

Condominium at Lilac Lane Unit Owners' Association v. Monument Garden, LLC



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In a recent opinion issued by the Supreme Court of New Hampshire, it appears again that the Court has ignored the clear meaning of RSA 356-B in favor of adopting what it sees as an equitable result.

With full disclosure that our firm submitted an *amicus curiae* brief about this case on behalf of the Community Association's Institute, it is our opinion that the Court in this case just got it wrong.

The summary of the facts is somewhat simple. The developer declared property as part of the association and did not complete the project within the allowable time period. As such, the Association took the position that land and buildings, whether equitable or not, should have been part of the Association's property and the developer's mortgage was extinguished at the same time.

However, the Court specifically found that there are other ways to create condominiums in New Hampshire other than on convertible land with expandable condominiums. In other words, the condominium act implies that a condominium can be created prior to completion of construction on all units, without the need to classify portions of the condominium land as convertible (i.e., that not all units within the condominium must be located on subsequent or converted land.)

Consequently, the Court ruled against the Association in favor of the declarant and mortgage holder.