

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
SUPERIOR GUNITE,

Index No.: 54272/2013

Plaintiff,

**STIPULATION AND ORDER**

-against-

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

Defendants,  
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WHEREAS, on March 25, 2013, Superior Gunite filed a Summons and Complaint against Yonkers Contracting Company, Inc. and Zurich America Insurance Company (collectively, the "Defendants") in the above-captioned matter ("Action No. 1"); and

WHEREAS, on May 20, 2013, Defendants filed a Verified Answer, Separate Defenses, and Counterclaim; and

WHEREAS, on June 10, 2013, Superior Gunite filed a Verified Reply to Defendants' Counterclaim; and

WHEREAS, on January 28, 2014, the Court issued a Trial Readiness Order in Action No. 1; and

WHEREAS, on February 7, 2014, Superior Gunite filed a Note of Issue pursuant to the Court's Trial Readiness Order; and

WHEREAS, on February 21, 2014, Defendants filed a Motion to Vacate the Note of Issue and temporarily stay Action No. 1; and

WHEREAS, on June 27, 2014, the Court issued an Order denying Defendants' motion to stay Action No. 1, but granting Defendants' motion to vacate the Note of Issue and permitting Defendants to litigate their construction defect claims against Superior Gunite in Action No. 1; and

WHEREAS, on July 28, 2014, Yonkers Contracting Company, Inc. filed a separate action against Superior Gunite and KJC Waterproofing, Inc. entitled: *Yonkers Contracting Company, Inc. v. KJC Waterproofing, Inc. and Superior Gunite*, Index No. 61442/2014, filed in the Supreme Court of the State of New York in the County of Westchester ("Action No. 2"); and

WHEREAS, on August 6, 2014, this Court held a conference to discuss how the two actions should proceed; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the undersigned parties, as follows:

1. The parties consent to a stay of all proceedings in Action No. 1 pending the completion of discovery in Action No. 2.
2. After completion of discovery in Action No. 2, both Action No. 1 and Action No. 2 shall be consolidated for trial, or tried jointly as the Court may determine.
3. If for any reason Action No. 2 does not proceed, or is transferred, terminated, or discontinued, any party to Action No. 1 may seek relief from the stay provided for by this Stipulation and Order.
4. Yonkers' Order to Show Cause for Leave of Defendants to Amend the pleadings filed in Action No. 1 on August 12, 2014 is withdrawn.

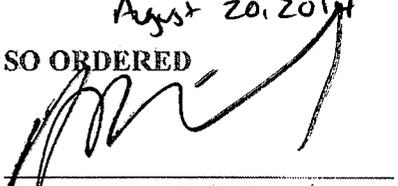
5. This Stipulation may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and facsimile signatures shall be deemed to be originals.

DUANE MORRIS LLP  
*Attorneys for Plaintiff*  
Superior Gunite  
1540 Broadway  
New York, New York 10036  
(212) 692-1000

By   
Mark A. Canizio, Esq.

Dated: White Plains, NY  
August 20, 2014

SO ORDERED

  
\_\_\_\_\_  
J. S. C.

**Hon. Alan D. Scheinkman**  
**Supreme Court Justice**

LEWIS & MCKENNA  
*Attorneys for Defendant*  
Yonkers Contracting Company, Inc.  
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By  For  
Michael F. McKenna, Esq.