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FROM THE COMMITTEE ON OPINIONS

RENEE BENNETT, JACK BRERETON, JANET BRERETON, ANDREA CAPUANO, ARTHUR CUMMING, MARY ANN CUMMING, CATHERINE FORINO, RONNIE LICHTENSTEIN, HAL LICHTENSTEIN, EDITH MICALE, JOSEPH MICALE, M.D., PETER NOONAN, SUSANA SANCHEZ, ALICE STOLER, CANDICE TIMMERMAN, MARIE TUTTLE and ALAN TUTTLE, individually and as members of the Northgate Condominium Association, Inc. and on behalf of all other unit owners similarly situated,

Plaintiffs,

v.

BOB MALONE, HENRY CENICOLA, BOB DELGRANDE, PAUL GORDON, DENNIS BRITO, BEN PEDATA, and DON OTTERSTEDT, in their capacity as members of the Board of Directors of Northgate Condominium Association, Inc., and WILKIN MANAGEMENT GROUP, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-3443-17**

Civil Action

OPINION

Argued: March 1, 2019
Decided: March 5, 2019

HONORABLE ROBERT C. WILSON, J.S.C.

Michael J. Breslin, Jr., Esq. appearing on behalf of plaintiffs Renee Bennett, Jack Brereton, Janet Brereton, Andrea Capuano, Arthur Cumming, Mary Ann Cumming, Catherine Forino, Ronnie Lichtenstein, Hal Lichtenstein, Edith Micale, Joseph Micale, M.D., Peter Noonan, Susana Sanchez, Alice Stoler, Candice Timmerman, Marie Tuttle, and Alan Tuttle (from Michael J. Breslin, Jr. LLC).

John M. Sapata, Esq. appearing on behalf of defendants Bob Malone, Henry Ceincola, Bob Delgrande, Paul Gordon, Dennis Brito, Ben Pedata, and Don Otterstedt (from Tango, Dickinson, Lorenzo, McDermott & McGee, LLP).

FACTUAL BACKGROUND

THIS MATTER arises out of an action by various condominium unit owners at the Northgate Condominium Association ("Northgate"). The owners bring a derivative, negligence, and breach of fiduciary duty action against the members of Northgate's Board of Directors (the "Board"). Northgate is a seventy-one unit condominium complex located in Washington Township, New Jersey.

Plaintiffs Renee Bennett, Jack Brereton, Janet Brereton, Andrea Capuano, Arthur Cumming, Mary Ann Cumming, Catherine Forino, Ronnie Lichtenstein, Hal Lichtenstein, Edith Micale, Joseph Micale, M.D., Peter Noonan, Susana Sanchez, Alice Stoler, Candice Timmerman, Marie Tuttle, and Alan Tuttle (collectively, "Plaintiffs") filed their Complaint in Superior Court on May 16, 2017. Plaintiffs are all unit owners at Northgate. Defendants Bob Malone, Henry Ceincola, Bob Delgrande, Paul Gordon, Dennis Brito, Ben Pedata, and Don Otterstedt (collectively, "Defendants") were all Board members at the time the events relevant to this litigation took place.

I. Litigation in the Chancery and Law Divisions

Plaintiffs alleged causes of action sounding in negligence and breach of fiduciary duty. Specifically, Plaintiffs claimed that Defendants depleted Northgate's reserve funds by incurring fees and costs in litigating a land use application against a neighboring development, Caliber. The Complaint states that Northgate retained lawyers and engineers to oppose the Caliber project without the approval or authority of the Northgate unit owners. Plaintiffs also claimed that the assessments imposed by Northgate on the unit owners were unlawful, lacked transparency, and were done without proper authority.

Sometime in October 2001, Northgate became aware of a proposal by Caliber Builders to construct a housing complex on a parcel of property adjacent to the Northgate complex. Northgate was concerned that water runoff from the proposed development would damage the general common elements of the Northgate complex. As a result, on October 29, 2003, the Northgate unit owners in attendance at that year's annual meeting unanimously voted to hire an engineering expert to oppose the Caliber project.

In 2004, when the legal challenge to the Caliber project began, Northgate implemented a $50 per month, per unit assessment intended to defer legal costs and expenses. This assessment raised approximately $42,600 per year towards legal fees and costs. The assessment went into effect in 2005.

In a letter dated December 10, 2004, the Board informed the unit owners of its active involvement in an engineering and legal review of the Caliber project. This letter also noted that an additional $50 monthly fee would be needed to fund Northgate's review of the Caliber project. As time went on, the Board continued to update the unit owners of the progress of the Caliber project through annual meetings, Board meetings, and correspondences.

While the Caliber project litigation was ongoing, the Board completed a four-year replacement and repair project at the Northgate complex, costing approximately $800,000. This project was funded by the Northgate reserve fund (the "Reserve Fund"). The Board also negotiated a $250,000 revolving line of credit, which was subsequently converted into a ten-year loan. This line of credit offset expenses and allowed for replenishment of the Reserve Fund through monthly maintenance fees.

As 2012 drew to a close, Northgate owed legal fees and costs associated with the Caliber litigation in excess of the amount generated by the $50 per month per unit assessment. In 2013,

Northgate incurred approximately $157,000 in new legal fees and costs. The Association used the $43,000 generated from the $50 per month, per unit assessment towards paying off the debt. Additionally, the Board decided to use reserve funds to pay off the remaining $88,000 in outstanding debt related to legal fees and costs, not covered by the assessment funds.

At the annual meeting in November 2013, the Board informed the unit owners that a one-time assessment of $1,500 would be charged to each unit owner in 2014 in order to replenish the Reserve Fund. This assessment raised approximately $106,000.

Eventually, the Caliber litigation resulted in a settlement that alleviated the Board's concerns regarding the Caliber project. Once the settlement was reached, the Board received an estimate for the final bill for legal fees and costs.

On June 17, 2015, the Board held an open meeting where it discussed the imposition of another assessment in the amount of $10,000. This assessment would be paid by each unit owner over four years, in seven installments, from 2015 to 2018. Funds generated from this assessment would be used to pay for legal and engineering fees and costs, as well as replenish the Reserve Fund from the previous capital improvements. The approximate total cost for legal and engineering fees was $440,000, while the total cost for the previous capital improvements was approximately $300,000.

Plaintiffs contend that before this meeting, there was no official notice provided regarding the $10,000 assessment. They also claimed that at the meeting, charts and other materials were distributed to the Northgate unit owners in attendance explaining Northgate's overspending on legal and engineering fees for nine of the twelve years it was involved in the Caliber litigation.

On or about September 16, 2015, after the final assessment was announced, Ms. Mary Breslin, a unit owner, filed a Complaint in the Chancery Division of the Superior Court, naming

Northgate, the Board, and Northgate's management company, Wilkin Management Group, Inc. as defendants (the "Chancery Matter"). The Chancery Matter sought injunctive relief related to the Board's imposition of the $10,000 per unit assessment. It also sought a declaratory judgment from the trial court that the assessment was a special assessment requiring a vote of the unit owners.

The Chancery Matter was tried before the Honorable Menelaos W. Toskos, J.S.C. on November 15, 16, 28, 29 and December 5, 2016. At the conclusion of the bench trial, Judge Toskos issued a written decision concluding that Northgate had the power to challenge the Caliber project, and that it also had the option to pay for litigation fees and costs through assessments.

After Judge Toskos rendered a decision in the Chancery Matter, Ms. Breslin filed an appeal of the final judgment on April 11, 2017. Thirty-five days after filing the appeal, Ms. Breslin and the other unit owners filed the present matter at issue in the Superior Court, Law Division. As a result, a newly-installed Board retained new legal counsel to negotiate a reduction in fees with prior counsel, Beattie Padovano, LLC. In addition to the legal and engineering expenses incurred in the Caliber litigation, Northgate incurred over $425,000 in legal fees to defend the Chancery Matter.

As a result of the negotiations, Beattie Padovano agreed to a reduction of its fees from $605,663.99 to $262,496.03. The current Board was concerned that the settlement would be paid using funds from a recently-imposed $710,000 common assessment. As such, the new Board decided to request that the unit owners approve and ratify as "special assessments" for all of the prior assessments and that portion of the $710,000 assessment sufficient to cover the settlement. Plaintiffs contend that they never saw any invoices.

On July 25, 2018, an informational "town hall" meeting was held, wherein legal counsel presented the proposed settlement with Beattie Padovano and outlined the strategy of seeking unit

owner ratification and approval of the prior assessments, so as to moot the appeal. In an effort to prevent unit owner ratification and approval of the prior assessments, Plaintiffs retained Michael Breslin, Esq. to file an Order to Show Cause with Temporary Restraints (the "OTSC"). On September 13, 2018, the Hon. James DeLuca, J.S.C. entered an order denying the request for temporary restraints.

On September 13, 2018, a "special meeting" was held for the sole purpose of voting on: (1) approval and ratification the prior assessments, and (2) a resolution of the unit owners ratifying prior assessments and approving a special assessment fund to pay for the settlement with Beattie Padovano (the "Resolution").

On November 30, 2018, the Appellate Division dismissed Ms. Breslin's appeal as moot. Prior to the September 13, 2018 approval and ratification of the $710,000 assessment, the Chancery Matter and subsequent appeal halted the four-year, $710,000 assessment. This completely stopped any cash flow for Northgate. If the Chancery Matter had not been litigated, the revenue stream from the aforementioned assessment would have paid off all of Northgate's legal debt, and added nearly $300,000 to Northgate's reserves over the four-year period from 2015-2018. Had this been the case, the sum total of Northgate's reserves would have been approximately $600,000. Furthermore, the Chancery Matter and the instant matter filed in the Law Division have resulted in approximately $425,000 in additional legal fees charged to Northgate.

II. Northgate's By-Laws

Northgate's By-Laws bestow certain powers upon the Board of Directors. The Articles of the By-Laws relevant to this matter are directly quoted below:

ARTICLE IV

BOARD OF DIRECTORS

Section 3. GENERAL POWERS: The Board shall have the powers granted to it by law, the Certificate of Incorporation, the Master Deed, and these By-laws. In addition to and not by way of limitation, it shall have the following powers, herein granted or necessarily implied, which it shall exercise in its sole discretion:

(a) Providing for operation, care, management, repair, alteration, replacement, cleaning, and sanitation of the Common Elements

. . . .

(i) The Board may employ, by contract or otherwise, a manager, managing agent, superintendent, or independent contractor to perform such duties and services as the Board shall authorize, including but not limited to the duties granted to the Board as set forth herein. The Board may delegate to the manager, managing agent, superintendent or independent contractor such powers as may be necessary to carry out the function of the Board. Said manager, managing agent, superintendent, or independent contractor shall be compensated upon such terms as the Board deems necessary and proper

. . . .

(m) Employ professional counsel and to obtain advice from persons, such as but not limited to landscape architects, recreation experts, architects, planners, biologists, lawyers, and accountants

. . . .

(v) Borrow and repay any monies giving notes, mortgages and other security upon such term or terms as it deems necessary. However, the power to borrow money on real estate, or purchase real estate, shall only be exercised by the Board with the consent of at least seventy-five (75%) present of the members of the Association

. . . .

(z) Invest and reinvest monies, sue and be sued, collect interest, dividends, capital gains, exercise rights, pay taxes, make and

> enter contracts, insure, enter into leases or concessions, and to pass good and marketable title without the necessity of any third party seeking to the application of the funds, make and execute any and all affidavits for various purposes, including but not limited to title to real estate, compromise any action without leave of Court, insure its own liability for: claims, and all other powers contained herein, and those necessary and incidental thereto.

Northgate's By-Laws also provided an exculpation clause precluding the Board or its officers from certain liabilities. Specifically, the By-Laws provide the following:

> ARTICLE XVII
>
> EXCULPABILITY of the BOARD and the OFFICERS
>
> (a) Neither the Board as a body, nor any director thereof, nor any officer of the Association, or any delegees of them, shall be personally liable to any Unit Owner in any respect for any action or lack of action arising out of the execution of his office. Each Unit Owner shall be bound by good faith actions of the Board and officers of the Association, or their delegees, in the execution of the duties of said directors and officers. Unless acting in bad faith, neither the Board as a body, nor any directors or officers of the Association, nor any delegees of them shall be liable to any Unit Owner or other person for misfeasance or malfeasance.
>
> (b) Each director and officer of the Association, and their delegees shall be indemnified by the Association against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, or deluges, except as to matters to which he has been finally found in such action to be liable for gross negligence or willful misconduct.

III. Defendants' Motion for Summary Judgment

Defendants now move for summary judgment. Defendants claim that: (1) Plaintiffs' Complaint is barred by a two-year statute of limitations; (2) the business judgment rule precludes

Plaintiffs from bringing a claim for breach of fiduciary duty; and (3) the exculpation clause of Northgate's By-Laws defeats Plaintiff's negligence claims.

Plaintiffs oppose the motion, arguing that: (1) the "Discovery Rule" applies in this instance, therefore tolling the two-year statute of limitations; (2) the business judgment rule is inapplicable because Defendants failed to act in compliance with the New Jersey Condominium Act, the Real Property Full Disclosure Act, and the Rules and Regulations of the Department of Community Affairs; and (3) the indemnification or exculpation of liability created by Northgate's By-Laws are a separate cause of action, and not a defense.

For the reasons below, Defendants' Motion for Summary Judgment is **GRANTED** in its entirety.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, 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." R. 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution

of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

RULE OF LAW AND DECISION

I. Plaintiffs' Complaint is Dismissed, as it was Filed Outside the Time Prescribed by the Applicable Two-Year Statute of Limitations

Plaintiffs allege causes of action sounding in negligence and in breaches of fiduciary duty against Defendants in their Complaint. The underlying facts supporting these allegations relate to the Board depleting Northgate's reserve funds by incurring fees and costs in litigating a land use application against the adjacent Caliber development. As it appears that Plaintiffs' claims are tort claims, the applicable statute of limitations is two years, and Plaintiffs have failed to file their Complaint within the appropriate time.

Statutes of limitations are used to penalize unreasonable delay. Such statutes are intended to persuade litigants to pursue their claims diligently so that answering parties will have a fair opportunity to defend against them. Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329, 337 (1978). Statutes of limitations also exist to prevent the courts from litigating stale claims. State v. Standard Oil Co., 5 N.J. 281, 295 (1950). Once memories fade, witnesses become unavailable, and evidence is lost, the courts no longer possess the capacity to distinguish valid claims from those which are frivolous or vexatious. Kaczmarek, 77 N.J. at 338. The statute of limitations begins to "run" against a claimant when the cause of action accrues. Courts have identified the accrual of a cause of action as the date on which the right to institute and maintain a suit first arises. Rosenau v. City of New Brunswick, 51 N.J. 130, 137 (1968).

A. *Plaintiffs' Verified Complaint was Filed After the Two-Year Statute of Limitations had Expired*

In this instance, the accrual of the cause of action was October 29, 2003. On this date, the Northgate unit owners in attendance at that year's annual meeting voted to unanimously hire an engineering expert to oppose the Caliber project. From this date onward, Northgate began to accumulate attorney fees, engineering fees, and other costs associated with challenging the Caliber project. These costs and fees, in turn, necessitated the assessments and use of reserve fund money to which the Plaintiffs base their causes of action in negligence and breach of fiduciary duty. Therefore, under the applicable statute of limitations, Plaintiffs had until October 29, 2005 to file their Complaint.

Plaintiffs Brereton, Capuano, Cumming, Forino, Lichtenstein, Tuttle, and Stoler filed a Complaint on May 16, 2017 – twelve years and seven months *after* the applicable statute of limitations had expired.

The Court would like to note that Plaintiffs filed a Verified Amended Complaint on July 25, 2018. The Verified Amended Complaint added Plaintiffs Bennett, Noonan, Micale, and Sanchez to the matter. Plaintiffs' initial Complaint did not include any fictitious parties. Assuming *arguendo* that the initial Complaint had listed fictitious parties, the claims of these added plaintiffs would be precluded regardless. This is because a plaintiff cannot use the "fictitious party rule" if, through the use of diligence, he or she should have known the identity of a party prior to the running of the statute of limitations. Cardona v. Data Sys. Computer Centre, 261 N.J. Super. 232, 235 (App. Div. 1992); Younger v. Kracke, 236 N.J. Super. 595, 600 (Law Div. 1989); Mears v. Sandoz Pharmaceuticals, Inc., 300 N.J. Super. 622, 629 (App. Div. 1997). Moreover, the fictitious party rule is inapplicable in this instance because the Complaint was amended to add new *plaintiffs*, not new *defendants*.

As was the case with the initial Complaint, the Verified Amended Complaint was filed after the applicable two-year statute of limitations had expired. The Verified Amended Complaint was filed thirteen years and nine months too late. Based on the foregoing, Plaintiffs' Complaint is dismissed as to Defendants.

B. *The "Discovery Rule" is Inapplicable in this Instance, and as such, Equitable Tolling of the Statue of Limitations is Inappropriate*

Plaintiffs agree that claims of negligence and breach of fiduciary duty are tort claims, and are therefore subject to a two-year statute of limitations pursuant to N.J.S.A. 2A:14-1.1. However, they argue that the accrual of these causes of action in this matter occurred on a date later than October 29, 2003. They argue that an exception to the standard accrual rule, the "Discovery Rule," is applicable here and should equitably toll the statute of limitations. However, this argument is of no moment.

In New Jersey, there is an exception to the standard rule regarding accrual of a cause of action for purposes of the statute of limitations. The Discovery Rule provides that a cause of action does not accrue, and the statute of limitations does not begin to run, until the facts presented would alert a reasonable person, exercising diligence, that they were injured due to the fault of another. Lopez v. Sawyer, 62 N.J. 267 (1973).

Plaintiffs argue that they learned of the high legal and engineering expenses incurred by Northgate for the first time at a June 17, 2015 open Board meeting of the unit owners, and therefore, this is the date upon which the cause of action should have accrued, and the statute of limitations should begin to run. However, even if the Court were to apply the Discovery Rule, the Complaint would have still been filed outside the statute of limitations. This is because the June 15, 2015 meeting simply is not the first time the unit owners learned of Northgate's involvement in opposing the Caliber project, and incurring legal and engineering fees and costs as a result of it.

There were several assessments imposed on the unit owners throughout the duration of the litigation involving the Caliber project. On December 10, 2004, Northgate issued a letter to all unit owners that a $50 per unit per month assessment would be imposed in order to assist funding for legal and engineering fees related to the Caliber project litigation. The unit owners were notified of a second assessment of $1,500 per unit per month at a November 2013 Board meeting, which was intended to replenish the Reserve Fund, after the Caliber project litigation had depleted it. Therefore, it is clear that the Plaintiffs' were on notice of the events underlying their claims for negligence and breach of fiduciary duty in December 2004 and November 2013 – well before the June 15, 2015 Board meeting. As such, even if the Discovery Rule applied, the statute of limitations would have expired in December 2006, or at the latest, November 2015, and Plaintiffs' complaint would still be time barred by the statute of limitations.

II. Plaintiffs are Precluded from Bringing a Breach of Fiduciary Duty Claim, as Defendants are Protected from Liability by the Business Judgment Rule

A homeowners' association has a fiduciary relationship with each of its unit owners that requires it to act "reasonably and in good faith." Billig v. Buckingham Towers Cond. Ass'n I, Inc., 287 N.J. Super. 551, 563 (App. Div. 1996). This relationship requires that the association protect the interests of the group as a whole, and the interests of each constituent owner individually. Id. "Individual owners and residents are required to subordinate their own interests to those of the community at large." Courts at Beachgate v. Bird, 226 N.J. Super. 631, 641 (Ch. Div. 1988).

N.J.S.A. 46:8N-14 states that a condominium association, acting through its officers of governing board, shall be responsible for the performance of the following duties, and the costs of which shall be common expenses: "(a) [t]he assessment and collection of funds for common expenses and payment thereof . . . . (b) [a]n association shall exercise its powers and discharge its

functions in a manner that protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community." The Board was also conferred additional powers enumerated in the sections of the By-Laws reproduced in the Factual Background section above.

While certain statutory requirements, in addition to the requirements imposed by the By-Laws were to be followed by the Board in making decisions, the "Business Judgment Rule" (the "BJR") applies to limit the personal liability of the Board members. The BJR applies to homeowners' and condominium associations. Walker v. Briarwood Condo Ass'n., 274 N.J. Super. 422 (App. Div. 1994) ("[D]ecisions made by a condominium association board should be viewed by a court using the same business judgment rule which governs the decisions made by other types of corporate directors.").

The test for applicability of the BJR in relation to a condominium or homeowners' association is as follows: "(1) whether the Association's actions were authorized by statue or by its own by-laws or master deed, and if so (2) whether the action is fraudulent, self-dealing, or unconscionable." Owners of the Manor Homes of Whittingham v. Whittingham Homeowners' Ass'n, 367 N.J. Super. 314 (App. Div. 2004); Chin v. Coventry Square Condo. Ass'n, 270 N.J. Super. 323 (App. Div. 1994). "If a contested act of the association meets each of these tests the judiciary will not interfere." Billig, 287 N.J. Super. at 551.

In this matter, there is no evidence of fraud or self-dealing. The funds raised through the assessments imposed on the unit owners were used only for litigation costs. At the same time, the unit owners approved the opposition to the Caliber project, and were aware of the assessments and the litigation. Moreover, at the conclusion of the bench trial in the Chancery Matter, Judge Toskos

determined that Northgate had the power to challenge the Caliber project, and also had the option to pay for the litigation fees and costs through a common assessment.

Plaintiffs claim that the BJR is inapplicable in this instance, despite admitting the absence of fraud or self-dealing by Defendants. Instead, Plaintiffs argue that the BJR is inapplicable because Northgate failed to comply with various provisions of the New Jersey Condominium Act, the Real Property Full Disclosure Act, and the Rules and Regulations of the Department of Community Affairs. However, these arguments were already made in the Chancery Matter before Judge Toskos, who ultimately found them unconvincing in his findings of fact and conclusions of law.

Therefore, as there was no fraud, self-dealing, or unconscionability shown by Plaintiffs, the BJR is applicable in this matter and insulates the individual Board members named as Defendants from liability.

III. Plaintiffs Cannot Bring a Negligence Claim against Defendants, as Northgate's By-Laws provide for Exculpability of the Board and its Officers

New Jersey courts have historically disfavored interpreting exculpatory agreements as enforceable, arguing that they encourage a lack of care. Hojnowski v. Vans Skate Park, 187 N.J. Super. 323, 222 (2006); Kuzmiak v. Brookchester, Inc., 33 N.J. Super. 575, 580 (App. Div. 1955). Exculpatory agreements operate in a manner where one party relinquishes a legal right, and thereby relieves another party of a common law duty of care. Gershon v. Regency Diving Center, 368 N.J. Super. 237, 247 (App. Div. 2004). Therefore, an exculpatory release must, on its face, reflect the expression of the party giving up his or her legal rights that the decision was made voluntarily, intelligently, and with the full knowledge of its legal consequences. Id. Any doubts or ambiguity as to the scope of the exculpatory language must be resolved against the drafter of the agreement and in favor of affording legal relief. Id. at 247.

When considering the relevant sections of Northgate's By-Laws set forth in the Factual Background, it is clear that the terms are unambiguous – the individual Board members and the Board as a whole are not to be held liable in negligence actions. Furthermore, Plaintiffs set forth no cognizable facts in their opposition papers alleging that any of the unit owners agreed to the By-Laws involuntarily, unintelligently, or without full knowledge of the legal consequences of those sections. Accordingly, Defendants are immune to a negligence cause of action under the exculpability clause of Northgate's By-Laws.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is **GRANTED** in its entirety. It is so **ORDERED**.