

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

D34260  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 21, 2012

REINALDO E. RIVERA, J.P.  
JOHN M. LEVENTHAL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

---

2011-01331

DECISION & ORDER

Frank Tricarico Contractors, Inc., appellant, v  
City of New Rochelle, respondent.

(Index No. 17426/08)

---

Raneri, Light & Sarro, PLLC, White Plains, N.Y. (Mark J. Sarro of counsel), for appellant.

Kathleen E. Gill, Corporation Counsel, New Rochelle, N.Y. (Brian J. Powers of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered December 28, 2010, which denied its motion for summary judgment on the second cause of action to recover damages for breach of contract, and granted the defendant's cross motion to dismiss, as time-barred, the second cause of action.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly determined that the second cause of action, to recover damages for breach of contract, was time-barred because it was not commenced during the one-year period of limitation set forth in section 127 of the City Charter of the City of New Rochelle. Contrary to the plaintiff's contention, the period of limitation began to run when its damages became ascertainable, which occurred in this case on or before the date on which the plaintiff filed its initial notice of claim alleging the same breach as is alleged in the second cause of action (*see C.S.A. Contr. Corp. v New York City School Constr. Auth.*, 5 NY3d 189, 192; *D & L Assoc., Inc. v New York City School Constr. Auth.*, 69 AD3d 435; *New York City School Constr. Auth. v Kallen & Lemelson*, 290

April 3, 2012

Page 1.

FRANK TRICARICO CONTRACTORS, INC. v CITY OF NEW ROCHELLE

AD2d 497). Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on its second cause of action, and granted the defendant's cross motion to dismiss that cause of action as time-barred.

In light of our determination, the plaintiff's remaining contentions have been rendered academic.

RIVERA, J.P., LEVENTHAL, ROMAN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court