

ROGER P. WILLIAMS	*	NO. 2017-CA-1049
VERSUS	*	COURT OF APPEAL
KELLY WOOD AND	*	FOURTH CIRCUIT
MICHAEL R. WOOD, ABC	*	STATE OF LOUISIANA
INSURANCE COMPANY,	*	
PAUL DILEO AND A HOME	*	
CHECK BY PAUL DILEO, LLC	*	
	*	

LOMBARD, J. DISSENTS WITH REASONS

For policy reasons, I find the application of the New Home Warranty Act (“NHWA”) in the instant matter to be patently unfair to the Plaintiff/Appellant Roger P. Williams. Mr. Williams purchased his home from the Woods, who constructed and designed the home.¹ The Woods then rented the home out for over a year prior to selling it to Mr. Williams. Mr. Williams alleges that he later discovered the existence of structural defects in the home; therefore, he sued the Woods, raising redhibition and negligence claims.

The stated purpose of the NHWA, originally enacted in 1986, is “to promote commerce in Louisiana by providing clear, concise, and mandatory warranties for the purchasers and occupants of new homes in Louisiana.” La. Rev. Stat. 9:3141. The NHWA “provides the exclusive remedies, warranties, and preemptive periods as between builder and owner relative to home construction and no other provisions of law relative to warranties and redhibitory vices and defects shall apply.” La. Rev. Stat. 9:3150.

The NHWA provides for three warranties ranging in length from one to three years pursuant to La. Rev. Stat. 9:3144:

¹ Specifically, Mr. Wood designed the home.

- (1) One year following the warranty commencement date, the home will be free from any defect due to noncompliance with the building standards.
- (2) Two years following the warranty commencement date, the plumbing, electrical, heating, cooling, and ventilating systems exclusive of any appliance, fixture, and equipment will be free from any defect due to noncompliance with the building standards.
- (3) Five years following the warranty commencement date, the home will be free from major structural defects due to noncompliance with the building standards.

The “warranty commencement date” is the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first. La. Rev. Stat. 9:3143(7). In the instant matter, the record indicates that the home was first occupied at the end of 2014 or beginning of 2015, by a tenant.

Under the unique facts presented, the warranty and prescription clock began tolling during the tenants’ occupancy although they derived no benefit or coverage under the NHTA. La. Rev. Stat. 9:3143(4). Moreover, Mr. Williams is penalized as the initial purchaser and barred from recovering for any defect “due to noncompliance with the building standards” under the one-year warranty because it had expired by the time he purchased the home. La. Rev. Stat. 9:3143(7). He was also left with very little time under the two-year warranty by the time he discovered the alleged structural defects of the home. *Id.* The fact that some of the warranties had fully expired also evidences that the home at issue was technically not “new” as a result of being rented out for approximately a year. La. Rev. Stat. 9:3143(3). It is unconscionable that a home buyer purchasing a used “new” home is essentially limited to the protections remaining after another individual has enjoyed actually living in a home when it was indeed *new*. La. Rev. Stat. 9:3143(4).

The application of the NHWA here leads to absurd consequences and solely inures to the benefit of the builders/contractors, the Woods, who became more shielded from liability with the passage of time, regardless of who occupies or has occupied the home. If the NHWA is applied in this matter, future home buyers similarly situated, will also be left at a disadvantage with little warranty protection. For instance, if a newly constructed home is rented out by its builder for four years and later sold, should the *initial* homebuyer be solely limited to recovering for damages under the unexpired term of the five-year warranty? I think not.

The NHWA on its face is an oxymoron as it is not possible to have an *old* “new” house. The better alternatives under these circumstances are for either: 1) the NHWA to be deemed inapplicable because the “home” at issue is not new under La. Rev. Stat. 9:3143(3) and the original occupants were not the initial purchaser under La. Rev. Stat. 9:3143(4); or 2) for Mr. Williams to have procured his own warranty directly from the Woods or from a third party. The purpose of a just law is to promote just results and just outcomes. Finding that the application of the NHWA in this instance is unjust and belies its purpose to “promote commerce” and to provide “clear” warranties, I respectfully dissent.