

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

D34690
N/prt

_____AD3d_____

Argued - February 28, 2012

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

2011-06254

DECISION & ORDER

Village of Lindenhurst, appellant, v
Hendrickson Bros., Inc., respondent.

(Index No. 25975/09)

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

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

In an action to recover damages for continuing public nuisance, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Molia, J.), dated June 6, 2011, which granted the defendant's motion for summary judgment dismissing the complaint as time-barred.

ORDERED that the order is affirmed, with costs.

The plaintiff alleges that, pursuant to a contract with Suffolk 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

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VILLAGE OF LINDENHURST v HENDRICKSON BROS., INC.

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