

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

D34687  
N/prt

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

Argued - February 28, 2012

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

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2011-01005

DECISION & ORDER

Town of Oyster Bay, appellant, v  
J.D. Posillico, Inc., respondent.

(Index No. 13429/09)

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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.

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, upon renewal, in effect, vacated so much of its prior order entered April 9, 2010, as denied that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred, and thereupon granted that branch of the motion.

ORDERED that the order entered January 5, 2011, 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 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]).

April 24, 2012

TOWN OF OYSTER BAY v J.D. POSILLICO, INC.

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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