

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ON RICHARD B. LOWE, IIIPART 56

Index Number : 600292/2008

VOOM HD HOLDINGS LLC

vs

ECHOSTAR SATELLITE L.L.C.

Sequence Number : 008

REARGUMENT/RECONSIDRATION

INDEX NO. _____

MOTION DATE 1/21/11

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

RECEIVED

FEB 04 2011

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVILMOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISIONDated: 2/2/11

ON. RICHARD B. LOWE, III

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST ☐ REFERENCE☐ SUBMIT ORDER/JUDG.☐ SETTLE ORDER /JUDG.MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

-----	:	
VOOM HD HOLDINGS, LLC,	:	Index No. 600292/08
Plaintiff,	:	
	:	IAS Part 56
-against-	:	
ECHOSTAR SATELLITE L.L.C.,	:	Hon. Richard B. Lowe III
	:	RECEIVED <u>ORDER</u>
Defendant.	:	
-----	:	

WHEREAS, on December 8, 2010, pursuant to C.P.L.R. 2221(d) and (e), Defendant DISH Network L.L.C. f/k/a EchoStar Satellite L.L.C. ("EchoStar") filed its Motion for Leave to Reargue and/or Renew Portions of this Court's Memorandum Decision and Order, dated November 3, 2010 (the "Order");

WHEREAS, on December 15, 2010, the parties appeared for a conference before the Court;

WHEREAS, on December 15, 2010, EchoStar requested a stay of trial proceedings pending reargument and/or renewal or appeal of portions of the Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. EchoStar's Motion for Leave to Reargue and Renew those parts of the Order granting VOOM HD Holding LLC's ("VOOM HD") motion for sanctions based upon spoliation of evidence, directing that an adverse inference instruction will be issued at trial and permitting VOOM HD to collect certain costs and legal fees is DENIED;

2. EchoStar's Motion for Leave to Reargue those parts of the Order granting VOOM HD's motion seeking to bar EchoStar from calling non-party Avram S. Tucker as an expert witness at trial and from introducing his expert report is DENIED;

3. EchoStar's request for a stay of trial proceedings pending reargument and/or renewal or appeal of those parts of the Order described herein is DENIED.

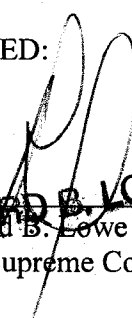
4. This case is set for trial and the parties are directed to appear on April ⁵ 2011, for jury selection;

5. At this time, no further pre-trial conference is required in advance of trial; and

6. Except as otherwise set forth in the Practices for Part 56, the parties shall abide by Rules 27 through 33 of the Commercial Division rules by substituting the date of March 4, 2011 in place of the date of the "pre-trial conference."

Dated: ^{February 2, 2011}
~~December 2, 2010~~
New York, New York

SO ORDERED:


ON, RICHARD B. LOWE, III
New York Supreme Court Justice