IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMATIC CORP.,	§	
	§	No. 180, 2023
Defendant Below, Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware
	§	
FORTIS ADVISORS, LLC,	§	
	§	C.A. No. N18C-12-104
Plaintiff Below, Appellee.	§	

Submitted: April 17, 2024
Decided: May 7, 2024

Before **VALIHURA**, **TRAYNOR**, and **GRIFFITHS**, Justices.

O R D E R

Now this 7th day of May 2024, the Court having considered this matter on the briefs

and oral arguments of the parties and the record below and having concluded that the same

should be affirmed on the basis of and for the reasons assigned by the Superior Court in its

Post-Trial Memorandum Opinion dated December 29, 2022; its Final Order and Judgment

dated April 24, 2023, and its Stipulation and Amended Final Order and Judgment dated

May 3, 2023.[1]

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[1] In this appeal, Appellee/Cross-Appellant, Fortis Advisors, LLC, argues on cross-appeal that the Superior Court erred when it granted a set-off to indemnify Dematic Corp. for certain legal fees and settlement costs incurred in a related litigation. Specifically, Fortis argues that the Superior Court incorrectly placed the burden of proof on it as opposed to placing the burden on Dematic Corp. The Superior Court found that Fortis did not offer any persuasive testimony regarding the reasonableness of the set-off amounts. The trial court's opinion indicates that it was satisfied that Dematic had put forward evidence sufficient to support the reasonableness of the set-off.   This evidence included testimony from Dematic's head of accounting who testified that he authorized the settlement amount after consultation with Dematic's executives and lawyers, and that the amount authorized was consistent with Dematic's estimates created during due diligence regarding the likely cost of resolving that related litigation. The court also noted that Fortis did nothing to

NOW THEREFORE, IT IS ORDERED that the decision and judgments of the Superior Court be and the same hereby are AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura
Justice

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rebut this testimony. Based upon the record before us, we conclude that, to the extent the trial court erred in allocating the burden of proof on this issue, it is not reversible error.