

**SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.**

**NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 5, 2026

In the Court of Appeals of Georgia

A26A1458. GARZA et al. v. LANDERS.

DAVIS, Judge.

After Felicia Landers and Hector Garza were involved in an automobile accident, Landers demanded the policy limits from Garza and Francisco Zarate, the car's owner, and their insurer pursuant to OCGA § 9-11-67.1. By the deadlines for acceptance and payment specified in the plaintiff's demand letter, the defendants accepted the offer to settle in writing and tendered payment, but they delivered a required affidavit of no additional coverage after the deadline specified in the demand. Based on that late submission, the trial court denied the defendants' motion to enforce the settlement agreement, concluding that no valid acceptance of the settlement offer occurred. Because the settlement offer did not make the timely provision of the

coverage affidavit a term of acceptance, we disagree with this conclusion. We therefore vacate the trial court's order and remand for it to instead consider whether Landers can validly rescind the contract based on a material breach.

When reviewing a trial court's order on a motion to enforce a settlement agreement, "we apply a de novo standard of review and, thus, view the evidence in a light most favorable to the nonmoving party." *Barnes v. Martin-Price*, 353 Ga. App. 621, 623(1) (838 SE2d 916) (2020).

So viewed, the record shows that Garza and Landers were involved in an automobile collision on November 15, 2024, in Cherokee County, Georgia. On February 17, 2025, Landers filed the instant complaint against Garza and Zarate. Garza and Zarate answered the complaint on April 3, 2025.

Garza and Zarate then filed a motion to enforce an alleged settlement agreement. Attached to the motion, they submitted a demand that Landers made on April 9, 2025, to their insurer, Home State County Mutual Insurance Company, for the limits of the policy pursuant to OCGA § 9-11-67.1. Under the heading "DEMAND," Landers' demand letter stated:

Pursuant to OCGA § 9-11-67.1, this is a time-limited settlement offer that will remain open through and including the date of May 19, 2025. This settlement offer must be accepted on or before May 19, 2025. If this settlement offer is not accepted on or before that date, this offer will expire and be automatically withdrawn.

In compliance with OCGA § 9-11-67.1, Felicia Landers hereby extends a time-limited offer to compromise and settle all bodily injury and personal injury claims against Hector Garza and Francisco Zarate that arise out of this motor vehicle collision in exchange for payment of settlement funds of \$30,000 bodily injury and \$25,000 property damage policy limits (total \$55,000.00) and compliance with the following material terms: The specified “material terms” included that the demand be accepted in writing and delivered to Landers’ counsel at the firm’s specified physical address or by email to the attorney’s specified email address and that payment of the settlement funds be delivered in a specified manner “on or before May 29, 2025.” The third and final designated material term provided:

Home State County Mutual Insurance Company must provide a statement under oath confirming that all liability and casualty insurance coverage issued by it that provides coverage or that may provide coverage for this claim has been disclosed, and that the amount of such coverage are \$30,000 bodily injury and \$55,000 [sic] property damage. This statement under oath must be delivered to [Landers’s attorney]

either by delivering it to [the firm's physical address] or by delivering it via email to [the attorney's email address] on or before May 29, 2025.

Landers opposed the motion and submitted email and documentary evidence showing that, while the written acceptance and payment were timely made, the affidavit of no further coverage was submitted on June 6, 2025, past the deadline specified in the offer. Landers also provided an email that she sent to the defendants wherein she purported to rescind the settlement agreement based on the alleged material breach by failing to timely provide the coverage statement. Following a hearing, the trial court denied the motion to enforce, concluding that by failing to provide the coverage statement within the deadline, the defendants failed to meet all the conditions to accept the settlement agreement. We granted Garza's application for interlocutory appeal.

1. The defendants first contend that the trial court erred in failing to find that Garza's timely acceptance of Landers's demand resulted in an enforceable settlement agreement. We agree that the trial court erred by finding that the failure to provide a coverage affidavit by the deadline specified in Landers's demand constituted the non-occurrence of a "condition of acceptance."

[W]ell-established principles ... guide our inquiry into whether the parties entered into a settlement agreement. Specifically, in order to prevent litigation, compromises of doubtful rights are upheld by general policy. But courts are limited to enforcing those terms upon which the parties themselves have mutually agreed. And apart from such mutual agreement, no enforceable contract exists between the parties. In fact, settlement agreements must meet the same requirements of formation and enforceability as other contracts. Thus, an answer to an offer will not amount to an acceptance, so as to result in a contract, unless it is unconditional and identical with the terms of the offer. Indeed, the offer must be accepted unequivocally and without variance of any sort, and if a purported acceptance of the plaintiff's settlement offer imposes any new conditions, it constitutes a counteroffer rather than an acceptance. Finally, the party asserting the existence of a contract has the burden of proving its existence and its terms.

Importantly, Georgia law holds that an offer may be accepted either by a promise to do the thing contemplated therein, or by the actual doing of the thing. And if an offer calls for an act, it can be accepted only by the doing of the act.

Barnes, 353 Ga. App. at 623-24(1) (citation modified).

Thus, whether a contract was formed in this case depends on the terms of Landers' demand, particularly the conditions of acceptance specified therein, and Garza's conduct in responding to the demand. The record shows that, by letter dated

May 1, 2025, Garza “hereby accept[ed] the terms of [Landers’] demand in their entirety including paying \$55,0000 [the combined policy limits] in full and final satisfaction of any and all injuries or claims associated with the [subject] accident described in [Landers’] demand letter.” The acceptance letter continued: “As required by your demand, payment and a statement made under oath by [the insurer] will be delivered to your office by May 29, 2025. These statements will confirm that all liability and casualty insurance coverage related to this claim have been disclosed, as well as the amount of bodily injury and property damage coverage.” Although Garza requested that Landers fill out a form to determine whether she had Medicare or Medicaid coverage, the acceptance letter emphasized that “completion of this form by [Landers] does not change our acceptance” although it would “greatly assist in ensuring that [she] is paid promptly and correctly.”

The record thus shows that Garza accepted Landers’ post-answer demand, unequivocally and without variance of any sort, within the time allowed by the offer and in the required manner. Although Garza concedes that he did not strictly comply with the terms of the settlement agreement as promised because the insurer did not provide the coverage affidavit until June 6, 2025, eight days after the deadline, this

does not change whether the offer was validly accepted. Although Landers' demand made timely provision of the coverage affidavit a "material" term, the demand only expressly made one term a condition of acceptance: namely, acceptance in writing by *May 19, 2025*. Indeed, not only did the coverage affidavit requirement not mention acceptance, the offer stated that "acceptance must be made by May 19, 2025," yet included a deadline for the coverage affidavit of May 29, 2025, well after that date the offer provided for "acceptance." Therefore, the coverage affidavit requirement was not a condition of acceptance required by the offer, and the trial court erred by ruling that there was no enforceable contract on the basis that the insurer's late delivery of the coverage affidavit somehow negated Garza's timely, unequivocal written acceptance of Landers' demand.

In response, Landers argues that the defendants had renounced the bilateral contract requirement of OCGA § 9-11-67.1(a) and that, therefore, the only way for the defendants to accept the settlement offer was strict performance of the demand.

In interpreting [OCGA § 9-11-67.1], our analysis begins with familiar and binding canons of construction. And in considering a statute's meaning, our charge is to presume that the General Assembly meant what it said and said what it meant. We must afford the statutory text, then, its plain and ordinary meaning, consider the text contextually, read the text in its

most natural and reasonable way, as an ordinary speaker of the English language would, and seek to avoid a construction that makes some language mere surplusage. So, when the language of a statute is plain and susceptible of only one natural and reasonable construction, courts must construe the statute accordingly.

Gomez v. USAA Cas. Ins. Co., 378 Ga. App. 702, 705-06(1) (926 SE2d 687) (2026) (quotation marks omitted).

As then-Chief Judge McFadden summarized, after the Supreme Court’s decision in *Southern Gen. Ins. Co. v. Holt*, 262 Ga. 267 (416 SE2d 274) (1992),

an insurer that passes up an opportunity to settle a claim within policy limits can be liable to its insured for a bad faith claim. That rule creates an incentive, in cases where damages greatly exceed policy limits, for a plaintiff to attempt to set up a bad faith claim. The General Assembly addressed that perverse incentive by adopting OCGA § 9-11-67.1. Our Supreme Court construed that statute in light of “the backdrop of a large body of law” under which an acceptance is effective only if “the offer [is] accepted unequivocally and without variance of any sort” because “an offeror is the master of his or her offer, and free to set the terms thereof,” and “conclude[d] that the plain language of OCGA § 9-11-67.1 [(2013)] does not expressly or by necessary implication contravene these common law principles.”

White v. Cheek, 360 Ga. App. 557, 564 (859 SE2d 104) (2021) (McFadden, CJ, concurring specially). Originally, OCGA § 9-11-67.1 applied only to settlement offers for tort claims arising from the use of a motor vehicle that were made prior to the filing of a civil action and prepared by or with the assistance of an attorney. OCGA § 9-11-67.1(a) (2013). Explicitly, nothing in the Code section was “intended to prohibit parties from reaching a settlement agreement in a manner and under terms otherwise agreeable to the parties.” OCGA § 9-11-67.1(c) (2013). The statute required a minimum period in which demands could be accepted before expiring or being withdrawn and also required pre-suit, attorney-drafted demands to be in writing and to include, at a minimum, five specified terms. See *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 854-858(2)(b) (797 SE2d 814) (2017).

The statute was amended in 2021 to make the statute applicable to demands “issued before the filing of an answer.” OCGA § 9-11-67.1(a) (2021). The 2021 amendment retained, with a slight rewording, the 2013 version of subsection (c), again providing that “[n]othing in this Code section is intended to prohibit parties from reaching a settlement agreement in a manner and under terms otherwise agreeable to both the offeror and recipient of the offer.” The amendment also authorized, but did

not mandate, “a term requiring that in order to settle the claim the recipient shall provide the offeror a statement, under oath, regarding whether all liability and casualty insurance issued by the recipient that provides coverage or that may provide coverage for the claim at issue has been disclosed to the offeror.” OCGA § 9-11-67.1(a)(3) (2021).

The statute was again amended into its current form in 2024, and because both the car accident and Landers’ demand came after July 1, 2024, the 2024 version of the statute applies here. See *Gabrell v. Hancock*, 378 Ga. App. 406, 407 n.1 (926 SE2d 110) (2026). In the 2024 amendment, the required terms of a pre-suit/pre-answer demand were re-labeled subsection (b),¹ and the following subsection was added: “[a]ny offer to settle a tort claim for personal injury, bodily injury, or death arising from a motor

¹ Among other changes, the 2024 amendment required that the statutorily specified material terms be “the only material terms” contained in the plaintiff’s pre-answer settlement demand. OCGA § 9-11-67.1(b)(1) (2024). In particular, the amendment made the insurer’s coverage affidavit a mandatory, rather than a permissive, material term and provided the insurer at least 40 days from receipt of the demand to provide the affidavit. OCGA § 9-11-67.1(b)(1)(G) (2024). Because the settlement demand here was provided after Garza and Zarate filed their answers, these provisions of OCGA § 9-11-67.1(b) do not control here. The 2024 amendment also continued to allow settlement agreements “under terms otherwise agreeable” to the parties, with an additional limitation, in what has now been re-designated as subsection (e).

vehicle collision shall be an offer to enter into a bilateral contract.” OCGA § 9-11-67.1(a). This provision squarely addressed previous cases which held that “OCGA § 9-11-67.1 permits ‘unilateral’ contracts whereby Pre-Suit Offers may demand acceptance in the form of performance (in addition to the statutorily mandated written acceptance) before there is a binding enforceable settlement contract.” *Grange Mut. Cas. Co.*, 300 Ga. at 858(3) (interpreting OCGA § 9-11-67.1 (2013)). See also *Patrick v. Kingston*, 370 Ga. App. 570, 576-78(1) (898 SE2d 560) (2024) (under OCGA § 9-11-67.1 (2013), “an offeror may include terms of acceptance establishing a unilateral contract, whereby an offer calls for acceptance by an act rather than by communication.”). For instance, in previous cases, we held that, where the plaintiff’s demand included the requirement that the settlement payment not “include any terms, conditions, descriptions, or representations that are not permitted in the release,” and the insurer’s check indicated on its face that it was “VOID IF NOT PRESENTED WITHIN 90 DAYS,” the defendant failed to perform an act required to accept the offer, the parties did not have a meeting of the minds, and no enforceable settlement agreement was created. *Patrick*, 370 Ga. App. at 576-78(1). However, under this new provision, and notwithstanding the requirements of OCGA § 9-11-67.1(b),

because a settlement demand is now by definition an offer to enter a bilateral – not a unilateral – contract, a binding contract is generally formed upon acceptance of a demand, so that an insurer’s failure to fulfill a condition would constitute, at most, a breach of contract rather than a rejection of the demand. See *Jackson Elec. Membership Corp. v. Ga. Power Co.*, 257 Ga. 772, 773-74(1) (364 SE2d 556) (1988) (a bilateral contract is one in which parties create a contract by expressing their mutual intent to be bound).

Here, Landers argues that the defendants had waived any reliance on OCGA § 9-11-67.1(a) by arguing below that it did not apply because the demand in this case was filed after both defendants had filed an answer. However, we find this argument ultimately to be unpersuasive because, regardless of whether this was a unilateral or bilateral contract, the defendants properly accepted because the only act that the offer called for to effect acceptance was providing the written acceptance letter. Nothing in the plain text of the settlement demand required full performance of the contract as a condition of acceptance. Compare *Kitchens v. Ezell*, 315 Ga. App. 444, 447-48(1) (726 SE2d 461) (2012) (physical precedent only) (the presentation of a certain bodily injury release was a condition of acceptance, not merely performance, when the

contract specified that “if State Farm delivered the bodily injury release, among other things, within 20 days of the settlement offer, then his clients would sign the release and the bodily injury claims would be settled.”). Thus, the defendants do not need to rely on OCGA § 9-11-67.1(a) to support their argument that they properly accepted the settlement offer.

In summary, the trial court erred by concluding that the defendants did not validly accept Landers’ settlement offer.

2. The defendants next argue that Landers cannot unilaterally rescind the settlement agreement based on the failure to timely provide the coverage affidavit. Because the trial court concluded that the defendants never properly accepted the settlement agreement, it did not reach the issues of whether the defendants materially breached the agreement by failing to timely provide the coverage affidavit and, thus, whether Landers properly rescinded the agreement. And we decline to answer those questions for the first time on appeal because they may possibly require resolving a number of disputed factual matters. See *McQueen v. Long*, 372 Ga. App. 840, 844 (906 SE2d 909) (2024) (“[W]e are a court of review, not of first view.”) (quotation marks omitted).

“A party may rescind a contract without the consent of the opposite party on the ground of nonperformance by that party but only when both parties can be restored to the condition in which they were before the contract was made.” OCGA § 13-4-62. “To justify rescission, there must be a material nonperformance or breach by the opposing party.” *Yi v. Li*, 313 Ga. App. 273, 276-77 (721 SE2d 144) (2011) (punctuation omitted). “A breach is material when it is so substantial and fundamental as to defeat the object of the contract. ... A breach which is incidental and subordinate to the main purpose of the contract does not warrant termination.” *Forsyth County v. Waterscape Servs., LLC*, 303 Ga. App. 623, 633(2)(b) (694 SE2d 102) (2010) (punctuation omitted). Whether a breach is material such that rescission is available is a matter that may potentially need to be resolved by a factfinder. See *Lanier Home Center, Inc. v. Underwood*, 252 Ga. App. 745, 745-46(1) (557 SE2d 76) (2001) (concluding that rescission claim was properly put before a jury to resolve).

Additionally and crucially, under the general contract principles that apply to most settlement demands, when “time is not of the essence, either expressly or by construction, the party has a reasonable time in which to perform.” *Peachstate Devs., LLC v. Greyfield Res., Inc.*, 284 Ga. App. 501, 504(1) (644 SE2d 324) (2007). See

OCGA § 13-2-2(9) (“Time is not generally of the essence of a contract; but, by express stipulation or reasonable construction, it may become so.”). “[W]hat is a reasonable time is a matter of fact, to be determined by a jury or other factfinder under all the circumstances of the case.” *Peachstate Devs., LLC*, 284 Ga. App. at 504(1). This is true even when the contract provides a deadline to perform. See, e.g., *Braddy v. Boynton*, 271 Ga. 55, 55 (518 SE2d 411) (1999) (when time is not of the essence, “the mere prescribing of a certain time within which [a real estate] transaction shall be closed does not necessitate a tender of the purchase price within that time.”). Thus, given the absence of any “time is of the essence” language in the settlement agreement at issue here, the defendants’ failure to provide the coverage statement within the specified deadline may not automatically be a material breach as a matter of law but may potentially instead present a question for a factfinder. Thus, we decline to address the issue of rescission for the first time on appeal.

Accordingly, we vacate the trial court’s denial of the motion to enforce the settlement agreement and remand for it to address whether Landers properly rescinded the agreement.

Judgment vacated and case remanded. Doyle, P. J., and Whitaker, J., concur.