

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

D36853
T/hu

_____AD3d_____

Argued - October 23, 2012

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2011-09643

DECISION & ORDER

Mary Lynn Macris, et al., appellants, v Paula Seoud
Matta, et al., respondents.

(Index No. 1354/11)

Levine & Vaysberg, P.C., Brooklyn, N.Y. (Alexander Levine of counsel), for
appellants.

Young/Sommer LLC, Albany, N.Y. (Kristin Laviolette Pratt and Dean S. Sommer
of counsel), for respondents.

In an action to recover damages for private nuisance and trespass, the plaintiffs appeal
from an order of the Supreme Court, Putnam County (Lubell, J.), dated August 25, 2011, which
granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the defendants' motion for summary judgment
dismissing the complaint. The defendants established their prima facie entitlement to judgment as
a matter of law, as they have no affirmative duty to remedy a natural condition on their property such
as the beaver dam at issue here (*see Vanderwiele v Taylor*, 65 NY 341; *Frank v Garrison*, 184 AD2d
852; *Lichtman v Nadler*, 74 AD2d 66). In response to this showing, the plaintiffs failed to raise a
triable issue of fact (*see Hilltop Nyack Corp. v TRMI Holdings*, 272 AD2d 521; *cf. Higgins v Village
of Orchard Park*, 277 AD2d 989).

December 19, 2012

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The parties' remaining contentions are without merit.

MASTRO, J.P., RIVERA, CHAMBERS and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court