

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY  
LAW DIVISION - CIVIL PART  
DOCKET NO.: MON-L-3147

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JOHN CESARD, :  
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Plaintiffs, :  
 :  
-vs- :  
 :  
D.R. HORTON, INC, etal,, :  
 :  
Defendants :  
x - - - - - x

TRANSCRIPT  
OF  
DECISION

Held at: Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey

Heard on: December 1, 2006

B E F O R E:

THE HONORABLE JOHN T. MULLANEY, J.S.C.

TRANSCRIPT ORDERED BY:

WILLIAM J. KEARNS, ESQ.  
(Kearns & Duffy, P.C.)

A P P E A R A N C E S:

FRANCES TOMES, ESQ.  
(Tortoretti Tomes & Callahan)  
Attorney for the Plaintiff

MATTHEW GOODE, ESQ.  
(Maybruch & Zapcic, LLC)  
Attorney for the Defendant

Audio Operator: M. McDermott

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TERRY GRIBBEN'S TRANSCRIPTION SERVICE  
THERESA GRIBBEN  
27 BEACH ROAD - UNIT 4  
MONMOUTH BEACH, NEW JERSEY 07750  
(732) 263-0044 FAX # (732) 263-0075

## Decision

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1 (Portion of proceedings not requested)  
2 THE COURT: Based on what I have read in this  
3 matter, I make the following finding.

4 These people all purchased homes from the  
5 defendant. At the closing of title they all received  
6 the requisite homeowner warranty, documentation which  
7 the law requires the builder to provide at the time of  
8 closing.

9 The copies of the application for the  
10 warranty form bearing each purchaser's signature are  
11 attached to the moving papers. And as I have indicated  
12 during the course of oral argument, the homeowner  
13 warranty is required by law, but as I used to do when I  
14 was practicing, I used to tell my clients in the  
15 strongest terms possible, this is a useless piece of  
16 paper. And I truly believe that.

17 Having gone through the process in private  
18 practice, with the few clients that wouldn't listen to  
19 me, and did go through this homeowner warranty and  
20 arbitration. It is an utter waste of time if you are a  
21 homeowner.

22 The only remedy you actually get is if your  
23 house literally falls down on your head, then you will  
24 get compensation in satisfaction. Other than that it  
25 is just a feel good thing that when people walk away

## Decision

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1 from a closing table, they think they have some kind of  
2 a security blanket. They don't.

3 In this particular situation, it is clear  
4 from some of these letters, -- some of these people  
5 encounter problems with these houses in the first six  
6 months, -- you know this is not unlike many of the  
7 tract houses that are built in New Jersey. Some of  
8 these things are put together with a staple gun. You  
9 know, that is how they put these together.

10 And they don't have a tried and true group of  
11 subcontractors that follow these builders around. They  
12 go out and they hire the local subcontractors, give  
13 them the blueprints and say, here, build these houses.

14 However, the people when they walk away from  
15 the table, and I have no indication if these people had  
16 counsel at closing. I assume they did but I don't  
17 know. Quite frankly, many people close with builders  
18 on new construction without counsel. They just show  
19 up, -- you know the closing secretary tells them bring  
20 six checks, all cashier checks, get them from the bank,  
21 make them out to these entities. Bring them in and  
22 just sign the papers and we will give you the keys and  
23 you walk out the door.

24 I have seen it happen. Many people go to  
25 closings on the biggest thing in their life, without an

1 attorney. I can't tell from the documents whether any  
2 of these people are represented. I assume at least  
3 some of them were. Having said that however, there is  
4 no doubt in my mind, that every one of these people  
5 walked out of there full well knowing that they were  
6 involved in the warranty program.

7 Because of the nature of the letters and the  
8 timing of all these, I am assuming there was some kind  
9 of neighborhood discussion about the lot in life that  
10 the various people were in in terms of this trim that  
11 was on these windows, and they got together and all  
12 sent letters out to the RWC. Who is beeping?

13 (Fire alarm sounds)

14 THE COURT: They sent these letters out and  
15 they are all similarly worded. They are all within a  
16 very similar time period, and they put the RWC on  
17 notice that there was a claim and they were holding the  
18 RWC responsible to fix the repairs.

19 I am well aware of the RWC program, the  
20 homeowner warranty program, and they election of  
21 remedies. It is set up with the specific goal in mind  
22 that there is declining coverage for the benefit of the  
23 homeowner. It declines.

24 This is a program, even though it is  
25 disguised by the Legislature, -- as a homeowner

1 warranty, it basically is a safety net for the builder,  
2 as opposed to the homeowner.

3 Having said that however, there is and I do  
4 find, an exclusive election of remedy process with  
5 reference to this. You either go through the RWC,  
6 under your coverage, or you file an action in the Law  
7 Division. But you don't have an option to do both or  
8 to proceed with one, abandon it and then go to the  
9 other.

10 Much to the chagrin of the homeowners, I find  
11 that each and every one of them put the RWC on notice  
12 that they had a claim, let the inspector come into  
13 their home, and it was then and only then, after the  
14 inspector brought to their attention the fact that they  
15 had a declining coverage policy. They were in the last  
16 phases of the coverage and at that stage, a major  
17 structural defect is all that was covered.

18 And that the inspector found that in all of  
19 these cases none of the repairs that were requested  
20 were major structural defects. They were window trim,  
21 which is not a major structural defect.

22 It further put the parties on notice that  
23 they had a right to arbitration, and that they had a 30  
24 day window to perfect their position on it. If they  
25 did not proceed with the arbitration, then the RWC was

## Decision

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1 basically closing their file which in so many words  
2 means, assuming they are assuming that the homeowners  
3 are abandoning their position.

4 I therefore find that each and every one of  
5 these homeowners elected their remedy when they put the  
6 RWC on notice, they wanted the claim handled under the  
7 coverage provision and that they were bound to the  
8 arbitration process, which by the way, besides  
9 statutory is the public policy of the State of New  
10 Jersey, when people opt or put themselves into a  
11 situation where arbitration is the remedy, that is the  
12 remedy.

13 And the Courts are duty bound to follow that  
14 and I do. And I therefore find that the homeowners  
15 were bound to the arbitration process and that they are  
16 coming in to court in the Law Division now on their  
17 various claims, are barred and I am going to grant the  
18 defense motion.

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## CERTIFICATION

1 I, THERESA GRIBBEN, Certified Agency Director  
2 /Transcriber, do hereby certify that the foregoing  
3 transcript of proceedings on Copied Tape No. CV336-06,  
4 Index No. 1265 to 1665 is prepared in full compliance  
5 with the current Transcript Format for Judicial  
6 Proceedings and is a true and accurate compressed  
7 transcript of the proceedings as recorded in the matter  
8 of Cesard vs. DR Horton Inc. heard by the Monmouth  
9 County Superior Court on December 1, 2006.

10  
11 *Theresa Gribben*

12 THERESA GRIBBEN

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AOC Number

13 TERRY GRIBBEN'S TRANSCRIPTION SERVICE

2/11/08

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