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

D34692
N/prt

_____AD3d_____ Argued - February 28, 2012

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

2011-09616 DECISION & ORDER

Village of Lindenhurst, appellant, v
Lizza Industries, Inc., respondent.

(Index No. 25974/09)

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 (Pitts, J.), dated September 28, 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 1976, 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