

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

D34684
N/prt

_____AD3d_____

Argued - February 28, 2012

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

2011-00739

DECISION & ORDER

Town of Oyster Bay, appellant, v S. Zara and Sons
Contracting Corporation, respondent.

(Index No. 013421/09)

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

Wade Clark Mulcahy, New York, N.Y. (Robert J. Cosgrove, Cheryl Fuchs, and Christopher O’Leary of counsel), for respondent.

In an action to recover damages for continuing public nuisance, the plaintiff appeals from an order of the Supreme Court, Nassau County (Palmieri, J.), entered December 3, 2010, which, in effect, granted that branch of the defendant’s motion which was, in effect, pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred.

ORDERED that the order is affirmed, with costs.

The plaintiff alleges that, pursuant to a contract with Nassau County, the defendant completed certain sewer construction work in 1986, 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]).

The plaintiff's contentions relating to alleged statutory violations are not properly before this Court.

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

ENTER:

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

Aprilanne Agostino
Clerk of the Court