

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

FILED
CLERK STATE COURT
GWINNETT COUNTY, GA

11 FEB -7 PM 2:12

TOM LAWLER, CLERK


JAMES MCCARTHY,)	
Plaintiff,)	
)	CIVIL ACTION
vs.)	
)	FILE NO. 09-C-18576-S5
LOWE'S HOME CENTERS, INC.,)	
Defendant.)	

ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE

THIS MATTER came before the Court on Plaintiff's Motion to Strike Defendant's Notice of Non-Party Fault, Defendant's reply, and the other pleadings related thereto. Having considered the pleadings, all matters of record, and the applicable and controlling law, the Court finds that Plaintiff's Motion to Strike Defendant's Notice of Non-Party Fault shall be, and the same hereby is, DENIED.

The plain language of O.C.G.A. § 51-12-33(c) authorizes the jury to consider the fault of all entities who contributed to the alleged injury or damages, regardless of whether or not a particular entity could have been named as a party. Plaintiff's employer is an entity immune from suit in this action – it cannot be named as a party – but the Code's intent is for the jury to determine the employer's percentage of fault, regardless of whether or not the employer is, or could be, a party. The Code section at issue is constitutional, it does not impermissibly shift the burden of proof, and there is no legal reason not to apply the Code's Notice of Non-Party Fault provision in this case.

SO ORDERED this 9 day of February, 2011.



PAMELA D. SOUTH, Judge
State Court of Gwinnett County

- Copies:
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- James A. Rice, Jr.
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