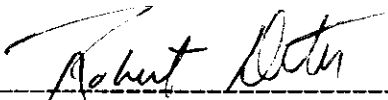
28. All of the documents relating to plaintiff's claim against New Vision are also located in our Hilliard, Ohio office. These documents relate to the negotiation and performance of the Agreement, which lasted for more than two years, and include voluminous records of the monthly sale of millions of dollars of credit card accounts to New Vision, invoices and other accounting records relating to New Vision, as well as documents evidencing the mitigation of damages from New Vision's breach of the Agreement.

29. As set forth at length in this affidavit, not only was the contract

negotiated in Ohio, and not only did several key business meetings involving the contract at issue occur within this state, but correspondence was routinely sent between Discover Financial's Ohio office and the Ohio office of New Vision's agent. Significantly, no such meetings occurred within the State of Georgia.

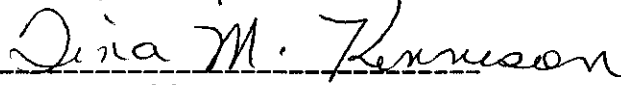
G. Conclusion

30. Based on the foregoing, defendant New Vision's motion to dismiss the action on jurisdictional grounds or to transfer venue should be denied in its entirety, and this case should be heard by this Court.



Robert Deter

Sworn to before me this
25 day of September 2003.



Notary Public

