

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27399
W/kmg

_____AD3d_____

Argued - April 20, 2010

MARK C. DILLON, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2009-06620

DECISION & ORDER

Town of Babylon, respondent, v H.T. Schneider
Associates, etc., et al., appellants.

(Index No. 19741/91)

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (John M. Denby of counsel), for
appellants.

Carman, Callahan & Ingham, LLP, Farmingdale, N.Y. (Michael F. Ingham of
counsel), for respondent.

In an action to recover damages for breach of contract, negligence, and continuing
nuisance, the defendants appeal, as limited by their brief, from so much an order of the Supreme
Court, Suffolk County (R. Doyle, J.), dated October 7, 2008, as denied that branch of their motion
which was for summary judgment dismissing, as time-barred, the third cause of action to recover
damages for a continuing nuisance.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and that branch of the defendants' motion which was for summary judgment dismissing the third
cause of action as time-barred is granted.

In this action, the plaintiff, Town of Babylon, alleged that the defendant construction
companies entered into a contract with the County of Suffolk to construct a sewer system and related
improvements, of which it was a third-party beneficiary. The plaintiff claimed that, during the course
of constructing the sewers, the defendants improperly backfilled sewer trenches and, in doing so,
failed to provide adequate support for roadways and other surface structures. The plaintiff further

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claimed that, as a result, it incurred costs in repairing those roadways and structures. The plaintiff asserted three causes of action against the defendants to recover damages for breach of contract, negligence, and continuing nuisance. The Supreme Court granted those branches of the defendants' motion which were for summary judgment dismissing the causes of action sounding in breach of contract and negligence on the ground that those causes of action were barred by the statute of limitations. However, the Supreme Court denied the branch of the motion which was for summary judgment dismissing the cause of action sounding in continuing nuisance, and the defendants appeal from that portion of the order. We reverse the order insofar as appealed from.

The cause of action sounding in continuing nuisance is time-barred for the reasons set forth in our determination of the appeal in a related action (*see Town of Islip v H.T. Schneider Assocs.*, _____AD3d_____, decided herewith).

DILLON, J.P., MILLER, DICKERSON and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court