

IN THE STATE COURT OF DEKALB COUNTY

STATE OF GEORGIA

QUARTAVIOUS O’NEAL,
Plaintiff,

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CIVIL CASE NO. 24A03752

v.

JUAN GARCIA RAYMUNDO,
Defendant.

ORDER ENFORCING SETTLEMENT

This matter comes before the Court on Defendant’s Motion to Enforce Settlement. Defendant alleges that his insurance company, Progressive Mountain Auto Insurance Co. (“Progressive”), accepted Plaintiff’s pre-suit Offer of Compromise. Defendant submitted the Offer of Compromise letter (“Offer”) Plaintiff sent on January 4, 2024, the attorneys’ communications about scheduling recorded statements as the Offer requested, a letter from Progressive accepting the Offer, and an affidavit along with postmarked proof that Progressive timely sent the settlement amount to Plaintiff.

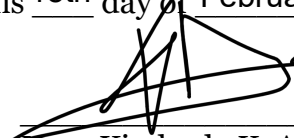
Plaintiff objects to Defendant’s motion, alleging that because Progressive, in its acceptance letter, asked Plaintiff the exact deadline date by which the settlement amount must be sent, Defendant was failing to accept the material terms of the Offer.¹ Plaintiff contends that because the delivery date was an essential element of his Offer under O.C.G.A. § 9-11-67.1, Progressive could not have been accepting the Offer as Progressive did not actually know the correct delivery date (as shown by its inquiry).

¹ The Offer stated that payment “must be delivered... on the 41st day of your receipt of this demand.” Defendant merely inquired whether, according to Plaintiff’s counting of days, the correct delivery date is February 21st or 22nd since it was unclear to Defendant whether the date of receipt was considered Day 0 or Day 1.

The parties' briefs argue as to whether the version of O.C.G.A. § 9-11-67.1 applicable at the time makes the payment delivery date a material term, but the Court finds this argument irrelevant. Even if every term Plaintiff designated as "material" is statutorily material, Progressive never wavers as to any material term. Looking at Progressive's acceptance letter, Progressive specifically stated that it accepts the terms of Plaintiff's Offer in full, which includes payment on the 41st day of Progressive's receipt. Notably, Plaintiff does not make a specific delivery **date** a material term of its Offer.

The final paragraph of Progressive's acceptance letter, which Plaintiff claims indicates a lack of acceptance, never states that Progressive disagrees to delivery on the 41st day. Rather, Defendant merely asks for clarification as to the specific delivery **date** to ensure Progressive makes proper delivery; Progressive consented to delivery on the 41st day, whether February 21 or February 22. Thus, the Court finds Progressive's accepted all essential terms as both O.C.G.A. § 9-11-67.1 and Plaintiff's Offer require. Progressive complied with all conditions necessary for completion of the agreement, therefore, this Court will enforce the settlement agreement and **GRANTS** Defendant's motion.

IT IS SO ORDERED, this 18th day of February _____, 2025.



Hon. Kimberly K. Anderson
State Court of DeKalb County

cc: Counsel of record; Clerk's file

STATE COURT OF
DEKALB COUNTY, GA.
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BY: Patricia Nesbitt