

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

D34683
N/prt

_____AD3d_____

Argued - February 28, 2012

REINALDO E. RIVERA, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2010-08093

DECISION & ORDER

Town of Oyster Bay, appellant, v
Marvec Allstate, Inc., respondent.

(Index No. 013427/09)

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

White Fleischner & Fino, LLP, New York, N.Y. (Jared T. Greisman and Renee S. Schwartz of counsel), for respondent.

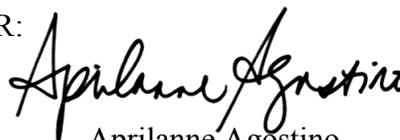
In an action to recover damages for continuing public nuisance, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Palmieri, J.), entered June 23, 2010, as, in effect, granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff alleges that, pursuant to a contract with Nassau County, the defendant completed certain sewer construction work in 1987, and that defects in the construction work constitute and contribute to a continuing public nuisance. The action is time-barred for the reasons stated in the companion case of *Village of Lindenhurst v J.D. Posillico, Inc.* (_____AD3d_____ [decided herewith]).

RIVERA, J.P., DILLON, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

April 24, 2012

TOWN OF OYSTER BAY v MARVEC ALLSTATE, INC.