

TERRI BARRACK, WIFE	*	NO. 2007-CA-0097
OF/AND DR. ROBERT	*	COURT OF APPEAL
BARRACK	*	FOURTH CIRCUIT
VERSUS	*	STATE OF LOUISIANA
J.F. DAY & COMPANY, INC.,	*	
D/B/A PELLA WINDOWS &	*	
DOORS, PELLA	*	
CORPORATION,	*	
CHARLOTTE SPENCER	*	
SMITH AND SPENCERSMITH,	*****	
A PROFESSIONAL		
CORPORATION, F/K/A		
SPENCERSMITH, INC.		

MURRAY, J., CONCURS AND ASSIGNS REASONS

The issue in this case, which appears to be res nova, is whether actual notice to the builder within the time limits set forth in La. R.S. 9:3145 (as opposed to written notice by registered or certified mail) is sufficient to maintain a cause of action under the NHTA. I agree with the majority that *Carter v. Duhe*, 05-0390 (La. 01/19/06), 921 So.2d 963, upon which the trial court relied, is distinguishable. The issue in *Carter* was whether the builder could invoke the protections of the NHTA despite his having failed to comply with a separate requirement of R.S. 9:3145, which is that the builder give the homeowner written notice of the provisions of the NHTA at the time of closing. The Supreme Court in *Carter* decided that the builder was protected by the statute despite his failure to strictly comply with this notice requirement.

Although the issue in *Carter* is not the same as that presented in the instant case, I find the Supreme Court's approach to that decision and its interpretation of the statute to be instructional. If the builder does not forfeit the protections of the NHTA by failing to comply with the notice requirement, neither should the homeowner forfeit his rights under the statute by failing to strictly comply with

R.S. 9:3145's express stipulation as to the form of notice, especially where actual notice within the proper time limits is undisputed.

In the instant case, I find that actual notice to the defendant/builder clearly complies with the spirit and purpose of the statute. Accordingly, I respectfully concur in the majority's reversal of the trial court's granting of summary judgment.