THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.

September 23, 2026

In the Court of Appeals of Georgia

A26A1588. GLENWOOD MOTEL ENTERPRISE, INC. v. MARTIN.

GOBEIL, Judge.

Glenwood Motel Enterprises, Inc. ("Glenwood") appeals the trial court's denial of its motion to enforce a settlement agreement with Lewayne Martin. For the reasons explained more fully below, we affirm.

This Court reviews de novo a trial court's order on a motion to enforce a settlement agreement, *Mealer v. Kennedy*, 290 Ga. App. 432, 432 (659 SE2d 809) (2008), and we view the evidence in the light most favorable to the nonmoving party, *Johnson v. DeKalb County*, 314 Ga. App. 790, 791 (726 SE2d 102) (2012).

So viewed, the relevant facts are as follows. In October 2024, Martin filed the underlying personal injury action alleging that he was violently attacked at the OYO

Hotel and sustained significant injuries.[1] Glenwood operates the OYO Hotel. On July 17, 2025, Martin sent Glenwood a settlement offer, seeking $300,000, which represents the coverage limits in an insurance policy that Great Lakes Insurance SE ("Great Lakes") issued to Glenwood. In the settlement offer, Martin conditioned acceptance on, among other things, delivery of an "Affidavit of No Additional Insurance Coverage, attesting that there is no additional liability coverage available — whether primary, excess, umbrella, or otherwise — that applies to the subject incident or claim." The offer provided that "Glenwood's failure to strictly comply with each of [the terms of the offer] within the time limits set forth herein will constitute a rejection of [the] offer" and that "[p]artial performance, untimely performance, or any proposed modification of the material terms will be deemed a counteroffer." Martin did not provide a proposed affidavit to be signed, nor did he specify any particular language required in the affidavit. The deadline within which Glenwood had to accept the offer was 21 days from the date of the letter, and the offer provided that "[p]ayment in full via certified funds must be paid within 10 days after acceptance." The affidavit was to be delivered with the payment.

[1] In his complaint, Martin named several other entities who are not parties to the instant appeal.

Thereafter, on August 7, 2025, Glenwood accepted the offer and sent the settlement check to Martin within the prescribed time period. In the written acceptance letter, Glenwood explained that it "will be providing an affidavit of no other insurance as required by the Demand, which will confirm that no additional liability coverage is available to Glenwood in connection with this claim other than the $300,000 limit available under" the Great Lakes policy. Glenwood subsequently provided Martin with the affidavit of Rojina Noorani, Glenwood's owner. Noorani attested that Great Lakes had issued a policy to Glenwood that provided coverage during the relevant time frame and that Glenwood had sought coverage under the Great Lakes policy in connection with the incident involving Martin. In addition, she averred that, other than the Great Lakes policy, she was "not aware of any insurance policies in effect on October 2, 2023, that provide or may provide coverage in connection with the Incident."

Martin then advised Glenwood that the affidavit provided was not sufficient for acceptance of the settlement offer. Specifically, Martin stated that the "Noorani affidavit only indicates that the operator of the motel is unaware of any other policy [but] it does not confirm, on behalf of the owner of the property, that there is definitively no other coverage and that '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 our client." Glenwood responded that it believed the affidavit was sufficient and requested assistance in crafting an affidavit that would satisfy Martin. Martin did not provide a proposed affidavit, and Glenwood did not send an additional affidavit.

Ultimately, Martin returned the funds that Glenwood sent because Glenwood "did not accept [his] July 17, 2025 settlement offer in the manner it required." Martin pointed in particular to the nonconforming affidavit of no additional insurance coverage.

Glenwood thereafter filed a motion to enforce the settlement agreement. Following a hearing, a transcript of which is not part of the record on appeal, the trial court denied Glenwood's motion, finding that Glenwood's affidavit was not in compliance with an express condition of acceptance because "not aware of" is not equivalent to "there is no additional" insurance coverage. The trial court stated it was constrained to follow precedent requiring "exact literal compliance" in order to accept a settlement offer, citing this Court's decision in *Wright v. Spearman*, 376 Ga.

App. 121 (918 SE2d 188) (2025).[2] The trial court certified its decision for immediate review, and Glenwood filed a timely application for interlocutory appeal, which we granted.[3] This appeal followed.

In related claims of error, Glenwood argues that the trial court erred in finding that its affidavit of no other insurance did not meet the requirements of Martin's settlement offer and concluding there was no enforceable settlement agreement. Glenwood also asserts that the trial court erred by inserting additional terms into the offer that were not contained in the demand letter.

> [S]ettlement agreements must meet the same requirements of formation and enforceability as other contracts. There is no enforceable settlement between the parties absent mutual agreement between them. That existing law includes the fundamental principle that an offeror is the master of his or her offer and free to set the terms thereof. An offeror may include terms of acceptance establishing a unilateral contract, whereby an offer calls for acceptance by an act rather than by communication. If an offer calls for an act, it can be accepted only by the

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[2] In *Wright*, this Court, in a 2-1 decision (Judge Land dissenting), affirmed the trial court's conclusion that the defendant's alteration of the release document sent with the plaintiffs' settlement offer constituted a counteroffer rather than an acceptance. Specifically, the defendant insurer's inclusion of blank notary signature lines (under the space for the plaintiffs' signatures in the release) constituted a counteroffer and not an acceptance of the plaintiffs' settlement offer, as it imposed a new condition of notarization that varied from the precise terms of the offer. 376 Ga. App. at 125-126.

[3] See Case No. A26I0139 (March 4, 2026).

> doing of the act. If the recipient of a pre-suit offer fails to perform the act required to accept the offer, then the parties do not have a meeting of the minds.

Pierce v. Banks, 368 Ga. App. 496, 499(2) (890 SE2d 402) (2023) (citation modified).

> 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. To constitute a contract, the offer must be accepted unequivocally and without variance of any sort. No contract exists until all essential terms have been agreed to, and the failure to agree to even one essential term means there is no agreement to be enforced.

Groves v. Gibbs, 367 Ga. App. 730, 733 (888 SE2d 305) (2023) (punctuation omitted); see also *Kemper v. Brown*, 325 Ga. App. 806, 808(1) (754 SE2d 141) (2014). "An offeree's failure to comply with the precise terms of an offer is generally fatal to the formation of a valid contract." *Pierce*, 368 Ga. App. at 500(2)(a). "The unambiguous terms of a settlement agreement must be strictly enforced and cannot be modified by the trial court." *In re Estate of Hubert*, 325 Ga. App. 276, 279(2) (750 SE2d 511) (2013). "[T]he party asserting the existence of a contract has the burden of proving its existence and its terms." *Hansen v. Doan*, 320 Ga. App. 609, 612 (740 SE2d 338) (2013).

Here, Martin conditioned acceptance of his settlement offer on, among other things, receipt of an affidavit from Glenwood "attesting that there is no other additional liability coverage available ... that applies to the subject incident or claim," in other words, the affirmative non-existence of a fact. However, Glenwood did not provide an affidavit that affirmatively stated that there was no other available insurance, but rather avowed only that Noorani was "not aware of" any other insurance that might "provide coverage in connection with the Incident." This was not "identical" and "without variance of any sort" to Martin's offer. See *Pierce*, 368 Ga. App. at 500(2)(a) (quotation marks omitted). Glenwood's affidavit did not provide the specific assurance that there was no other insurance, but rather provided a confirmation of Noorani's present lack of awareness of a fact. This Court has held that an offeree must comply with even "stringent" or "petty" conditions imposed within an offer to settle, particularly where, as here, the offer explicitly states that the offeree's "failure to strictly comply with each of these terms ... will constitute a rejection" and that "any modification of the material terms will be deemed a counteroffer." *Wright*, 376 Ga. App. at 126. Furthermore, and despite differing perspectives on what ensued after Martin informed Glenwood of an insufficient affidavit, Glenwood did not provide an additional affidavit to correct the defects noted in Martin's letter.[4] Under these circumstances, Glenwood has not shown that there was acceptance without variance resulting in an enforceable settlement agreement. See *Jervis v. Amos*, 358 Ga. App. 589, 594–95(1) (854 SE2d 387) (2021) (no settlement agreement where the affidavit of other insurance was not executed and returned as required by the terms of the offer).

Accordingly, we affirm the trial court's denial of Glenwood's motion to enforce the settlement agreement.

Judgment affirmed. Pipkin, J., concurs and Dillard, P. J., concurs specially.

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[4] It is true that one who makes an offer is master of the offer. But, disputes concerning whether there is an acceptance or counter-offer highlight the frequent difficulty in discerning where good faith lies. As Judge McFadden expressed in his concurrence in *Wright v. Nelson*, "plaintiffs sometimes structure offers not to reach settlements, but rather to elicit rejections. See generally Douglas R. Richmond, An Overview of Insurance Bad Faith Law and Litigation, 25 Seton Hall L. Rev. 74, 131(VI)(B) (1994) (noting potential of a third-party insurance claimant trying to set up a bad faith claim by way of sharp practice")." 358 Ga. App. 871, 877 (856 SE2d 421) (2021) (McFadden, C. J., concurring). In the end, we must rely on the terms of the offer, which in this instance — we are constrained to find — support affirming the trial court.

A26A1588. GLENWOOD MOTEL ENTERPRISE, INC. v. MARTIN.

DILLARD, Presiding Judge, concurring fully and specially.

I concur fully in the majority opinion. I write separately only to highlight that OCGA § 9-11-67.1 is not applicable here, so the majority's reliance (in part) on *general* contract principles from cases involving motor-vehicle accidents should not be misunderstood.[1]

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[1] See *Wright v. Spearman*, 376 Ga. App. 121, 125 n.15 (918 SE2d 188) (2025) (explaining that it was "undisputed" OCGA § 9-11-67.1 "does not apply to this case because the offer to settle was made after [appellant] answered"); *Pierce v. Banks*, 368 Ga. App. 496 (890 SE2d 402) (2023) (applying the 2013 version of OCGA § 9-11-67.1), *superseded by statute as recognized in Gomez v. USAA Casualty Insurance Co.*, 378 Ga. App. 702 (926 SE2d 687) (2026); *Groves v. Gibbs*, 367 Ga. App. 730 (888 SE2d 305) (2023)

OCGA § 9-11-67.1(a) was enacted by the General Assembly to end the gamesmanship that often arises during (pre-answer) settlement negotiations[2] in cases involving "personal injury, bodily injury, or death arising from a motor vehicle collision."[3] And significantly, the jurisprudential landscape of this statutory regime changed dramatically in the wake of recent amendments to OCGA § 9-11-67.1—which we explored considerably in *Gomez v. USAA Casualty Insurance Co.*[4] But again, this statute applies *only* to settlement negotiations involving "personal injury, bodily injury, or death arising from a *motor vehicle collision*"—not to settlement negotiations

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(same); *Wright v. Nelson*, 358 Ga. App. 871 (856 SE2d 421) (same); *Kemper v. Brown*, 325 Ga. App. 806 (754 SE2d 141) (2014) (involving a motor-vehicle accident occurring before OCGA § 9-11-67.1's enactment and later amendments); *Hansen v. Doan*, 320 Ga. App. 609 (740 SE2d 338) (2013) (same); *Mealer v. Kennedy*, 290 Ga. App. 432 (659 SE2d 809) (2008) (same).

[2] See OCGA § 9-11-67.1(b) (specifying that the statute applies "[f]rom the time a cause of action accrues until the filing of an answer by the named defendant, or if there are multiple named defendants, until the time that all named defendants have filed their initial answers or been found to be in default"); *Wright*, 376 Ga. App. at 124 (cautioning parties "to avoid crossing the line from vigorous advocacy to gamesmanship" in crafting settlement offer requirements).

[3] OCGA § 9-11-67.1(a).

[4] 378 Ga. App. 702 (926 SE2d 687) (2026), *cert. denied* (Aug. 11, 2026). See also *McGovern v. Rowland*, ___ Ga. App. ___, ___(1) (932 SE2d 762) (2026) (discussing the statutory history and jurisprudential tension surrounding OCGA § 9-11-67.1).

generally.[5] Our opinion, then, should not be read to conflate general contract law with the unique standards applicable to settlement negotiations controlled by OCGA § 9-11-67.1. This case deals with the former, and says nothing about the latter.

[5] See OCGA § 9-11-67.1(a) (emphasis added). The General Assembly could, of course, extend the same or similar requirements to other contractual contexts.