

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-10480

D. C. Docket No. 98-00028 CV-HLM-4

FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

April 4, 2005

THOMAS K. KAHN
CLERK

LOWE'S HOME CENTERS, INC.,

Plaintiff-Appellee,

versus

GENERAL ELECTRIC COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(April 4, 2005)

Before ANDERSON and BLACK, Circuit Judges, and NANGLE*, District Judge.

PER CURIAM:

In a decision published in 381 F.3d 1091 (11th Cir. 2004), this panel

*Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri, sitting by designation.

affirmed the district court's denial of General Electric's motion for new trial premised upon its challenge to the mitigation instruction, and certified two state law questions to the Supreme Court of Georgia. The first certified question, as articulated by the Supreme Court of Georgia, was "whether Georgia's economic loss rule allows a plaintiff to recover in tort lost profits that would have only been realized by using its damaged property *and* other damaged property that it did not own." General Electric Company v. Lowe's Home Centers, Inc., 608 S.E.2d 636 (Ga. 2005). The Supreme Court of Georgia answered that first certified question in the negative, thus mooted the second certified question. Id. Accordingly, the judgment of the district court awarding \$18 million in lost profits to Lowe's is vacated, and this case is remanded to the district court for further proceedings consistent with the judgments of this court and the Supreme Court of Georgia.

SO ORDERED.