NELL SHEHEE : NUMBER: 554,126, “B”

VERSUS

: FIRST JUDICIAL DISTRICT COURT

CURTIS M. LOFTIN,

INDIVIDUALLY AND

CURTIS M. LOFTIN BUILDERS, : CADDO PARISH, LOUISIANA

L.L.C., ET AL.

**REASONS FOR JUDGMENT**

The Court has considered the peremptory exception of peremption and/or prescription and the peremptory exception of no cause of action filed June 28, 2013 by Curtis M. Loftin individually and Curtis M. Loftin Builders, L.L.C., its exhibits and memoranda, oral arguments of counsel held August 26, 2013, the entire record and applicable law. Concluding that plaintiff’s claims are governed exclusively by the New Home Warranty Act and therefore subject to the applicable peremptive period against named defendants, for the reasons that follow, the Court sustains the defendants’ peremptory of exception of peremption, thereby rendering adjudication of defendants’ peremptory exception of no right of action unnecessary.

The legislature expressly defines its purpose in enactment of the New Home Warranty Act, stating that it finds a need to promote commerce in Louisiana.[[1]](#footnote-1) In effect, the law is meant to protect Louisiana home builders, and it does so by shortening the time frame within which purchasers and occupants of new homes can file suit against builders. Here, the defendants are clearly within the scope of what the New Home Warranty Act defines as a “builder.” As such, the Court finds the dispositive fact is that the plaintiff took occupancy of her residence in 2002, because this constituted the “Warranty commencement date” as defined by the New Home Warranty Act, causing the plaintiff’s claims to become subject to the peremptive period in 2009, at the very latest.[[2]](#footnote-2) The plaintiff’s original petition was not filed until September 30, 2011.

Plaintiff argues that certain claims fall outside the scope of the New Home Warranty Act, such as the failure to build a rock ledge into the foundation and the failure to put flashing around the windows, because these were constructions entirely omitted by the builder, not faultily constructed. A similar argument was made in a 1999 First Circuit Court of Appeal case, where the Court held that the plaintiff’s claim was not exclusively governed by the New Home Warranty Act and that general contract law applied.[[3]](#footnote-3) However, *Barnett* is distinguishable from the present case, because the Court found that the builder had not only failed to complete the construction contract but had abandoned the contract entirely.[[4]](#footnote-4) The builder simply refused to complete construction of the home until the full purchase price was paid.[[5]](#footnote-5) Here, the plaintiff accepted the house when she began to occupy it, and there was no abandonment as there was in *Barnett*.

In conclusion, the Court finds that the New Home Warranty Act is the plaintiff’s exclusive remedy, given the legislative purpose behind the act and the facts at hand.[[6]](#footnote-6) Plaintiff has not substantiated her argument as to why any of her claims should not be governed by the New Home Warranty Act, which the Court finds to be the plaintiff’s burden of proof, given the clearly expressed legislative intent. As the defendants’ memorandum in support of its peremptory exception of peremption and/or prescription points out, plaintiff’s claims, as a whole, coalesce into nothing more than claims between an owner and a builder relative to defects in construction or construction not performed satisfactorily. Furthermore, the clearly expressed legislative purpose for the New Home Warranty Act and the relevant jurisprudence strongly suggests that this Court approach the plaintiff’s claims collectively rather than individually in making its determination as to whether the New Home Warranty Act governs exclusively. Such an approach weighs in the defendants’ favor that these claims are generally the type which the legislature intended to address. Therefore, defendants’ peremptory exception of peremption is hereby sustained.

Counsel for Curtis M. Loftin individually and Curtis M. Loftin Builders, L.L.C. shall submit a formal Judgment in accordance with La. D. Ct. R. 9.5.

Signed this 29th day of August in Shreveport, Caddo Parish, Louisiana.

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Scott J. Crichton

District Judge

Distribution:

W. Alan Pesnell, Counsel for Nell Shehee

C. Sherburne Sentell, Jr., Counsel for Curtis M. Loftin and Curtis M. Loftin Builders, LLC

John G. Alsobrook, Counsel for Whitlock’s Plumbing Company, Inc.

Robert A. Jahnke, Counsel for Whitlock’s Plumbing Company, Inc.

Cheri A. Chestnut, Counsel for Seegers Roofing and Remodeling, LLC

James A. Prather, Counsel for Republic Vanguard Insurance Company

1. La. R.S. 9:3141 [↑](#footnote-ref-1)
2. La. R.S. 9:3143 [↑](#footnote-ref-2)
3. *Barnett v. Watkins*, 970 So.2d 1028 (La. App. 1 Cir. 2007) [↑](#footnote-ref-3)
4. *Id*. at 1037 [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. This Court believes that the plaintiff, Nell Shehee, is an outstanding member of this community and the claims made in the lawsuit are serious; however, the claims are clearly perempted under law. [↑](#footnote-ref-6)