

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**ROOT PROPERTY &
CASUALTY INSURANCE
COMPANY**)

Plaintiff,)

v.)

**STEPHAN WADE and
VANESSA GOODMAN.**)

Defendants.

CIVIL ACTION FILE

NO. _____

**COMPLAINT FOR DECLARATORY JUDGMENT,
BREACH OF CONTRACT, AND SPECIFIC PERFORMANCE**

Plaintiff ROOT PROPERTY & CASUALTY INSURANCE COMPANY

(“Root”) files this Complaint for Declaratory Judgment, Breach of Contract, and Specific Performance, respectfully showing this Court as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Root is an insurance company based in Columbus, Ohio, engaged in the business of providing property and casualty insurance for policy holders in various states, including Georgia.

2. Upon information and belief, Defendant Vanessa Goodman (“Ms. Goodman”) is a citizen of Georgia and a resident of Rockdale County, Georgia and may be personally served at 2047 Reflection Creek Dr, Conyers, Georgia 30013. Ms. Goodman is subject to the jurisdiction of this Court and venue as to her is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) and Local Rule 34.

3. Upon information and belief, Defendant Stephan Wade (“Defendant Wade”) is a citizen of Georgia and a resident of Rockdale County, Georgia and may be personally served at 402 Honey Creek CT SE, Conyers, Georgia 30094-3658. Defendant Wade is subject to the jurisdiction of this court and venue as to him is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) and Local Rule 34. Defendant Wade is also a claimant as to the alleged negligence of Ms. Goodman.

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because this is a civil action between citizens of different States and, as set forth in detail below, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. This Court is authorized to grant the declaratory relief sought herein pursuant to 28 U.S.C. § 2201(a) because, as set forth in detail below, this matter presents an actual dispute regarding the rights and obligations of the parties under a settlement contract and, thus, this Court may declare the rights and other legal relations of the parties in relation to the settlement contract described herein.

6. This Court is further authorized to exercise jurisdiction and grant the declaratory relief sought herein because, *inter alia*:

- a. This is a straight-forward matter of contract interpretation and there is no pending state-court litigation wherein the state's interest would prefer the issue be decided in state court;
- b. A judgment in this court would prevent entirely and otherwise completely dispose of any state court litigation;
- c. A judgment in favor of Root here would clarify the legal relations at issue and hold that an enforceable settlement occurred;
- d. A ruling in favor of Root on the enforceability of the settlement discussed below is separate from the tort matter threatened by Defendant Wade;
- e. There would be no friction created as to this Court and the state courts insofar as the enforceability of a contract is well within this Court's ability to decide and would not encroach on any state law issue better heard in the state courts;
- f. There is no better or more effective alternative remedy as there is no pending state court litigation where a remedy could be obtained;

- g. There are no additional factual issues outside of those pled in this complaint and found in the exhibits;
- h. No state court case is pending, and even if there were, the state court hearing a tort action would be in no better position to hear them and make an informed decision; and
- i. There is not a close nexus between the threatened tort state case focused on liability and damages and this case focused on principles of contract; thus, this Court is fully callable of exercising its jurisdiction to hear this matter and apply well-settled principles of contract formation and performance.

FACTS AND ALLEGATIONS RELEVANT TO EACH COUNT

7. This Action arises out of claims for damages made by Defendant Wade against Ms. Goodman in connection with a September 21, 2023, automobile accident on SR 20 in Rockdale County, Georgia (the “Accident”).

8. At the time of the Accident, Ms. Goodman was covered by an automobile liability insuring agreement issued by Root with an applicable policy limit of \$25,000.00.

9. On or about December 20, 2023, counsel for Defendant Wade wrote to Root setting forth a time-limited settlement demand in the policy limit amount of \$25,000.00. Defendant Wade’s counsel purported to make such demand pursuant to

O.C.G.A. § 9-11-67.1 and *Southern General Insurance Company v. Holt*, 262 Ga. 267 (1992) (the “*Holt* Demand”). A true and correct copy of the *Holt* Demand as received by Root on or about December 27, 2023, is attached hereto as Exhibit “A.”

10. The *Holt* Demand stated in relevant part as follows:

5. HOW TO ACCEPT THIS OFFER

In this firm’s previous dealings with insurance companies, we have encountered insurance companies that attempt to trick claimants into accepting compromises that include terms or conditions not offered by the claimant or that exclude terms or conditions required by the claimant. Based on the past behavior of insurance companies, please be aware that we will not believe any claim that any failure to accept this offer of compromise unequivocally and without variance of any sort was “accidental.” Root is a hundred-million-dollar company that is fully capable of accepting this offer of compromise as written, and any attempt by Root to change any terms or conditions of this offer will be a counteroffer even if Root later claims that the variance was “accidental.”

Mr. Wade offers to settle this case against Vanessa Goodman and Root Insurance Company for twenty-five thousand dollars (\$25,000.00) (hereinafter, “the Demanded Amount”). The terms of this offer—all of which are material to this offer—are below. Time is of the essence.

1. To accept this offer, Root must cause written acceptance of the offer to be delivered¹ to 10 Lenox Pointe, Atlanta, Georgia 30324 within thirty (30) days of receipt of this letter by Root or its agent. See O.C.G.A. § 9-11-67.1(e). If Root’s acceptance is not timely delivered to the specified address, the offer shall be automatically withdrawn, such that it can no longer be accepted. The date on which Root received this offer shall be conclusively determined by a return receipt (or

¹ The “mailbox rule” does not apply to the deadlines in this offer.

substantially similar document) from the service used to deliver a paper copy (e.g., USPS).

2. Pursuant to O.C.G.A. § 9-11-67.1(g), Root must cause payment to be **delivered** to Butler Kahn Law Firm within forty (40) days of the date that Root or its agent receives this offer to compromise. Payment may be made by any of the methods set out in O.C.G.A. 9-11-67.1(f). If Root chooses to pay by sending a check, draft; or money order, the payment instrument may be made out to “Butler Law LLC in trust for Stephan Wade” and **delivered** to Butler Kahn, c/o Sarah Christy, 9 Swann Ridge, Palmetto, GA 30268. Hand deliveries may be made to Butler Kahn at 10 Lenox Pointe, Atlanta, GA 30324. If payment is to be made by some other method identified in § 9-11-67.1(f) (such as “[c]ash,” “[w]ire transfer,” or “[e]lectronic funds transfer”) and Root requires further information about how to deliver the funds, please contact us immediately in writing so that we may assist. Timely receipt of payment is a material condition of acceptance. *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 848 (2017).

(See Exhibit “A,” emphasis added.)

11. On January 17, 2024, outside counsel retained by Root to effectuate the settlement accepted the *Holt* Demand in a timely manner. A true and correct copy of Root’s acceptance of the *Holt* Demand is attached hereto as Exhibit “B.”

12. On January 22, 2024, payment in the amount of \$25,000.00 (the “Settlement Check”) was delivered via FedEx (Tracking Number 774874023348) to “Butler Kahn, c/o Sarah Christy, 9 Swann Ridge, Palmetto, Georgia 30268” pursuant to and in compliance with the above-referenced condition in the *Holt* Demand.² A

² It was later learned that Sarah Christy is employed by the Butler Kahn law firm, and the 9 Swan Ridge address is her personal residence.

true and correct copy of the correspondence forwarding the settlement draft via FedEx delivery is attached hereto as Exhibit “C.”

13. The delivery of the Settlement Check was confirmed by FedEx:

Hi. Your package was delivered Mon, 01/22/2024 at 3:09pm.



Delivered to 9 SWANN RDG, PALMETTO, GA 30268

[**OBTAIN PROOF OF DELIVERY**](#)



TRACKING NUMBER	774874023348
FROM	WALDON ADELMAN CASTILLA 900 Circle 75 Parkway Suite 1040

	Atlanta, GA, US, 30339
TO	N/A Butler Khan c/o Sarah Christy 9 Swann Ridge PALMETTO, GA, US, 30268
REFERENCE	19.1251-2
SHIPPER REFERENCE	19.1251-2
SHIP DATE	Fri 1/19/2024 06:17 PM
DELIVERED TO	Residence
PACKAGING TYPE	FedEx Envelope
ORIGIN	Atlanta, GA, US, 30339
DESTINATION	PALMETTO, GA, US, 30268
SPECIAL HANDLING	Deliver Weekday Residential Delivery
NUMBER OF PIECES	1
TOTAL SHIPMENT WEIGHT	0.50 LB
SERVICE TYPE	SOS

(A true and correct copy of the FedEx confirmation is attached hereto as Exhibit “D.”)

14. On February 26, 2024, counsel for Defendant Wade responded to outside counsel retained by Root to accept the *Holt* Demand and took the position that the Settlement Check was never received. (A true and correct copy of counsel for Defendant Wade’s February 26, 2024, correspondence is attached hereto as Exhibit “E.”)

15. Specifically, counsel for Defendant Wade represented that “[d]espite providing Root with multiple options by which to deliver the payment, Root ha[d] not delivered any payment whatsoever and therefore Root rejected Plaintiff’s reasonable offer.” *See Id.* at 3.

16. As a result of the foregoing, counsel for Defendant Wade advised Root that the *Holt* Demand was withdrawn and the parties had not reached a settlement agreement. *Id.*

17. Counsel for Defendant Wade further advised that a potential judgment in excess of the applicable policy limit of \$25,000.00 was substantially likely, and that a future “bad faith” lawsuit was imminent:

Presented with the facts and evidence in this case, it is easy to see how a Rockdale County jury could realistically award damages in excess of \$200,000.00. . . .Once we obtain an excess judgment against your Insured and seek to enforce it against her assets and wages, I am confident that your Insured will jump at the chance to assign her bad faith claim to us in order to pursue Root for its negligent failure to settle this case.

Id.

18. In light of the foregoing, counsel for Defendant Wade demanded \$150,000.00 to resolve Defendant Wade’s claim. Counsel for Defendant Wade also provided a draft copy of complaint he threatened to file against Ms. Goodman on behalf of Defendant Wade. *Id.* After an agreed extension, said subsequent demand expired on Friday, March 22, 2024, at 3:00pm Eastern.

19. After being confronted with the FedEx delivery confirmation and photograph referenced above, counsel for Defendant Wade advised that he believed the Settlement Check that was admittedly delivered as confirmed by FedEx was subsequently stolen by “porch pirates.” A true and correct copy of the March 14 and 15, 2024, email chain confirming counsel for Defendant Wade’s representations is attached hereto at Exhibit “F.”

20. In support of his “porch-pirate” position, counsel for Defendant Wade then represented that a doorbell camera at the front porch of the delivery address detected activity after the check was admittedly delivered on January 22, 2024, at 3:09 PM (the time and date noted on the FedEx documented delivery):

I’ve attached screenshots of the Ring Camera Timeline from our Firm Administrator’s (Sarah Christy) front door camera showing “motion detected” on Monday, January 22, 2024 (*not* 1/19/24 as your email below referenced). As you can see, it reflects the delivery of the FedEx parcel that presumably contained the settlement check at 3:09 p.m. (which is noted in the FedEx tracking info Mr. Williams provided). Subsequently, there are two other instances of motion being detected on the front porch (8:35 p.m., 8:45 p.m.) NOTE: the 9:04 p.m. and 9:06 p.m. were from the “outdoor camera” which is on Sarah’s back porch). Unfortunately, the camera footage is no longer available as we only discovered that the check was missing last week (when Mr. Williams sent the FedEx tracking information on 3/7/24) – i.e., the footage is deleted after 30 days.

Id.

21. Despite counsel for Wade waiting nearly a month to report that he was not in possession of the settlement funds, in the same correspondence, counsel

further advised that he did not see much use in reporting the matter to local law enforcement. *Id.*

22. Accordingly, there is no dispute herein that the Settlement Check was delivered to the address specified in the *Holt* Demand.

23. Upon counsel for Wade’s representation that the original payment had been stolen, Root immediately placed a “stop-pay” on the original check, and further requested that outside counsel retained to accept the *Holt* Demand report the package stolen with FedEx.

24. On March 22, 2024, outside counsel for Root advised counsel for Wade that a replacement check was being sent pursuant to the terms of the *Holt* Demand. Said check was subsequently delivered. A true and correct copy of said correspondence and a copy of the replacement settlement check are attached hereto as Exhibit “G.”

25. All conditions of the *Holt* Demand were satisfied and payment was timely delivered pursuant to the *Holt* Demand’s terms; an enforceable contract for settlement has thus been created and counsel for Wade’s contention to the contrary is without merit.

COUNT ONE
— DECLARATORY JUDGMENT —
ALL DEFENDANTS
ROOT TIMELY AND PROPERLY ACCEPTED THE *HOLT* DEMAND
AND A BINDING SETTLEMENT CONTRACT WAS FORMED

26. Root repeats and realleges the foregoing paragraphs as if fully set forth herein.

27. Root fully and unequivocally accepted the *Holt* Demand and a binding settlement contract was formed between Root and Defendant Wade pursuant to the terms set forth in the *Holt* Demand.

28. Counsel for Defendant Wade's contention that the Settlement Check was not timely and properly delivered pursuant to the terms of the *Holt* Demand are not consistent with the factual record.

29. FedEx confirmed the timely and proper delivery of the Settlement Check to "Butler Kahn, c/o Sarah Christy, 9 Swann Ridge, Palmetto, Georgia 30268."

30. FedEx delivery personnel even took a photograph of the package containing the Settlement Check on the doorstep of 9 Swann Ridge, Palmetto, Georgia 30268 upon delivery:



31. Counsel for Defendant Wade’s contention that the Settlement Check was stolen by “porch pirates” after it was properly and timely delivered does not vitiate the validity and enforceability of the settlement contract between the parties.

32. Indeed, Ms. Christy, counsel for Wade, and/or the Butler Kahn firm could have, and should have, retrieved the package timely, or otherwise not permitted payment to be delivered to that address if they did not intend to do so.

33. Further, counsel for Wade could have demanded that any form of delivery be made to the Butler Kahn law firm’s office address, but did not, and instead explicitly provided Root with the option to deliver payment to Ms. Christy’s personal residence.

34. Root is therefore entitled to a judicial declaration that it properly and timely accepted the *Holt* Demand and that a binding settlement contract was created.

35. Consequently, counsel for Wade is now required under the contract to provide to Root an executed release for the benefit of its insured as provided for in the *Holt* Demand, having been provided with replacement payment.

COUNT TWO
— BREACH OF CONTRACT —
DEFENDANT WADE

36. Root repeats and realleges the foregoing paragraphs as if fully set forth herein.

37. Following Root’s acceptance of the *Holt* Demand, a binding settlement

contract was created.

38. Thus, Defendant Wade must now provide to Root and Ms. Goodman the executed release he contracted for in exchange for payment and compliance with any other terms in the *Holt* Demand.

39. Defendant Wade has breached said settlement contract by refusing to effectuate the agreed settlement.

40. Root has been damaged by said breach, including in the face of Defendant Wade's subsequent demand seeking extracontractual relief in the form of \$125,000 over and above the \$25,000 policy limit, in the form of nominal and other damages, and by virtue of the necessity of retaining counsel to prosecute this lawsuit.

41. Defendant Wade's breach of contract was the proximate cause of damages incurred by Root.

COUNT FOUR
— SPECIFIC PERFORMANCE —
DEFENDANT WADE

42. Root repeats and realleges the foregoing paragraphs as if fully set forth herein.

43. Under the circumstances as alleged, and given Root's unequivocal acceptance of the *Holt* Demand and subsequent delivery of the replacement payment pursuant to the terms of the *Holt* Demand, an order for specific performance of the settlement contract is warranted and justified.

44. Doing so will render any subsequent litigation by Defendant Wade against Ms. Goodman moot.

45. The settlement contract is fair, just, and not against good conscience, and its enforcement is proper pursuant to well-established principles of contract interpretation, formation, performance, and equity.

46. Root therefore additionally seeks an order for specific performance requiring Defendant Wade to honor the settlement contract as entered into by the parties, to include execution of the release specified in the *Holt* Demand.

WHEREFORE, the Plaintiff, ROOT PROPERTY AND CASUALTY INSURANCE COMPANY, prays this Honorable Court to:

A. Adjudicate and declare the rights of the Parties hereto in connection with the matters set forth herein;

B. Find and declare that Root properly and timely accepted the *Holt* Demand, has fully performed, and that therefore that a binding and enforceable settlement contract was formed between Root and Defendant Wade pursuant to the terms set forth in the *Holt* Demand;

C. Find and declare that Root has no duty to pay Defendant Wade or any other party any amounts above and beyond the \$25,000.00 payment agreed to by the parties in the settlement contract;

D. Find and declare that Defendant Wade breached the settlement contract he entered into with Root by failing to effectuate the settlement terms;

E. Order specific performance of the settlement contract, including but not limited to, the following duties of Defendant Wade as set forth in the *Holt* Demand:

- In exchange for settlement funds in the Demanded Amount, Mr. Wade will sign and execute a copy of the limited release attached as Exhibit 4 to the Holt demand and provide an executed copy of that limited release to Root and/or other people and entities as, reasonably requested; and
- Liens, subrogation, and reimbursement will be handled as set forth in the release referred to in the preceding paragraph;

F. Grant to Root fees and expenses of litigation pursuant to O.C.G.A. §§ 13-6-11, 23-2-58 and/or 51-12-7;

G. Grant Root any and all further relief that this Court may deem equitable and just; and

H. Grant Root a trial by jury.

Respectfully submitted this 22nd day of March, 2024.

THE SMITH LAW PRACTICE

/s/ Brian R. Smith

Brian R. Smith
Ga. Bar No.: 001302
*Attorney for Plaintiff Root Insurance
Company*

THE SMITH LAW PRACTICE
1201 Peachtree Street
Suite 200
Atlanta, Georgia 30361
Tel: 404-402-7767
Email: brs@smithlawatlanta.com