

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

DISCOVER BANK, :  
 :  
 : Civil Action No. C2-3-686  
 Plaintiff, :  
 :  
 : Judge Gregory L. Frost  
 -against- :  
 :  
 : Magistrate Judge Mark R. Abel  
 NEW VISION FINANCIAL, LLC., :  
 :  
 :  
 Defendant. :

**PLAINTIFF DISCOVER BANK'S MOTION TO DISMISS  
DEFENDANT NEW VISION FINANCIAL, LLC'S AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS, AND FOR PARTIAL  
JUDGMENT ON THE PLEADINGS**

Now comes Plaintiff Discover Bank, by and through its undersigned counsel, and hereby respectfully submits its Motion to Dismiss Defendant New Vision Financial, LLC's Affirmative Defenses and Counterclaims contained in its Answer and Counterclaims pursuant to F.R.Civ.P. 12(b)(6) for failure to state a claim and for Partial Judgment on the Pleadings in favor of Discover Bank on the issue of liability pursuant to F.R.Civ.P. 12(c).

This Motion is more fully supported by the Memorandum of Law which is being filed simultaneously herewith.

Respectfully submitted,

s/ Craig A. Smith  
Craig A. Smith (0012443)  
Attorney for Plaintiff  
GAMBLE HARTSHORN JOHNSON, LLC  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
(614) 221-0922  
(614) 365-9741 – Fax  
E-mail: [smith@ghjlaw.com](mailto:smith@ghjlaw.com)

Of Counsel:

JAFFE & ASHER LLP  
600 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10016  
(212) 687-3000

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Rodney A. Holaday, [raholaday@vssp.com](mailto:raholaday@vssp.com), and I hereby certify that I have mailed by United States Postal Service the document to the following nonCM/ECF participants: E. Scott Dosek, Kutak Rock LLP, 8601 North Scottsdale Road, Suite 300, Scottsdale, AZ 85253, and Ira N. Glauber and Mark H. Moore, Jaffe & Asher LLP, 600 Third Avenue, New York, NY 10016.

s/Craig A. Smith  
Craig A. Smith (Bar No. 0012443)  
Attorney for Plaintiff  
GAMBLE HARTSHORN JOHNSON, LLC  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
(614) 221-0922  
(614) 365-9741 – Fax  
E-mail: [smith@ghilaw.com](mailto:smith@ghilaw.com)