

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

D34686
N/prt

_____AD3d_____

Argued - February 28, 2012

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

2011-01003

DECISION & ORDER

Town of Oyster Bay, appellant, v
J.D. Posillico, Inc., et al., respondents.

(Index No. 013432/09)

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

Agovino & Asselta, LLP, Mineola, N.Y. (Joseph P. Asselta and John M. Comiskey of counsel), for respondent J.D. Posillico, Inc.

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (John M. Denby of counsel), for respondent Lizza Industries, Inc.

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 (Murphy, J.), entered January 5, 2011, as (1), upon renewal, in effect, vacated so much of its prior order entered April 9, 2010, as denied that branch of the motion of the defendant J.D. Posillico, Inc., which was pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against it as time-barred, and thereupon granted that branch of the motion, and (2) granted the separate motion of the defendant Lizza Industries, Inc., for summary judgment dismissing the complaint insofar as asserted against it as time-barred.

ORDERED that the order entered January 5, 2011, is affirmed insofar as appealed from, with one bill of costs.

The plaintiff alleges that, pursuant to a contract with Nassau County, the defendants

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completed certain sewer construction work in 1978, 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:


Aprilanne Agostino
Clerk of the Court