

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2012-0387, Bilden Properties, LLC & a. v. S. Gerald Birin & a., the court on September 30, 2013, issued the following order:

After review of the defendant's motion for reconsideration, the court modifies the slip opinion as set forth below. In all other respects, the defendant's motion for reconsideration is denied.

The slip opinion dated August 21, 2013, is modified by deleting the first two full paragraphs on page 5 of the slip opinion and by replacing them with the following:

That inference may be rebutted in this case only if searching the grantor index under the name "Austin James Development, LLC" does not constitute a "reasonable inquiry." The petitioners argue that such a search would not have constituted a "reasonable inquiry" because information from the Secretary of State established that no entity named "Austin James Development, LLC" existed. However, New Hampshire has rejected the theory that an unregistered foreign limited liability company does not exist for legal purposes. See RSA 304-C:63, I, :69, II(a) (2005) (repealed and reenacted as RSA 304-C:174, I, :180, II(a) (Supp. 2012)); cf. Zenane, Inc. v. Tofer, 127 N.H. 366, 367 (1985) (discussing similar statutory scheme related to unregistered corporations).

Under New Hampshire law, creating a mortgage, securing debts, and owning real property do not constitute "doing business" for the purposes of the statute requiring foreign limited liability companies to register with the Secretary of State. RSA 304-C:63, I(g), (h), (i). Similarly, by statute, "[t]he failure of a foreign limited liability company to register in New Hampshire does not impair . . . [t]he validity of any contract or act of the foreign limited liability company." RSA 304-C:69, II(a). Although we need not decide whether the title abstractor or her supervising attorney was negligent, we conclude that it was not reasonable, as a matter of law, to cease investigating upon learning that Austin James Development, LLC was not registered with the Secretary of State.

Reconsideration denied:
slip opinion modified.

Dalianis, C.J., and Hicks, Conboy, Lynn and Bassett, JJ., concurred.

**Eileen Fox,
Clerk**