

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SUPERIOR GUNITE,

Index No.: 54272/2013

Plaintiff,

-against-

**VERIFIED REPLY
TO COUNTERCLAIM**

YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICA INSURANCE COMPANY,

Defendants.
-----X

Plaintiff, Superior Gunite, by its attorneys Duane Morris LLP, as and for its Reply to Counterclaim of defendants Yonkers Contracting Company, Inc. ("Yonkers") and Zurich America Insurance Company ("Zurich"), states as follows:

1. Admits that on or about March 3, 2011, Superior Gunite and Yonkers entered into a written subcontract agreement (the "Subcontract") pursuant to which Superior Gunite agreed to perform certain work in connection with the project known as the Excavating/Mining/Lining of Vertical Shaft, E1, E2 Inclined Tunnels, TI Connector Tunnel, and the Construction of a Ventilation Building and Station Entrance Structure at Site J in New York, NY (the "Project"), and denies the truth of the balance of the allegations set forth in paragraph 1 of the Counterclaim. Superior Gunite respectfully requests leave to refer to the Subcontract upon the trial of this action, and incorporates the Subcontract, including all of the drawings, specifications, plans and other documents forming the Subcontract, as if set forth at length herein.

2. Denies the truth of the allegations set forth in paragraphs 2 through 12 of the Counterclaim.

FIRST AFFIRMATIVE DEFENSE TO COUNTERCLAIM

3. The Counterclaim fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE TO COUNTERCLAIM

4. Defendants' Counterclaim is barred due to Yonkers' breach of the terms and conditions of the Subcontract.

THIRD AFFIRMATIVE DEFENSE TO COUNTERCLAIM

5. Defendants are barred from recovery in this proceeding by the doctrines of waiver, estoppel and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE TO COUNTERCLAIM

6. Defendants' failed to provide sufficient notice of delays purportedly caused by plaintiff's inadequate work and/or staff, and failed to provide reasonable opportunity to cure.

FIFTH AFFIRMATIVE DEFENSE TO COUNTERCLAIM

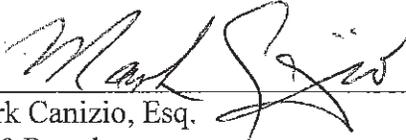
7. Defendants' purported damages are voluntarily incurred, and as such, may not be recovered from the plaintiff.

WHEREFORE, Plaintiff Superior Gunito demands judgment dismissing the Counterclaim of Defendants Yonkers Contracting Company, Inc. and Zurich American Insurance Company, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 10, 2013

DUANE MORRIS LLP
Attorneys for Plaintiff

By: _____


Mark Canizio, Esq.
1540 Broadway
New York, NY 10036
212-692-1000
MACanizio@duanemorris.com

TO: VENERUSO, CURTO, SCHWARTZ & CURTO, LLP
Attorneys for Defendants
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
Attn.: Joseph R. Curto, Esq. / Stephen J. Brown, Esq.

ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARK CANIZIO, an attorney duly admitted to practice law before the Courts of the State of New York, being duly sworn deposes and says:

I am a member of the firm of Duane Morris LLP, attorneys for Superior Gunite, the plaintiff in the within action; I have read the foregoing Reply and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

This Verification is submitted by me and not by plaintiff, Superior Gunite, for the reason that the plaintiff is not within the county where I have my office and I am familiar with the facts upon which the suit is based.

The grounds of my belief as to all matters not stated upon my knowledge are investigations and reports made to me.

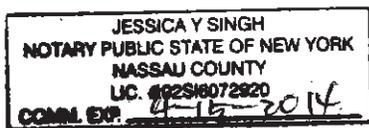


MARK CANIZIO

Sworn to before me this
10th the day of June 2013



NOTARY PUBLIC



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK

ROSEABEL SCHECK, being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age, and resides in Cliffside Park, New Jersey. On June 10, 2013, I served the within **VERIFIED**

REPLY TO COUNTERCLAIM upon:

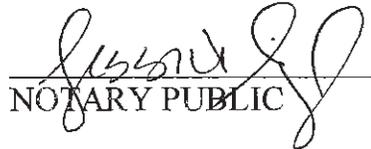
VENERUSO, CURTO, SCHWARTZ & CURTO, LLP
Attorneys for Defendants
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
Attn.: Joseph R. Curto, Esq. / Stephen J. Brown, Esq.

at the addresses indicated on said service list by electronic mail and by depositing a true copy of same enclosed in postpaid, properly addressed wrappers in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



ROSEABEL SCHECK

Sworn to before me this
10th day of June, 2013



NOTARY PUBLIC

JESSICA Y SINGH
NOTARY PUBLIC STATE OF NEW YORK
NASSAU COUNTY
LIC. #0251072820
COMM. EXP. 4-15-2014