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1530 OWNERS CORP., GARNIK AZARNIA, JO ANN CROSS, and MOE MARSHALL, Plaintiffs, v. AMERICANA ASSOCIATES, THE OLNICK ORGANIZATION, INC., ROBERT OLNICK ASSOCIATES OF NEW JERSEY (d/b/a ROBERT OLNICK CORPORATION), JOHN DOES 1-25, and XYZ CORPORATION 1-25, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET No. BER-C-281-19 **OPINION** Argued: June 19, 2020 Decided: August 28, 2020

Appearances: Cheryl Siegel, (Buckalew, Frizzell & Crevina LLP, attorneys) for Plaintiffs
Michael B. Kramer (Michael B. Kramer & Associates, attorneys) for Defendants

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HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the Court by way of Motion to Dismiss the Complaint pursuant to R. 4:6-2(e) and to the extent necessary converting it to a Motion for Summary Judgment and disposed of pursuant to R. 4:46, filed on January 24, 2020, by Defendants Americana Associates, the Olnick Organization, Inc., Robert Olnick Associates of New Jersey (d/b/a Robert Olnick Corporation, John Does 1-25 and XYZ Corporation 1-25 ("Defendants"), by and through counsel Michael B. Kramer & Associates, Michael B. Kramer, Esq. appearing on *Pro Hac Vice* admission pursuant to R. 1:21-2. On March 16, 2020, Plaintiffs 1530 Owners Corp., Garnik Azarnia, Jo Ann Cross and Moe Marshall ("Plaintiffs"), by and through counsel Buckalew Frizzel and Crevina

LLP, Cheryl Siegel, Esq. appearing, filed opposition to Defendants' Motion. On April 20, 2020, Defendants filed a reply to Plaintiffs' opposition. The Court heard oral argument on June 19, 2020.[1]

BACKGROUND

The issue in dispute derives from the conversion of an apartment building located in Fort Lee, New Jersey, to a cooperative ownership property (the "Colony"), with Defendant Americana Associates ("Defendant Americana") serving as the sponsor of the cooperative conversion in 1985. The rental building, with an address of 1530 Palisade Avenue, Fort Lee, New Jersey (the "Building"), consists of four hundred eighty-one (481) apartments. As a result of the cooperative conversion, Defendant Americana formed the corporate entity 1530 Owners Corp. (the "Corporation") to serve as the owner of the cooperative apartment building and to oversee the cooperative apartment's affairs. The Articles of Incorporation include the following provision setting forth the Corporation's main role:

> [t]he primary purpose of this Corporation is to provide residences for its shareholders by leasing to them, under proprietary leases, apartments in the building owned by the Corporation, and each of its shareholders shall be entitled solely by reason of his ownership of shares in the Corporation to a proprietary lease entitling him to occupy for dwelling purposes an apartment in the building under said leases.

On July 25, 1985, a closing of title occurred where Defendant Americana conveyed the Building and corresponding land to the Corporation (the "Closing Date"). In addition, on this same date, Defendant Americana entered into an offering plan (the "Offering Plan") in which they would sell apartments and corresponding shares of the Corporation to resident tenants residing in the Building; these shares were to be sold at a discount. Moreover, these sales of shares would

[1] In addition to the Motion to Dismiss, Defendants' counsel, Michael B. Kramer, Esq. filed a Motion for *Pro Hac Vice* admission, pursuant to R. 1:21-2, on January 24, 2020. This Motion was unopposed, heard on June 19, 2020, and granted by the Court.

give rise to a long-term proprietary lease for each resident's own apartment. Per the Offering Plan, if any of the Building's tenants chose to not purchase any of the Corporation's shares appurtenant to apartments, then these unsold shares (the "Unsold Shares") would be possessed by Defendant Americana. Defendant Americana would then retain the responsibilities and obligations of the proprietary lease that belonged to these unsold apartments and their corresponding Unsold Shares.

The Offering Plan sets out the following in regards to any Unsold Shares, the rights or restrictions surrounding the Unsold Shares, and any obligations of a holder of the Unsold Shares:

> Sponsor-Seller represents and agrees to sell or transfer to one or more financially responsible natural persons, by no later than the *third* anniversary of the Closing Date, all then remaining Unsold Shares held by it. (Complaint, Exhibit A, page 61)

In addition, the Offering Plan also states:

> The Unsold Shares shall retain their character as such (regardless of sale or transfer) until the same are purchased, and the apartment to which the same related is occupied, by a purchaser for bona fide occupancy (by himself or a member of his family) or the holder of Unsold Shares (or a member of his family) becomes a bona fide occupant of the apartment. No holder of Unsold Shares shall be restricted in the ability to sublease or sell the Apartment to which the shares are allocated for so long as such share retain their character as Unsold Shares. (Complaint, Exhibit A, page 63).

To date, there are Unsold Shares still held by Defendant Americana, which were never purchased by the residents of the Building and were not sold to any other individuals. Defendants contend that the Offering Plan, Bylaws, and Proprietary Lease are silent as to any obligation for the holder of Unsold Shares to sell said shares for occupancy by a specific date. Defendants also argue that the Offering Plan allows the holder of Unsold shares to sublet the unsold apartments and to engage in transfers of the Unsold Shares to third parties.

To the contrary, Plaintiffs contend that Defendant Americana has an obligation under the Offering Plan to sell all of its shares to individuals for occupancy, and accordingly they filed the Complaint in this action to assert these alleged obligations.

Thus far, four hundred twenty-nine (429) out of four hundred eighty-one (481) apartments in the Building have been sold. Defendant Americana holds fifty-two (52) apartments and twenty-five thousand four hundred seventy-five (25,475) Unsold Shares.

Ultimately, on October 22, 2019, Plaintiffs filed the Complaint in this action claiming that Defendant Americana's inability to transfer the Unsold Shares to individuals for occupancy by July 25, 1988 (three years after the Closing Date) was in breach of the terms of the Offering Plan.

LEGAL ARGUMENT

Elevation to Summary Judgment Standard

Pursuant to R. 4:6-2(e), if matters outside of the pleading are proffered and not excluded by the court, then a motion to dismiss, for failure to state a claim upon which relief can be granted, shall be treated as a motion for summary judgment. Here, Defendants' Motion to Dismiss shall be elevated to a Motion for Summary Judgment and shall be disposed of per the standard set forth in R. 4:46.

Summary judgment is designed to "avoid trials which would serve no useful purpose and to afford deserving litigants immediate relief." Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74 (1954). Thus, the court shall grant a summary judgment motion "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." N.J.S.A. 4:46-2(c).

In order to satisfy its burden of proof on a summary judgment motion, the moving party must show that no genuine issue of material facts exists. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528–29 (1995). Once the moving party satisfies its burden, the burden then shifts to the non-moving party to present evidence that there is a genuine issue for trial. Ibid. The non-moving party may not solely rely on denials or allegations made in an answer to defeat a motion for summary judgment. See Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014). Instead, the non-moving party must respond with affidavits meeting the requirements of R. 1:6-6 as otherwise provided in this rule and by R. 4:46-2(b), setting forth specific facts showing that there is a genuine issue for trial.

In determining whether the existence of a genuine issue of material fact precludes summary judgment, the court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. Even if there is a denial of essential fact, the court should grant a motion for summary judgment if the rest of the record, viewed most favorably to the party opposing the motion, demonstrates the absence of a material and genuine factual dispute. See Rankin v. Sowinski, 119 N.J. Super. 393, 399–400 (App. Div. 1972).

Expiration of the Statute of Limitations

Defendants contend that the primary reason for dismissing Plaintiffs' claims is due to the fact that these claims were filed more than two decades after the applicable statute of limitations time period expired. Accordingly, Defendants point to the governing documents between the parties and claim that these documents clearly express when Plaintiffs' claims were ripe for filing, and that now, the window of time to file these claims has expired.

Defendants note that Plaintiffs' claims are centered around the fact that Defendant Americana did not transfer the Unsold Shares within three years of the Closing Date. Given that the Closing Date, in which the Offering Plan went into effect and the Corporation was given control of the Building, was on July 25, 1985, this alleged three-year window to transfer the Unsold Shares would have been July 25, 1988. As such, Defendants argue that Plaintiffs' claims against them would have commenced on July 25, 1988, and the applicable six-year statute of limitations to bring these claims would have expired on July 25, 1994.

Plaintiffs argue that the statute of limitations is twenty years as opposed to six years because their claims involve real property and thus N.J.S.A. §2A:14-7 should apply.

N.J.S.A. §2A:14-7 states "[e]very action at law for real estate shall be commenced within 20 years next after the right or title thereto, or cause of such action shall have accrued."

Defendants argue that N.J.S.A. §2A:14-7 does not apply to the facts of this case because a plaintiff must have a right or title to the real property at issue in order for the statute and twenty-year statute of limitations to apply. More specifically, Defendants point out that Plaintiffs contend that Defendant Americana had a contractual obligation to transfer the Unsold Shares to other third party individuals, but not to Plaintiffs, which serves as further proof that Plaintiffs do not have right or title to the Property and thus the six-year statute of limitations should apply.

As to the timeline of any claims that may have arose, and the corresponding statute of limitations, the six-year statute of limitations would have expired on July 25, 1994, six years after the alleged three-year timeframe Defendants had to transfer the Unsold Shares after the Closing Date, or the twenty-year statute of limitations would have expired on July 25, 2008, twenty years after the alleged three-year timeframe Defendants had to transfer the Unsold Shares following the Closing Date.

Plaintiffs also assert that discovery is needed to determine when their claims accrued and how this point of accrual impacts the statute of limitations. Plaintiffs argue that the date of accrual of their claims is a question of fact and, as such, they are entitled to discovery. Moreover, they also raise the issue as to whether the limitations period should be equitably tolled due to the alleged conduct of Defendants. More specifically, Plaintiffs seek discovery to look into issues such as the steps Defendant Americana took to prepare any unsold apartments for sale, when these steps were taken, and whether they made a decision to stop attempting to sell unsold apartments and what market data was considered in a decision such as this. Accordingly, Plaintiffs contend that these issues, and the dates they were communicated to Plaintiffs, are necessary for determining when their claims accrued. Moreover, Plaintiffs argue that a Lopez hearing is necessary in order to determine when their claims accrued.

The Court disagrees with Plaintiffs; discovery is not needed to address these alleged issues raised. Plaintiffs' request for discovery is not only onerous and a considerable cost to the litigants, but it also ignores the express terms of the governing documents: the Offering Plan, By-laws, and Proprietary Lease. A Lopez hearing, in which the party asserting the need for this hearing maintains the burden of proof, is utilized in situations where parties' claims need to be analyzed and balanced prior to determining when a plaintiff attained knowledge of the facts leading to the cause of action. Lopez v. Sawyer, 62 N.J. 267, 275, 300 A.2d 563 (1973). Here, unlike cases that require a Lopez hearing, the date in which Plaintiffs' claims accrued are clear and expressly stated in the governing documents, and is, in fact, the date advanced by Plaintiffs in the Complaint. There is no difficulty in discerning Plaintiffs' claims in this action. It is clear from the Offering Plan that the date Plaintiffs' claims accrued was three years after the Closing Date. As noted above, the

Offering Plan, in reference to the amount of time Defendant Americana had to transfer the Unsold Shares, states the following:

> Sponsor-Seller represents and agrees to sell or transfer to one or more financially responsible natural persons, by no later than the *third* anniversary of the Closing Date, all then remaining Unsold Shares held by it. (Complaint, Exhibit A, page 61)

Based on this clear language in the Offering Plan, to the extent that Plaintiffs believed they had a claim against Defendant Americana for failing to transfer all Unsold Shares within three years of the Closing Date, there is no question that these claims would have arose on July 25, 1988. Thus, Plaintiffs are not entitled to discovery to discern this unambiguous accrual date of their claims.

To the extent that Plaintiffs were deterred from bringing claims against Defendants because of Defendant Americana's alleged ongoing contractual breaches, to which Plaintiffs cite Mancini v. Township of Teaneck, 349 N.J. Super. 527 (App. Div. 2002), the Court does not find any merit in this additional argument for tolling the statute of limitations. Not only is the case at hand vastly different from Mancini, where the Appellate Division was considering claims relating to labor laws and a hostile work environment in the police force, but also Defendant Americana possesses a mere 8.57% of the Corporation's shares. The Court is unable to see how an entity with less than 9% of an ownership stake in a corporation could exert the necessary influence on a corporation's board to not bring claims that they felt were warranted. Here, there was no such influence or continuing breach that impacted the Corporation in such a way as to not bring their claims in a timely manner.

Ultimately, this Court would not need to decide whether the six-year or twenty-year statute of limitations applies, because regardless of which controls, the timeframe to bring these claims has expired. Accordingly, given that either a six-year or twenty-year statute of limitations have

clearly expired, Plaintiffs' claims should be dismissed and these issues do not warrant further discussion. Nonetheless, the Court will address the substance of Plaintiffs' claims.

Plaintiffs' Complaint does not set forth a Claim for Relief Against Defendants

Plaintiffs contend that their Complaint has set forth causes of action that should withstand this Motion. In accordance with this contention, Plaintiffs argue that Defendants expressly represented in the Offering Plan an intention to sell or transfer all their Unsold Shares, to individuals for occupancy, by the third anniversary of the Closing Date and that this representation has not been met. Additionally, Plaintiffs assert that Defendants have not provided them with all the necessary information of the tenants renting their Unsold Shares, which allegedly creates safety issues for the Building and impacts the management's ability to administer the Building's rules and regulations.

In support of Plaintiffs' claims, they cite to an unpublished trial court case Luppino v. Eiffel Tower Co-Op, Inc., BER-C-254-97, N.J. Super. Ct. Ch. Div. (May 4, 1999). In this case, the plaintiffs/sponsors brought an action against a co-op board. The sponsors, consisting of a partnership between two brothers, had agreed to sell or transfer any unsold shares within three years after the apartment building was converted to a cooperative apartment. However, despite the agreement by the sponsors to offload the unsold shares of the newly formed cooperative, they ultimately held the unsold shares years passed the sell/transfer date. The sponsors dissolved their partnership and attempted to transfer their unsold shares into a trust for the benefit of their children. The co-op board denied the sponsors' request to move the unsold shares to a trust and took issue with their subletting of the unsold apartments. The sponsors subsequently filed the action seeking their right to sublet and transfer the unsold shares into the trust. The court in Luppino rejected the plaintiff sponsors' implication that their rights to the unsold shares continued into perpetuity and

found the board's denial of the transfer of the unsold shares to a trust to be a reasonable decision. Moreover, the court found that the decisions of boards of directors, when agreed to and exercised in good faith, are not subject to judicial inquiry and that the special rights accompanied with unsold shares do not last indefinitely. As such, Plaintiffs argue that given the Luppino decision, coupled with the fact that Defendants are allegedly attempting to hold their stake in the Unsold Shares as a source of revenue and are improperly benefiting from the special rights, or second class, of Unsold Shares, their claims should withstand this Motion.

Defendants, in response to Plaintiffs' reliance on Luppino, contend that the Court should look to New York case law regarding cooperative buildings for guidance on this matter as opposed to Luppino, especially given the lack of New Jersey case law on these cooperative issues. See Sulcov v. 2100 Linwood Owners, 303 N.J. Super. 13, 30, 696 A.2d 31 (App. Div. 1997) (finding that "[a]bsent New Jersey precedent, it is appropriate to look to out-of-state cases for guidance"). Most persuasively, Defendants point towards the New York case 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 746 N.Y.S.2d 131 (N.Y. 2002), in which the New York Court of Appeals found that a sponsor and/or holder of unsold shares must only satisfy their implied duty to sell unsold shares to the point in which enough shares are sold to form a cooperative that is "viable." In other words, this implied duty—where a sponsor/holder of unsold shares must sell enough shares to create a viable cooperative—stops at the point of viability, and once viability for a cooperative is reached, then there is no longer a duty to sell the unsold shares still held by the sponsor. Bauer v. Beekman Intl. Ctr. LLC, 125 A.D.3d 534, 535 (1st Dep't 2015); Gillespie v. St. Regis Residence Club, N.Y. Inc., 343 F. Supp. 3d 332, 343 (S.D.N.Y. 2018). Moreover, the apartment corporation has the burden of demonstrating that the sponsor's possession of the unsold shares has caused the cooperative to become unviable because it has "frustrated plaintiff's ability

to resell her units, interfered with plaintiff's ability to obtain favorable financing terms and caused wear and tear to the building for which plaintiff has had to pay increased common charges," and contrarily, the sponsor must show "its retention of units for rent has not frustrated the ability of owners to resell their units or to obtain favorable financing." Bauer v. Beekman Intl. Ctr. LLC, 40 Misc. 3d 1237(A), 977 N.Y.S.2d 665, 14 (N.Y. Sup. Ct. 2013); see Bd. of Mgrs. of the Warren House Condominium v. 34th St. Assoc. LLC, 154 A.D.3d 475, 61 N.Y.S.3d 480, 480 (1st Dep't 2017).

The Court is not persuaded by Plaintiffs' reliance on Luppino, which took place years prior to Jennifer Realty. There are two main reasons why Luppino is distinguishable from this case. First, the court in Luppino decided not to overrule the decision of the board of directors of the cooperative building. Rather, the court essentially deferred to the business judgment of the board, which the court found to be exercised in good faith and reasonable. Here, there is no overarching board decision where the Court should generally exercise deference. Instead, it is the Corporation bringing this action and seeking to compel Defendant Americana to sell all their Unsold Shares, unlike in Luppino which was brought by the sponsors holding the unsold shares. The nature of the relief sought and the dynamic between the parties are vastly different between this case and Luppino.

Secondly, and more importantly, Luppino consisted of an action in which the plaintiff sponsors sought to have their unsold shares transferred into a trust for the benefit of their children, thereby demonstrating a clear desire to hold unsold shares in perpetuity. As such, the Court finds Luppino to be inapplicable here and less persuasive than Jennifer Realty.

In Jennifer Realty, the court found that an implied duty exists for a sponsor of a cooperative to in good faith "timely sell so many shares in the building as necessary to create a fully viable

cooperative." 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (N.Y. 2002). In addition, as to the issue of viability, and what constitutes this level at which a cooperative is functioning sufficiently, the plaintiff must demonstrate that the unsold shares held by the sponsor have frustrated the owners' ability to resell their units and acquire financing, and if the sponsor's holding of unsold shares has created damage to the cooperative causing the plaintiff to make additional maintenance payments. Bauer, 977 N.Y.S.2d at 14; see Bd. of Mgrs. of the Warren House Condominium, 61 N.Y.S.3d at 480.

Here, it is clear that Defendant Americana's actions, or inactions, have left the Colony cooperative viable. First, in Jennifer Realty, the sponsors held onto forty-one out of sixty-six apartments equating to 62% of the units. Here, Defendant Americana only maintains 8.57% of the shares and 10.81% of the apartment units. Second, it was ultimately discovered by the tenant-owners in Jennifer Realty that the sponsor had rejected offers to purchase unsold shares/unsold apartments; no such allegations have been made here.

In addition, Plaintiffs have failed to plead any facts that would demonstrate not only that the Colony is less-than-viable as a cooperative, but also that there is any frustration in shareholders' ability to resell their units or to obtain favorable financing, or that the Unsold Shares have caused damage or wear and tear to the Building causing an increase in maintenance payments. There is simply nothing here convincing the Court that the Unsold Shares have: (1) created an unviable existence for this cooperative; (2) caused an untenable situation for the unit holders regarding the selling, marketing, or financing of their apartment ownership; or (3) induced additional damage to the building with increased maintenance costs.

Furthermore, when looking to the governing documents, specifically the Offering Plan, Proprietary Lease, and By-Laws, the express language does not impose a deadline for Defendant Americana to have sold or transferred their shares to individuals for occupancy.

First, the Offering Plan goes into great length as to the Unsold Shares and the obligations and rights that come with them. There are two main provisions within the Offering Plan that speak volumes as to the nature of the Unsold Shares and the obligations, if any, on Defendant Americana in transferring them. First, as noted above, one provision in the offering plan states the following:

> Sponsor-Seller represents and agrees to sell or transfer to one or more financially responsible natural persons, by no later than the *third* anniversary of the Closing Date, all then remaining Unsold Shares held by it. (Complaint, Exhibit A, page 61).

It is important to look at this provision in conjunction with the following additional portion of the Offering Plan:

> The Unsold shares shall retain their character as such (regardless of sale or transfer) until the same are purchased, and the apartment to which the same related is occupied, by a purchaser for bona fide occupancy (by himself or a member of his family) or the holder of Unsold Shares (or a member of his family) becomes a bona fide occupant of the apartment. No holder of Unsold Shares shall be restricted in the ability to sublease or sell the Apartment to which the shares are allocated for so long as such shares retain their character as Unsold Shares. (Complaint, Exhibit A, page 63).

Plaintiffs contend that the first provision in the Offering Plan imparted a contractual obligation on Defendant Americana to have sold all their Unsold Shares to purchasers for occupancy within three years of the Closing Date. However, the key language that is missing in this portion of the Offering Plan, and where Plaintiffs' argument fails, is "for occupancy." What is even more telling than the lack of express "for occupancy" language in the first provision is when you compare it to the second provision highlighted above, which occurs two pages later in the Offering Plan. Unlike the first provision, this second provision does contain express language concerning a purchaser for

occupancy, although not in the context that Plaintiffs argue. Rather, the purchaser for occupancy language that is present in the Offering Plan is found in the context of the characteristics and functionality of the Unsold Shares. Instead of placing a "for occupancy" transfer obligation on Defendant Americana, the Offering Plan clearly allows for a situation, as Defendants argue, where Defendant Americana sells a unit, and the purchaser becomes a holder of that unit but does not occupy the apartment; in this situation, the unit still maintains its status as an Unsold Share until that purchaser occupies the apartment, i.e. a purchaser for occupancy.

As such, it is clear that had the parties intended for there to be a "for occupancy" component, or mandate, on Defendant Americana's retention and ultimate transferring of the Unsold Shares, it would have been written into the first provision of the Offering Plan. The fact that this language exists later in the Offering Plan regarding the Unsold Shares' characteristics, but not in the portion of the Offering Plan pertaining to Defendant Americana's obligations, conveys to the Court that there was no three-year obligation for Defendant Americana to sell its Unsold Shares to purchasers for occupancy. Rather, the only obligation on Defendant Americana was to transfer or sell its Unsold Shares to natural persons. Thus, there is nothing in the Offering Plan to support Plaintiffs' argument that Defendant Americana breached their contract and should be forced to relinquish their Unsold Shares.

This is further supported when looking to the other two governing documents: the Proprietary Lease and the Bylaws. Most prominently, the Proprietary lease further affirms the characteristics of the Unsold Shares and the ability to sublease them. In addition, like the Offering Plan, the portion of the Proprietary Lease that specifically concerns purchasers for occupancy has nothing to do with any sale or transfer obligations for Defendant Americana, but rather has to do with how the characteristics of Unsold Shares dissipate; the Unsold Shares lose this particular

status upon the sale of the unit to a purchaser for occupancy or when the holder ultimately occupies the unit. Moreover, not only do the Bylaws similarly set-forth how holders of Unsold Shares must operate and what they are able to do with these shares, but also lacking from the Bylaws is any language imparting an obligation on Defendant Americana to sell or transfer the Unsold Shares to purchasers for occupancy.

Ultimately, the governing documents venture into extensive detail regarding the Unsold Shares and their characteristics, rights and obligations for their holders, and when the status of Unsold Shares is forfeited. Absent from the governing documents is any language requiring the sponsor to sell the Unsold Shares to purchasers for occupancy. Furthermore, in Gillespie, the court refused to broaden the holding in Jennifer Realty to find that there was an implied obligation to sell all unsold shares and that to doing so would conflict with the express language of the offering documents. Gillespie, 343 F. Supp. 3d at 343. Had the obligation for Defendant Americana to sell all of its Unsold Shares for occupancy been intended, it would have been expressed in at least one of these governing documents. Nonetheless, it does not appear in any of them.

CONCLUSION

For the aforementioned reasons, Plaintiffs' claims must be dismissed. The facts at hand do not comport with Plaintiffs' contention that Defendant Americana must relinquish their Unsold Shares. In addition, when looking to New York case law on cooperatives, especially Jennifer Realty, it is clear that the Colony is a viable cooperative and that Defendant Americana has sold enough of its units to help foster and sustain this viability. As such, Defendant Americana is not obligated to abandon these units. Furthermore, the language of the governing documents also does not support Plaintiffs' claims. Rather, these documents emanate an intention of the parties to create a clear status of Unsold Shares, with all their rights and obligations, and an intention to dive deeply

into the characteristics of these units and how they operate, all the while expressly utilizing the key "for occupancy" language when describing the characteristics of the Unsold Shares, but not for the obligations of the sponsor. Thus, the governing documents create a partnership in which the sponsor retains the Unsold Shares, must transfer them to natural persons, but is not obligated to sell them to purchasers for occupancy within any set timeframe. Notwithstanding the fact that Plaintiffs fail to show how their claims set forth a genuine issue for trial, Plaintiffs' claims must also be dismissed because the statute of limitations has clearly run regardless of whether the appropriate statute of limitation is six or twenty years.

Therefore, Defendants' Motion to Dismiss, which was converted to a Motion for Summary Judgment pursuant to R. 4:6-2(e), and disposed of per the standard set forth in R. 4:46, is hereby granted and Plaintiffs' complaint is dismissed.