STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY SUPERIOR COURT

Condominiums at Lilac Lane Unit Owners' Association

v.

Monument Garden, LLC, and Eastern Bank

Docket No. 219-2015-CV-313

ORDER ON PENDING MOTIONS

The plaintiff, Condominiums at Lilac Lane Unit Owners' Association ("Lilac"), brings this action against the defendants, Monument Garden, LLC ("Monument Garden"), and Eastern Bank (collectively, the "defendants"), asserting claims for, among other things, declaratory judgment, injunctive relief, and unjust enrichment. Now before the court are the parties' cross-motions for summary judgment and objections thereto. (Court index #15, 21–22, 31.) After a hearing on the cross-motions, and considering the parties' arguments, the factual circumstances of the case, and the applicable law, the court finds and rules as follows.

FACTS

The following facts are undisputed, unless otherwise indicated. Lilac is an association comprised of the owners of condominium units located within a residential development in Dover known as the Condominiums at Lilac Lane (the "condominium"). (See Klass Aff., Ex. C at 1–2, Oct. 22, 2015.) An entity known as New Meadows, Inc. ("New Meadows") was the original declarant of the condominium. (Id., Ex. B at 1.[1]) The condominium land was initially part of a preexisting condominium development known as the Meadows at Dover. (Id., Ex. A at 1–2.) New Meadows sought to construct new buildings on Meadows at Dover land, but sought to separate the new development—the condominium at issue here—from the existing development. (Id., Ex. A at 1–2.) The proposed division received approval of the Attorney General in February 2010. (Id., Ex. A at 6.)

[1] Exhibit B to the affidavit of Michael Klass is paginated, with the exception of the first page—a table of contents. For ease of reference, when citing to Ex. B, the court will reference the page numbers as set out therein, and will refer to the table of contents as "TOC."

New Meadows subsequently established the condominium in 2010 by executing and recording a Declaration of Condominium (the "declaration") with the Strafford County Registry of Deeds, as required by New Hampshire's Condominium Act, see RSA chapter 356-B (2009 & Supp. 2015). (Id., Ex. B at 1–13.) The declaration describes the land submitted to the condominium as:

> A certain tract or parcel of land together with the buildings thereon situate on Lilac Lane in the City of Dover County of Strafford and State of New Hampshire, the same being more particularly delineated as The Condominium at Lilac Lane on plan entitled "Revision IV to the Condominium Site Plan, Tax Map H Lot 35A, The New Meadows, Inc." prepared by MSC Civil Engineers & Land Surveyors, Inc. [(the "[site] [p]lan")] and to be recorded in the Strafford County Registry of Deeds . . . .

(Id., App A. to Ex. B.[2]) It also explains that the condominium was to "consist of a maximum of one hundred twenty (120) units in five buildings designated on the [above-referenced site plan] as Buildings 12, 13, 14, 15[,] and 16." (Id., Ex. B at 3.) It further contains a list of the 120 units, complete with designation numbers. (Id., App B. to Ex. B.)

Consistent with the declaration, the site plan depicts two existing buildings on the approximate 7.18 acres of submitted land; these buildings are labeled Building 12 and Building 13 respectively. (Id., Ex. D at 1.) According to the accompanying floor plans, Building 12 was substantially complete and Building 13 was under construction. (Verified Compl., Ex. 4 at 6.[3]) The site plan also depicts three proposed buildings, which are labeled Building 14, Building 15, and Building 16 respectively. (Klass Aff., Ex. D at 1.) According to the floor plans, construction on these buildings had not yet begun. (Verified Compl., Ex. 4 at 6.) Additionally, the floor plans depict the twenty-four units existing, or proposed to be built, within each building—a total of 120 units. (Id., Ex. 4 at 6–7.)

On April 10, 2012, New Meadows executed a document entitled "Memorandum of Understanding (Phasing Plan)" (the "phasing plan"), which it subsequently recorded in the

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[2] The declaration contains exhibits; the court refers to these as appendices to Exhibit B to the Klass Affidavit.

[3] Although the accompanying floor plans were not submitted on summary judgment, they were submitted as an exhibit to the verified complaint. (Verified Compl., Ex. 4 at 6–8.) The verified complaint attests that the exhibit is a true and accurate copy of the floor plans. (Id. ¶ 14.) Under these circumstances, the court may consider the exhibit for summary judgment purposes. See Sheinkopf v. Stone, 927 F.2d 1259, 1262 (1st Cir. 1991); 73 Am. Jur. 2d Summary Judgment § 30 (WEST 2016) ("[A] verified complaint may be treated as the functional equivalent of an affidavit for the purposes of opposing a summary judgment motion to the extent that it satisfies the standards explicated in the summary judgment rule.")

Strafford County Registry of Deeds. (Id., Ex. 6 at 1.[4]) The phasing plan explained that New Meadows intended to construct the buildings within the condominium in phases, and sell the units as it completed construction on each building. (Id., Ex. 6 at 1.) At the time of the phasing plan, most of the units in Building 12 had been sold. (Id., Ex. 6 at 1.)

On October 3, 2012, New Meadows transferred its interests in the condominium to Monument Garden by deed. (Aylesworth Aff., Ex. C, Nov. 19, 2015.) Monument Garden executed a mortgage in favor of Eastern Bank's predecessor—Centrix Bank and Trust ("Centrix")—in exchange for a loan to complete the purchase. (Id., Ex. F at 1; see Klass Aff., Exs. G–H.) As further security, Monument Garden executed a document entitled "Collateral Assignment of Declarant's Rights"; this assignment provided that Centrix would be entitled to exercise Monument Garden's development rights in the event of default. (Aylesworth Aff., Ex. G at 1–2 (bolding and capitalization omitted).)

After purchasing New Meadows' interest in the condominium, Monument Garden continued construction on Building 13, which it completed in or around June 2013. (Compl. ¶ 8; Answer ¶ 8.) It subsequently began construction on Building 14, which it completed in or around July 2014. (Compl. ¶ 8; Answer ¶ 8.) Contrary to New Meadows' phasing plan, Monument Garden did not sell any of the units in Buildings 13 and 14, but instead retained ownership of the units contained therein. (See Compl. ¶ 8; Answer ¶ 8.) Monument Garden also planned to construct buildings 15 and 16. (See Compl. ¶ 9; Answer ¶ 9.)

Lilac, as the unit owner's association, is subject to the condominium's bylaws. (Klass Aff., Ex. C at 2.) According to the bylaws' description of Lilac's voting rights, "[e]ach completed unit [is] entitled to one (1) vote." (Id., Ex. C at 2.) The bylaws explain that this provision applies even where the declarant owns multiple units. (Id., Ex. C at 3.) As unit owners, Lilac votes on, among other things, the election and removal of members of the Board of Directors ("Board"). (Id., Ex. C at 3.) The bylaws dictate that the condominium is to be managed by a five member Board. (Id., Ex. C at 5.)

Currently, Steven Fee ("Fee"), Anthony Stevens ("Stevens"), James Plante ("Plante"), Venkat Badabagni ("Badabagni"), and Kenneth Anderson ("Anderson") are serving on the

[4] Like the floor plans, the phasing plan was not submitted on summary judgment but was submitted as an exhibit to the verified complaint. (Verified Compl., Ex. 6.) The verified complaint attests that the exhibit is a true and accurate copy of the phasing plan. (Id. ¶ 17.) Under these circumstances, the court may consider the exhibit for summary judgment purposes. See Sheinkopf, 927 F.2d at 1262; 73 Am. Jur. 2d Summary Judgment § 30.

condominium's Board. (Fee Aff. ¶ 2, November 5, 2015.) Fee and Anderson are managing members of Monument Garden; Stevens, Plante, and Badabagni are individual unit owners. (Id.) Monument Garden is displeased with the way in which the Board has been managing the condominium. (See id. ¶¶ 3–9.) It called, by letter, for a special meeting to remove Stevens as a member of the Board, claiming to hold the requisite 30% of the unit owners' votes.[5] (Klass Aff., Ex. C at 3; Verified Compl., Ex. 7.[6]) This action followed.

LEGAL STANDARD

In ruling on cross-motions for summary judgment, the court "consider[s] the evidence in the light most favorable to each party in its capacity as the nonmoving party." Eby v. State, 166 N.H. 321, 327 (2014) (citation omitted). Where "no genuine issue of material fact exists, [the court] determine[s] whether the moving party is entitled to judgment as a matter of law." N.H. Ass'n of Counties v. State, 158 N.H. 284, 287–88 (2009). "An issue of fact is 'material' for purposes of summary judgment if it affects the outcome of the litigation under the applicable substantive law." VanDeMark v. McDonald's Corp., 153 N.H. 753, 756 (2006). To demonstrate a genuine dispute regarding a material fact, the non-moving party "may not rest upon mere allegations or denials of his pleadings, but his response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue for trial." RSA 491:8–a, IV (2010).

ANALYSIS

Lilac's verified complaint seeks: a declaratory judgment that Lilac owns certain condominium units (Count I); a declaratory judgment that Monument Garden has no rights to further develop condominium lands (Count II); a declaratory judgment that Monument Garden lacks sufficient voting rights to control Lilac's board of directors (Count III); damages for unjust enrichment / disgorgement (Count IV); a declaratory judgment that Eastern Bank does not hold a valid note and mortgage to condominium lands (Count V); a prejudgment and lis pendens attachment (Count VI); a preliminary injunction ordering defendants to refrain from conveying

[5] Monument Garden claims ownership of all units in Buildings 13 and 14 and several units in Building 12.

[6] This letter was not submitted on summary judgment. The verified complaint, however, attests to the letter as true and accurate, (Verified Compl. ¶ 30), and thus the court may consider the exhibit for summary judgment purposes. See Sheinkopf, 927 F.2d at 1262; 73 Am. Jur. 2d Summary Judgment § 30.

their respective interests in certain property (Count VII); a preliminary injunction ordering Monument Garden to refrain from developing condominium lands (Count VIII); a preliminary injunction ordering Monument Garden to refrain from exercising voting rights premised upon its asserted ownership of certain condominium units (Count IX); and a preliminary injunction ordering Eastern Bank to refrain from exercising its claimed rights under the mortgage (Count X). (Verified Compl. ¶¶ 36–86.) By order dated December 8, 2015 (the "preliminary order"), the court (Temple, J.) denied Lilac's requests for preliminary injunctive relief and a prejudgment attachment. (Court index #25, at 20.) The court also declined to rule on Lilac's request for court approval to file a writ in the form of lis pendens, noting that court approval was not required for such a filing. (Id., at 17.)

The defendants and Lilac now cross-move for summary judgment. (Court index #15, 21–22, 31.) While the defendants assert entitlement to summary judgment on all ten of the claims asserted in Lilac's verified complaint, Lilac seeks summary judgment on all claims except for Count IV—its claim for unjust enrichment / disgorgement. The parties raise various arguments in support of and in opposition to their cross-motions for summary judgment. These arguments will require the court to determine: (1) the extent of the interests in the condominium conveyed to Monument Garden by the 2012 deed; and (2) whether the condominium is subject to certain provisions of RSA chapter 356-B, which relate to "convertible land." The court first considers these issues in turn, and then discusses the effect its determinations have on Lilac's claims.

I. Interests Conveyed by Deed

In its earlier pleadings, Lilac argued that the 2012 deed failed to convey any ownership interest in the condominium land to Monument Garden on the basis that the land had already been conveyed to Lilac by the declaration. (See, e.g., Verified Compl. ¶¶ 23–26; Pl.'s Mem. Law Supp. Mot. Prelim. Inj. at 5–6.) It relies on this argument as a partial basis for some of its claims. (See Verified Compl. ¶¶ 45–52, 58–61.) Lilac still appears to pursue this argument. (See Pl.'s Mem. Supp. Cross-Mot. Summ. J. and Obj. Defs.' Mot. Summ. J., at 15 n.11.) The court finds that such an argument is misplaced for the reasons stated in the preliminary order, which the court incorporates herein by reference. (See court index #25 at 6–9.) Accordingly, the court determines that New Meadows retained the right to develop the property in accordance with the site plan, as well as ownership of the units not yet constructed and those units'

respective undivided interests in the common area. It subsequently transferred those rights to Monument Garden by deed in 2012.

II. Convertible Land

The parties dispute whether the condominium contains convertible land, and, consequently, whether Monument Garden was required to adhere to the relevant statutory provisions governing the creation and conversion of such land. The court thus considers whether the condominium is subject to certain provisions of the Condominium Act, see RSA chapter 356-B, which relate to "convertible land." See RSA 356-B:3, X (Supp. 2015) (defining "convertible land" as "a building site which is a portion of the common area, within which additional units and/or a limited common area may be created in accordance with this chapter.") Determination of this issue will require the court to engage in statutory interpretation of RSA chapter 356-B, which is a matter of law. See Trefethen v. Town of Derry, 164 N.H. 754, 755 (2013). The court considers the statute as a whole and ascribes the plain and ordinary meaning to the words used. Id. (citation omitted). The court "interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. (citation omitted). The court "construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Petition of Carrier, 165 N.H. 719, 721 (2013) (citation omitted). Furthermore, the court should "not consider words and phrases in isolation, but rather within the context of the statute as a whole." Id. (citation omitted). This approach "enables [the court] to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." Id. (citation omitted).

"The Condominium Act, RSA chapter 356-B, applies 'to all condominiums and to all condominium projects' in New Hampshire." Holt v. Keer, 167 N.H. 232, 240 (2015) (quoting RSA 356-B:2, I (2009)). "In order to create a condominium, certain 'condominium instruments' must be recorded with the registry of deeds in the county where the condominium is located." Id. (quoting RSA 356–B:7 (2009), :11 (2009)). "The condominium instruments include a declaration of condominium, which defines the rights as among the condominium owners, the condominium association, and the developer." Ryan James Realty, LLC v. Villages at Chester Condo. Ass'n, 153 N.H. 194, 196 (2006). Under the Act, condominiums can contain convertible land. See RSA 356-B:16, II (2009). If the condominium contains convertible land, certain

requirements must be met. For example, the declaration must contain, among other things, a legal description of the convertible land. Id. Similarly, a site plan depicting "the location and dimensions of any convertible lands within the submitted land" must be recorded along with the declaration. RSA 356-B:20, I (Supp. 2015). Additionally, to convert convertible land into units, a declarant must "record an amendment to the declaration describing the conversion" along with applicable site plans and floor plans. RSA 365-B:23, II (2009). The statute places a five-year limitation on the conversion of convertible lands. RSA 356-B:20, III.

Although Lilac agrees that the condominium instruments do not reference convertible land, it argues that, under the Condominium Act, the only method by which a declarant can develop a condominium in phases is by designating certain portions of common area as convertible land and by later converting that land to units. (Pl.'s Mem. Supp. Cross-Mot. Summ. J. and Obj. Defs.' Mot. Summ. J., at 6–14.) In contrast, the defendants contend that all five buildings and 120 units were part of the original condominium as submitted, and that Monument Garden is not, therefore, required to convert land in order to construct them. (Defs.' Mot. Summ. J., at 4–9.) The defendants' contention is correct.

By its plain language, the Condominium Act allows for the creation of a condominium that includes planned future development, including the construction of units, but does not contain convertible land. RSA 356-B:7 provides that condominium instruments cannot be recorded "unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on site plans and floor plans that comply with RSA 356-B:20, I and II." (Emphasis added). This provision necessarily implies that a condominium can be created prior to the completion of construction on all units, without the need to classify portions of the condominium land as convertible—i.e., that not all units "to be located" within the condominium must be located on subsequently converted land.

This interpretation is supported by other provisions of the statute. For example, RSA 356-B:20, I, describes the information necessary to include in site plans and floor plans where the planned development is not complete, but the condominium does not contain convertible lands. This provision states, in relevant part:

> In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the site plans shall indicate which, if any, have not been begun by the use of the phrase

> "(NOT YET BEGUN)" and which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)."

RSA 356-B:20, I (emphasis added).[7] As another example, a different provision of the statute provides that, under certain circumstances, a declarant has an affirmative duty—as opposed to a mere right—to complete the development in accordance with the site plans where construction is not yet completed or not yet begun. See RSA 356-B:29, II (2009) ("The declarant shall complete all improvements labeled '(NOT YET COMPLETED)' on site plans . . . and shall, in the case of every improvement labeled '(NOT YET BEGUN)' on such site plans, [identify] 'the extent of the obligation to complete the same . . . .'" (emphases added)).

The court is not persuaded by Lilac's argument that the language "to be located" refers only to the term "convertible space." The Act does not define "convertible space" as a unit or other area "to be located" in the condominium. See RSA 356-B:3, XI (defining "convertible space" as "a portion of a structure within the condominium which portion may be converted into one or more units and/or common area, including but not limited to limited common area, in accordance with this chapter" (emphasis added)). Moreover, the Act uses the phrase "to be located" and the term "convertible space" in multiple provisions. RSA 356-B:7 ("to be located"), :20, II (both), :24 ("convertible space"). From this, it appears that "to be located" and "convertible space" carry different meanings. See Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 791 (2011) ("When the legislature uses different language in the same statute, we assume that the legislature intended something different." (citation omitted)); State Employees Ass'n of N.H., SEIU, Local 1984(SEA) v. N.H. Div. of Pers., 158 N.H. 338, 345 (2009) (same principle applied to related statutes).

Contrary to Lilac's contention, this interpretation is consistent with RSA 356-B:20, I. Lilac claims that part of this provision requires that all units be substantially completed at the time of a condominium's creation. (Pl.'s Mem. Supp. Cross-Mot. Summ. J. and Obj. Defs.' Mot. Summ. J., at 8–10.) The sentence Lilac relies upon states:

> . . . Each site plan shall be certified as to its accuracy and compliance with the provisions of this paragraph by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted on any portion of the

[7] Applying the common meaning of the term, a unit is an "improvement." See Webster's Third New International Dictionary 1683 (unabridged ed. 2002) (defining "improvement" as "a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs").

> submitted land other than within the boundaries of any convertible lands have been substantially completed. . . .

RSA 356-B:20, I. However, considering the statute as a whole, Trefethen, 164 N.H. at 755, the plain language of this provision does not require a surveyor to certify that all units are substantially completed prior to the creation of the condominium.[8] Rather, it requires a surveyor to certify that all units are substantially completed to the extent depicted in the submitted plans. See RSA 356-B:20, I (requiring the surveyor to "certify that all units or portions thereof depicted . . . have been substantially completed . . ." (emphasis added)). To conclude otherwise would not only nullify earlier portions of RSA 356-B:20, I, but would also ignore language contained in the very sentence Lilac relies upon. See id.

This interpretation is, likewise, consistent with the Act's purpose. RSA 356-B:7 proscribes the creation of a condominium before the recording of site plans and floor plans, and RSA 356-B:20 sets forth what those plans must depict. The plain language of these provisions indicates that they are designed to protect the interests of potential condominium unit owners—particularly, by ensuring that they are apprised of the details of the planned development. See RSA 356-B:7, :20; see also Holt, 167 N.H. at 241–42 ("Based upon the statute's plain language, the purpose of RSA 356–B:19 is to provide protection for condominium unit owners, relating to their interest in common areas and limited common areas."). Interpreting the Act as allowing for the creation of a condominium that includes planned future development but does not contain convertible land has no effect on this purpose; so long as the site and floor plans depict the requisite information, potential unit owners will be fully informed. Additionally, that the Act contains no express time limits for completion of such planned future developments does not alter this result. Regardless of the lack of such a limitation, the potential unit owners are apprised of the development plan. Indeed, the legislature provided unit owners with a vehicle to ensure that the development plan is fully executed to the extent depicted in applicable site and floor plans. See RSA 356-B:29, II.

Having determined that RSA chapter 356-B allows for the creation of a condominium that includes planned future development but does not contain convertible land, the court next

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[8] The court disagrees with Lilac's assertion that Rhode Island law is instructive on this point. The Rhode Island Condominium Act's substantial completion requirement differs significantly from the requirements of the New Hampshire Condominium Act. Compare 34 R.I. Gen. Laws Ann. § 34-36.1-2.01(b) (WEST 2016) ("A declaration . . . may not be recorded unless all structural components and mechanical systems of the building containing or comprising any units thereby created are substantially completed . . . ."), with RSA 356-B:20, I.

addresses whether the condominium at issue here is such a development. Considering the relevant provisions of RSA chapter 356-B, it is apparent from a review of the condominium instruments that, although the condominium was not fully developed, it did not contain any convertible land. As noted above, the site plan indicates that construction on Building 13 was not yet completed, and that construction on Buildings 14, 15, and 16 had not yet begun. (Klass Aff., Ex. D at 1; Verified Compl., Ex. 4 at 6.) Specifically, sheet 1 of the site plan depicts all five buildings, labeling Building 12 as "EXISTING BUILDING," Building 13 as "EXISTING BUILDING . . . UNDER CONSTRUCTION," and the remaining buildings as "PROPOSED BUILDING . . . NOT YET BEGUN." (Klass Aff., Ex. D at 1.) Additionally, the floor plans accompanying the site plans describe Building 12 as "SUBSTANTIALLY COMPLETE," Building 13 as "WEATHER TIGHT SHELL COMPLETE, INTERIOR NOT YET COMPLETE," and the remaining buildings as "NOT YET BEGUN." (Verified Compl., Ex. 4 at 6.) Thus, the site plan and floor plans appear to have been created in an effort to comply with RSA 356-B:20, I, and RSA 356-B:29, II—the provisions addressing continuing construction on "any portion of the submitted land other than within the boundaries of any convertible lands." RSA 356-B:20, I.

The meaning of the term "convertible land" further supports this determination. The statute defines "convertible land" as "a building site which is a portion of the common area, within which additional units and/or a limited common area may be created in accordance with this chapter." RSA 356-B:3, X. Thus, land is only classified as "convertible" where the building site was initially intended to be "common area" and where that area is being converted into units. Here, Monument Garden has not built units on any portion of the condominium previously identified as "common area," and does not plan to do so in the future. (Klass Aff., Ex. B at 1 (defining "common area" as "all parts of the [p]roperty other than the [u]nits"); Verified Compl., Ex. 4 at 6 (depicting "units"—including those that are the subject of the present dispute).) Because the units in dispute were always identified as units, they were never part of the "common area," and there is, accordingly, no need to convert the common area into units. See RSA 356-B:3, II (defining "common area"), X ("defining convertible land"); see also J. A. Bielagus and J. F. Bielagus, A Practical Guide to Residential Real Estate Transactions and Foreclosures in New Hampshire, § 5.5 (2010).

The court is not persuaded by Lilac's argument that the instant case is analogous to Shepherds Hill Homeowners Ass'n, Inc. v. Shepherds Hill Dev. Co., LLC, Hillsborough-southern judicial district, No. 13-CV-241 (March 18, 2014) (Order, Colburn., J.) (hereinafter "Shepherds Hill"), aff'd New Hampshire Supreme Court, 2014-0306 (April 2, 2015) (non-precedential order).[9] In Shepherds Hill, the trial court found that an amendment to a condominium declaration was void because it frustrated the purposes of the Condominium Act and violated the declaration itself by improperly exercising the convertible land requirements contained in the statute. Id. at 7–8. However, whether the land in question was "convertible land" was not a disputed issue in Shepherds Hill. See id. at 1 ("The land on which the additional units could be built is referred to by the parties and the New Hampshire Condominium Act . . . as 'convertible land.'"). Even if it had been at issue, the condominium instruments applicable in Shepherds Hill made clear that the land in question was convertible in nature. There, unlike the site plans applicable here, the site plans expressly identified the land in question as "convertible land." (Compare Klass Aff., Ex. F at 1–10 (Shepherds Hill site plans labeling certain areas of land as "PHASE II CONVERTIBLE LAND" and only depicting buildings and floor plans for separate area labeled as "PHASE I SUBMITTED LAND"), with Klass Aff., Ex. D at 1, and Verified Compl. Ex. 4 at 6 (Lilac site and floor plans depicting all buildings and units but not labeling any portion of land as "convertible land").) Additionally, unlike the declaration applicable here, the declaration of the Shepherds Hill condominium described the land as "convertible." (Compare Klass Aff., Exs. E at 3–4 §§ H (Shepherds Hill declaration stating "a legal description of all land reserved as convertible land is attached as [an exhibit]"), J (entitled "Special Provisions Regarding Convertible Land . . ."), with Compl., Ex. 1 (Lilac declaration containing no similar provisions).)

Accordingly, the court determines that the condominium is not subject to the provisions of the Condominium Act regulating "convertible land."

III. Effect on Lilac's claims

Since the court has determined that Monument Garden has certain development and ownership rights, and that the condominium is not subject to the provisions of the Condominium Act regulating "convertible land," the court must consider the effect these determinations have

[9] The New Hampshire Supreme Court's order affirming the trial court's decision is available at http://www.courts.state.nh.us/supreme/finalorders/2015/20140306.pdf.

on Lilac's claims. As explained above, Lilac's verified complaint includes four declaratory judgment claims and a claim for unjust enrichment/disgorgement. (Verified Compl. ¶¶ 36–61.) Each of these claims is dependent upon a finding that: (1) the 2012 deed failed to convey New Meadows' development and ownership interests to Monument Garden; or (2) the condominium is subject to the provisions of the Condominium Act regulating "convertible land." (See id.) Because of this dependence, and because the court has already found in Monument Garden's favor on these issues, Monument Garden is entitled to summary judgment on these claims.

Lilac also asserts four claims seeking injunctive relief and a claim seeking an attachment. (Id. ¶¶ 62–86.) To the extent these claims seek preliminary injunctive relief, a pre-judgment attachment, and court approval to file a writ of lis pendens, they have been resolved by the court's (Temple, J.) preliminary order. (See court index #25.) Additionally, to the extent these claims seek permanent injunctive relief and a post-judgment attachment, for the reasons set out in this order and the preliminary order, Lilac has failed to establish entitlement to such relief. See N.H. Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007) ("[A] party seeking an injunction must show that it would likely succeed on the merits." (citation omitted)); RSA 511:1 (2010) ("[P]roperty may be attached following the entry of judgment for the plaintiff." (emphasis added)). The defendants are, therefore, entitled to summary judgment on these claims to this extent.

CONCLUSION

For the foregoing reasons, the court GRANTS the defendants' motion for summary judgment on Counts I–X[10]. Lilac's cross-motion for summary judgment on Counts I–III, and V–X is DENIED.

So Ordered.

June 8, 2016

Steven M. Houran
Presiding Justice

[10] As did the court (Temple, J.) in the December 8, 2015 preliminary order, and for the same reasons, the court does not rule on Lilac's request for court approval to file lis pendens, as court approval is not required for such a filing. (Court index #25, at 17.)