

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-29

DAVID LAVARINE AND CARLA LAVARINE

versus

MAC CONSTRUCTION, LLC AND STEPHEN MCCREADY

IN RE MAC CONSTRUCTION, LLC AND STEPHEN MCCREADY
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
STEPHEN C. GREFER, DIVISION "J", No. 818-043

TRUE COPY

February 09, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

The relators, MAC Construction, LLC and Stephen McCready, seek review of the trial court's denial of their motion for partial summary judgment on whether the plaintiffs may include an action for contractor fraud against the relators in this civil case. We deny relief for the following reasons.

Procedural History

According to the application, the plaintiffs, David and Carla Lavarine, filed a petition in the 24th Judicial District Court on May 28, 2021, asserting several causes of action related to the construction of the Lavarines' home in Jefferson Parish. Relevant to this writ application are the allegations against the relators for fraud, as outlined in COUNT TWO of the petition. COUNT TWO alleges that McCready is the sole member and qualifying partner of MAC Construction, LLC. The petition also alleges that McCready committed contractor fraud, a violation of La. R.S. 14:202.1, when he hired unlicensed subcontractors to build the Lavarines' home. The Lavarines argue that by committing a "criminal act," McCready is personally liable *in solido* with MAC Construction. Finally, the Lavarines conclude in their petition that by hiring unlicensed subcontractors, McCready was able to offer a low bid to build the home, "gaining an unjust advantage over the Lavarines to their detriment."

The relators filed an answer denying all allegations and asserted several counterclaims. On November 7, 2025, the relators filed a motion for summary judgment seeking to dismiss what they deemed to be all of the respondents' breach of contract claims. The relators argued in their motion that the respondents' exclusive remedy was under the New Home Warranty Act ("NHWA"). The trial court denied the motion for summary judgment on December 16, 2025, after a hearing on December 8, 2025. This timely application follows.

Standard of Review

Appellate courts review summary judgments *de novo*, using the same criteria the trial court applies to determine whether summary judgment is appropriate. *Pizani v. Progressive Ins. Co.*, 98-225 (La. App. 5 Cir. 9/16/98), 719 So.2d 1086, 1087. The court must decide a motion for summary judgment by referencing the substantive law that applies to the case. *Muller v. Carrier Corp.*, 07-770 (La. App. 5 Cir. 4/15/08), 984 So.2d 883, 885.

Law and Argument

The relators contend that the trial court erred in determining that all of the respondents' claims did not fall under the purview of the NHWA. In opposing the motion for summary judgment, the respondents argued that while the NHWA is the exclusive remedy for defects in the home caused by the relators, the relators' actions in failing to comply with the construction contract constituted a breach of contract.

In *Robinson v. Wayne & Beverly Papania & Pyrenees Invs., LLC*, 15-1354 (La. App. 1 Cir. 10/31/16), 207 So.3d 566, 572-73, *writ denied sub nom. Robinson v. Papania*, 16-2113 (La. 3/13/17), 216 So.3d 808, the First Circuit observed:

The NHWA is not the exclusive remedy available to new homeowners in an action against the builder based on the builder's failure to complete construction of home. *See Jenkins Bldg. Supply, Inc. v. Thigpen*, 2009-0903 (La. App. 1 Cir. 12/23/09), 34 So.3d 867, 871. The NHWA is designed to protect the owner from faulty workmanship, but not to insure completion of the construction of a home under the terms of the contract between the owner and builder. *Thorn v. Caskey*, 32,310 (La. App. 2 Cir. 9/22/99), 745 So.2d 653, 658.

In *Thorn v. Caskey*, 745 So.2d at 658, the Second Circuit held:

The NHWA, therefore, was designed to protect the owner from faulty workmanship, but not to insure completion of the construction of a home under the terms of the contract between the owner and builder. Accordingly, we find that where the builder abandons construction of the home and fails to fulfill his obligations under the contract, he may be found liable in an action for breach of contract; however, he may also be liable for breach of the warranties outlined in the NHWA. Our finding that the Thorns' breach of contract claim was, in fact, a valid one, becomes significant in determining which

damages proven at trial recoverable and under what theory (breach of contract or NHWA).

As this Court observed in *Ory v. A.V.I. Const., Inc.*, 03-72 (La. App. 5 Cir. 5/28/03), 848 So.2d 115, 118-19:

Where the cause of action has not wholly arisen from construction defects, violations of the building code, or poor workmanship, Louisiana courts have determined the NHWA was not the sole remedy available to the home owner. *Stokes v. Oster Development, Inc.*, 01-80 (La. App. 5 Cir. 1/15/02), 807 So.2d 987, citing *Thorn v. Caskey*, 32,310 (La. App. 2 Cir. 9/22/99), 745 So.2d 653; *Squyres v. Nationwide Housing*, 98-8 (La. App. 3 Cir. 6/03/98), 715 So.2d 538; *Melancon v. Sunshine Construction*, 97-1167 (La. App. 1 Cir. 5/15/98), 712 So.2d 1011; *Leon v. Deters Custom Homes*, 97-0772 (La. App. 1 Cir. 4/08/98), 711 So.2d 346.

In this case, the trial court found:

I'm not aware of cases that cite incompletion as being defects under the New Home Warranty Act claim. I just don't think that that might be covered. I think there are some allegations -- and look, they're extensive, you are both aware that Mr. Gurtler's report is extensive in terms of the alleged items that are either incomplete, insufficient or defective in some fashion. I'm not in a position at this point to classify some of those as defects as opposed to incomplete.

...

I still think there are genuine issues of material fact that exist as to whether some of the allegations alleged by the plaintiffs constitute defects or constitute incompletion, which may be covered under breach of contract as opposed to New Home Warranty Act. And for those reasons, the motion for summary judgment is denied.

After our *de novo* review of the application, which includes the petition, the original construction contract, an inspection report from Gurtler Brothers detailing construction defects, and the deposition testimony of homeowner David Lavarine, we find no error in the trial court's ruling that genuine issues of material fact exist as to whether some of the respondents' allegations are properly considered as breach of contract claims. As the trial court observed, the finder of fact will need to consider each claim in the context of whether the issue is a defect of craftsmanship covered by the NHWA, or whether the alleged damage resulted from the relators' failure to fulfill the terms of the construction contract.

On the showing made, the application is denied.

Gretna, Louisiana, this 9th day of February, 2026.

JJM
FHW
SUS

SUSAN M. CHEHARDY

CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



CURTIS B. PURSELL

CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

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THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY
COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-29

E-NOTIFIED

24th Judicial District Court (Clerk)

Honorable Stephen C. Grefer (DISTRICT JUDGE)

Albert J. Nicaud (Respondent)

Adrian A. D'Arcy (Relator)

Andrew G. Vicknair (Relator)

Margaret N. Davis (Relator)

MAILED