

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOAN VIOTTY,

Plaintiff,

1:06-cv-6

v.

THE BANK OF NOVA SCOTIA,

Defendant.

TO: Lee J. Rohn, Esq.
James Bernier, Jr., Esq.

ORDER DENYING DEFENDANT'S MOTION TO STRIKE

THIS MATTER came before the Court upon Defendant's Motion to Strike Report and Testimony of R. Paul McCauley (Docket No. 80). Plaintiff filed a memorandum in opposition to said motion, and Defendant filed a reply thereto.

Defendant seeks to strike the report and testimony of R. Paul McCauley as a bank security expert. Defendant asserts that the disclosure of Mr. McCauley's report, on July 15, 2009, was untimely. Motion at 1-2. Plaintiff claims that Mr. McCauley's report was submitted as a rebuttal expert report. Opposition at 1. Defendant acknowledges the rebuttal nature of the report in its motion at page 2.

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The Federal Rules of Civil Procedure allows thirty days for the disclosure of rebuttal evidence. Rule 26 provides, in pertinent part: "Absent a stipulation or a court order, the disclosures must be made: . . . (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure." Fed. R. Civ. P. 26(a)(2)(C).

In the matter at bar, the Court did not set a specific rebuttal expert deadline. Defendant states that it produced its expert report on June 30, 2009. Motion at 1. Plaintiff produced her rebuttal expert report on July 15, 2009, or fifteen (15) days after Defendant's expert disclosure. Opposition at 1. Consequently, the Court finds that the report of Mr. McCauley is not untimely.

Accordingly, it is now hereby **ORDERED** that Defendant's Motion to Strike Report and Testimony of R. Paul McCauley (Docket No. 80) is **DENIED**.

ENTER:

Dated: September 8, 2009

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE