

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

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SHAMOKIN COMMONS LLC,

Index No. 153336/2014

Plaintiff,

**ORDER WITH NOTICE OF  
ENTRY**

- against -

LEXINGTON INSURANCE COMPANY,

Defendant.

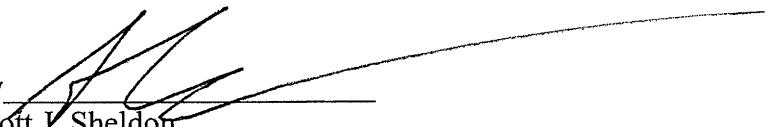
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S I R S :

PLEASE TAKE NOTICE that the within is a true copy of an order in the within matter dated March 2, 2016 and duly entered in the office of the Clerk of the within named court on March 3, 2016.

Dated: New York, New York  
March 8, 2016

MOUND COTTON WOLLAN & GREENGRASS, LLP

By   
Scott J. Sheldon  
One New York Plaza  
New York, New York 10004  
Phone: (212) 804-4200

Attorneys for Defendant

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

PRESENT: Ellen M. Coin  
Justice

PART 63

Chamokin Commons LLC

INDEX NO. 153336/2014

MOTION DATE 3/2/2016

- v -

Lexington Insurance Company

MOTION SEQ. NO. 003

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 is granted for the reasons set forth on the record in oral argument held on March 2, 2016.

It is further ordered that the clerk of Court shall enter judgment dismissing the complaint with prejudice and costs.

This constitutes the decision and order of the Court.

Dated: 3/2/16

EW  
HON. ELLEN M. COIN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Def's mfsj disp'g cp

1<sup>st</sup> c/a: breach of K

2<sup>nd</sup> c/a: GBL § 349

Assuming, arguendo, that plaintiff has standing in this matter, the 1<sup>st</sup> cause of action for breach of contract must be dismissed. Defendant has shown, through the affidavit of adjuster Joseph Christie and the deposition testimony of Richard Mazza that plaintiff's predecessor, Capmark Bank, accepted its offer in settlement of the insurance claim. Plaintiff, as transferee of the property, stands in no better position than the transferor. Matter of International Ribbon Mills (Arjan Ribbons), 36 NY2d 121 [1975]; Garrison Special Opportunities Fund LP v Fidelity Nat. Card Servs, 130 AD3d 546 [1<sup>st</sup> Dept 2015].

Plaintiff's 2<sup>nd</sup> cause of action fares no better. First of all, General Business Law § 349 applies only to claims that are consumer oriented. Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A., 85 NY2d 20 [1995]. Plaintiff is not a consumer, but a business entity formed to own a commercial building. Moreover, while the complaint alleges deception of the public at large, plaintiff's submission in opposition to this motion fails to offer any facts to support this allegation.

The motion for summary judgment is granted; the complaint is dismissed.