

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

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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CASTLEPOINT INSURANCE COMPANY AS SUBROGEE OF 780
REST. ASSOCIATES CORP.,

Plaintiff,

- v -

DANICA GROUP LLC,

Defendant.

INDEX NO. 151432/2015

MOTION DATE 01/15/2019

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for

JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of third-party defendant JRT Realty Group, Inc. seeking to amend its third-party answer and cross claim, and to have such amended third-party answer and cross claim deemed served and filed nunc pro tunc, is GRANTED without opposition; and for summary judgment on its cross claim for defense and indemnification against third party defendant Cushman & Wakefield, Inc. and dismissal of the third-party complaint against it is GRANTED; and it is further

ORDERED that the third-party complaint against JRT Realty Corp. Group, Inc. only is dismissed, and the award of partial summary judgment of liability on the cross-claim for defense and

indemnification against third party defendant Cushman & Wakefield, Inc. is severed and the issue of the amount of damages, including attorneys' fees, cost and disbursements, shall be referred to a Special Referee to hear and determine; and it is further

ORDERED that an assessment of damages against third party defendant CUSHMAN & WAKEFIELD, INC. is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)]

ORDERED that the Clerk of the Court shall enter judgment in favor of third-party defendant JRT Realty Group, Inc. dismissing the third-party complaint and cross-claims made against and entering the judgment in the amount of damages assessed in the report of the Special Referee in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

DECISION

Third party defendant JRT Realty Group, Inc. (JRT) has established prima facie its entitlement to summary judgment dismissing the third-party complaint and cross claims against it as well for damages on its cross claim for defense and indemnification against third party defendant Cushman & Wakefield Inc. (C&W). The unrefuted testimony that JRT employed no one at the subject premises, coupled with the amended contract language wherein Cushman & Wakefield, Inc. agreed to indemnify JRT for "any and all liability...incurred in enforcing this Agreement...arising out of C&W's failure or *alleged failure* to perform any of the obligations required to be performed by JRT" (emphasis supplied), establish JRT's lack of negligence and C&W's obligation indemnify JRT for costs and expenses (including attorneys' fees) incurred in the instant action. See Vey v Port Authority of New York and New Jersey, 54 NY2d 221, 227-228 (1981).

2/13/2019			<i>Debra A. James</i>
DATE			DEBRA A. JAMES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE