

City of New York v Vudu Inc.
2011 NY Slip Op 33820(U)
August 10, 2011
Sup Ct, New York County
Docket Number: 401250/11
Judge: Carol E. Huff
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: PAROLE E. HUFF
Justice

IN PART 32
PART

CITY OF NEW YORK
- v -
VUDU, INC.

INDEX NO. 401250/11
MOTION DATE _____
MOTION SEQ. NO. 03
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
with part - 03
revised - 03

CYNTHIA S. KERN
J.S.C.

FILED

AUG 10 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: AUG 09 2011

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

IA PART 32

-----X

THE CITY OF NEW YORK, : Index No. 401250/11
 :
 Plaintiff, :
 :
 - against - :
 :

VUDU INC., KATHERINE CHOU; THE LAND AND :
 BUILDING KNOWN AS 1487 FIRST AVENUE, TAX :
 BLOCK 1452, TAX LOT 27, COUNTY OF NEW YORK, :
 CITY AND STATE OF NEW YORK; NEW YORK :
 LIQUOR AUTHORITY; "JOHN DOE" and "JANE DOE"; :
 fictitiously named parties, true names unknown, the parties :
 intended being the owners, lessees, operators, or occupants :
 of the commercial establishment operating as :
 "Vudu Lounge" located at 1487 First Avenue, New York, :
 New York; and any person claiming any right, title, or :
 interest in the real property which is the subject of this :
 action, :
 :
 Defendants. :

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AUG 10 2011
NEW YORK
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-----X

CAROL E. HUFF, J.:

Defendant Vudu Inc., the owner of a cabaret business located at 1487 First Avenue, New York, New York (the Premises), moves for an order staying plaintiff's effort to close the premises and subject it to a fine for failure to comply with the terms of the parties' so-ordered stipulation dated May 18, 2011.

Plaintiff originally brought a nuisance abatement action against Vudu, alleging that underage drinking and other unlawful activity had taken place on the premises. The parties settled the action pursuant to the stipulation, one part of which stated: "Defendant VUDU INC. shall have at least seven (7) New York state licensed security guards at the subject premises

every Friday and Saturday the subject premises is open for business.” Stipulation at 4. Vudu contracted with an outside security company, GEI Investigative, Inc., to provide the security guards. It is undisputed that GEI is a reputable company and that plaintiff did not object to its selection.

On Saturday, July 23, 2011, the New York City Police Department appeared to check compliance with the stipulation. Six of the security guards produced their licenses, while the seventh, Darnell Watson, did not. Vudu states that it had been assured by GEI and Mr. Watson that he was properly licensed by New York State to work as a security guard. In fact, he had not been licensed, although apparently his application for the license was pending.

Plaintiff asserts that Vudu should be held strictly accountable to the language in the stipulation and, to support its position, cites City of New York v 393 Rest on Eight, Inc., 72 AD3d 611 (1st Dept 2010), where the court found a violation involving a similar provision. In that case, however, the premises owner apparently was responsible for hiring its own security guards, and claimed “that it believed that the security guard’s credentials as a former correction officer satisfied the license requirement.” The court found that no reasonable reading of the stipulation supported such a belief.

In contrast, the plaintiff here contracted with a reputable outside security company to provide licensed guards, and relied upon GEI’s representation that its guards were, in fact, licensed. In doing so, Vudu reasonably attempted to comply with the terms of the stipulation, and the lack of one guard’s possession of a license in this instance is de minimus and not a violation of the parties’ agreement.

Accordingly, it is

ORDERED that the motion is granted, and the premises are permitted to remain open upon the condition that owner and general manager check the licenses of the security guards and personally assure that seven licensed guards are on the premises in accordance with the provisions of the stipulation.

Dated:

FILED

AUG 10 2011

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COUNTY CLERK'S OFFICE**



CAROL E. HUFF

IA PART 32

AUG 03 2011