

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

SUPERIOR GUNITE,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY,
INC. AND ZURICH AMERICAN
INSURANCE COMPANY,

Defendants.

Index No.: 54272/13

**AFFIDAVIT OF
ROBERT STEPIEN, P.E.**

I, ROBERT STEPIEN, P.E., of full age, being duly sworn, hereby affirm as follows:

1. I am a project manager for Yonkers Contracting Company, Inc. ("Yonkers"). I have worked for Yonkers since 2008. I was directly involved with the work performed by Superior Gunite ("Superior"). As such, the statements in this Affidavit are based on my personal knowledge, unless otherwise stated.

2. I make the current affidavit in support of Defendants' Motion to Vacate the Note of Issue filed by plaintiff Superior on February 6, 2014.

3. Attached hereto as **Exhibit 1** are true and correct copies of Meeting Minutes taken by Yonkers from a meetings held among the MTA, Superior, Yonkers, and their respective representatives on October 10, 2013.

4. Attached hereto as **Exhibit 2** are true and correct copies of Meeting Minutes taken by Yonkers from a meetings held among the MTA, Superior, Yonkers, and their respective representatives on October 14, 2013.

5. Attached hereto as **Exhibit 3** are true and correct copies of Meeting Minutes taken by Yonkers from a meetings held among the MTA, Superior, Yonkers, and their respective representatives on October 24, 2013.

6. Attached hereto as **Exhibit 4** is a true and correct copy of a letter sent from the MTA to Yonkers, dated February 19, 2014, and entitled “Substantial Completion.”

7. Attached hereto as **Exhibit 5** is a true and correct copy of a letter sent from Yonkers to Superior, dated February 25, 2014, an entitled “Site J – Directive to Superior Gunite to immediately begin repairing leaks at the Site J Project.”

8. Attached hereto as **Exhibit 6** is a true and correct copy of a letter sent from Yonkers to Superior, dated February 27, 2014, and entitled “Site J – Structural Integrity Issues at E1/E2 Inclined Tunnels.”

9. Attached hereto as **Exhibit 7** is a true and correct copy of a letter sent from Superior to Yonkers, dated March 12, 2014, and entitled “Site J Waterproofing/Leaks.”

10. From 2010 to present day, I have worked as Yonkers’ project manager on a construction project involving the construction of a new subway station in the area of 34th Street and 10th Avenue in New York City (the “Project”). Pursuant to the prime contract between Yonkers and the owner of the Project, the Metropolitan Transit Authority (“MTA”), Yonkers undertook the role of general contractor on the Project. A copy of the prime contract is too voluminous to attach hereto, but is readily available and can be produced upon request.

11. As the general contractor for the Project, Yonkers was responsible to perform a scope of work that included a significant amount of new concrete construction.

12. As Yonkers' project manager on the Project, I managed Yonkers' staff on the Project. I also interfaced with the Project's subcontractors throughout the performance of their respective scopes of work.

13. Meetings were held among representatives of the MTA, Yonkers, Superior, and the MTA's chief engineer during which issues concerning the defects and structural integrity of Superior's concrete were discussed. Meeting Minutes for such meetings held on October 7, 2013 (**Exhibit 1**), October 14, 2013 (**Exhibit 2**), and October 24, 2013 (**Exhibit 3**) were documented by Yonkers. During the meeting held on October 14, 2013, the MTA's engineer indicated that the voids within Superior's concrete posed the risk of puncturing the waterproofing system.

14. On or about February 19, 2014, the MTA issued a Certificate of Substantial Completion for the Project. (**Exhibit 4**). Work on the Project remains to be completed, however, with respect to remediating various water leaks. The MTA has expressed its firm belief that these leaks were caused by the voids within Superior's concrete. (**Exhibit 5**). The MTA explained that at locations where the waterproofing membrane spans over the void locations, the risk collapsing and puncturing is greatly increased. (**Exhibit 4**). Furthermore, the waterproofing membrane was both tested and approved after its installation by the MTA. It was only afterwards, when Superior's concrete was installed over the waterproofing system, that the watertightness of the system became subject to question.

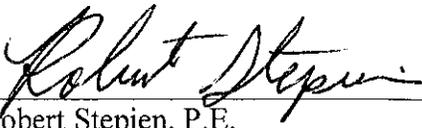
15. On or about February 25, 2014, Yonkers wrote a letter to Superior in which I reiterated the MTA's findings concerning the causal link between Superior's defective work and the leaks discovered on the Project. I also directed Superior to repair these leaks, and that the failure to do so will result in additional backcharges. (**Exhibit 5**).

16. On or about February 27, 2104, Yonkers wrote a letter to Superior in which I generally explained the timeline of events revolving around Superior's defective work, noted that remedial work is still ongoing, and informed that as damages continue to accumulate they could be accurately assessed but would be forward to Superior once they were definitively known. (**Exhibit 6**).

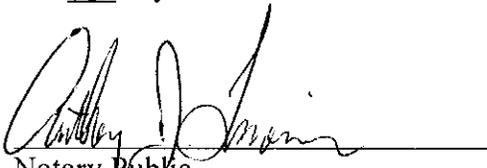
17. On or about March 12, 2014, Superior responded to Yonkers' letter of February 25, 2014 and refused to proceed with any repair work in accordance my directive. Superior noted further that no evidence even merely "suggested" that its defective work caused damage to the waterproofing system (**Exhibit 7**), despite having been in attendance of meetings during which the MTA had stated the contrary.

18. As remedial work continues on the Project with respect to the water leaks, so do discussions with the MTA concerning the issuance of a Certificate of Final Completion and assessment of potential Liquidated Damages. Since the MTA has already issued a Certificate of Substantial Completion, it is believed that a Certificate of Final Completion is forthcoming along with a quantifiable amount of imposed Liquidated Damages, if any.

19. Based on the foregoing, I submit this Affidavit in support of both Yonkers' Motion to Vacate Plaintiff's Note of Issue and to Stay Action.


Robert Stepien, P.E.

Sworn to before me
this 12 day of March 2014


Notary Public

ANTHONY J. TAVORMINA
NOTARY PUBLIC-STATE OF NEW YORK
No. 02TA6252356
Qualified in Richmond County