

Georgia Court of Appeals Decision on "Mirror-Image"

Jul 12 2023

Practice Area: Insurance Coverage and Risk Management

Pierce v. Banks et al., No. A23A0394, 2023 WL 4227923 (Ga. Ct. App. June 28, 2023)

In *Pierce*, the Georgia Court of Appeals issued a decision regarding the enforceability of settlement agreements where strict "mirror-image" acceptance is not achieved. Appellant Aaron Pierce was involved in a motor-vehicle accident with Appellees Kyndyl Banks and Octavius Avery Smith. Following the accident, counsel for Pierce made a written pre-suit offer to Appellees' insurer, Trexis One Insurance Corporation. The offer letter provided that Appellant would settle all claims for a payment of \$25,000 (the bodily injury limit), and that Trexis must accept the terms of the offer, in writing, within 31 days. The offer letter also stated that any payment must be made out to "Aaron Pierce and Brooks Injury Law, LLC," and that, as an act necessary to accept the offer, payment had to be "received 15 days after Trexis' written acceptance of th[e] offer." Furthermore, the offer letter also provided that, again, as an act necessary to accept the offer, the settlement payment and all other documents sent by Trexis "must not include any terms, conditions, descriptions, expirations, or restrictions that are not expressly permitted" in the offer.

Days later, counsel for Trexis responded via letter and noted that she had been "authorized" to accept the settlement offer. Accompanying the letter was a settlement check addressed to "Aaron Pierce and Brooks Injury Law LLC" and a limited release. Importantly, the check included a notation that it was "void after 180 days." Following receipt of the check and release, counsel for Pierce explained that Trexis' purported acceptance was not identical to his offer and that Pierce was rejecting Trexis' counteroffer. Shortly thereafter, Pierce filed an action, Trexis moved to enforce settlement, and Pierce subsequently filed a motion for summary judgment asserting that no settlement existed. The Georgia trial court found in favor of Trexis, ultimately concluding that it had complied with the material terms of OCGA § 9-11-67.1 (2021).

The Georgia Court of Appeals reversed. First, the Court recounted that, while bilateral contracts allow parties to create contracts by expressing their mutual intent to be bound, the type of contract at issue here—a unilateral contract—is formed where an offer calls for acceptance by act, rather than by communication and, as such, can only be accepted by the doing of the act. The Court further noted that the performance of such an act must be "identical" and without "variance of any sort." Accordingly, the Court rejected Trexis' argument that, despite not strictly complying with the non-material terms of the agreement, it had nonetheless satisfied the material terms of the agreement, and thus, the agreement should be enforced.

Second, the Court held that there was nothing wrong with Pierce's provided term that payment of the settlement funds be received on the 15th day following Trexis' written acceptance of the offer. The Court concluded that Georgia law allowed for the offeror to demand payment on a specific date, so long as the offeror gives the offeree at least 10 days from the time of written acceptance to make the payment. Therefore, the fact that Trexis provided payment prior to the 15th day following written acceptance meant that Trexis had not complied with the terms of Pierce's offer. Moreover, the Court rejected Trexis' arguments that permitting offerors to identify specific days on which a payment must be made would lead to absurd or unintended consequences, and instead reaffirmed its previous holding that, where a party fails to deliver payment in the manner specified, then the party did not accept the offer.

Lastly, the Court concluded that the inclusion of the notation on the settlement check, which indicated that the check would be void after 180 days, also constituted an impermissible variation of terms. Trexis argued that it had caused the check to be issued, and that it was not Trexis who included the notation, but rather, its bank, who included the standard 180-day language. Trexis further asserted that, under OCGA § 11-4-404, checks issued in Georgia have an expiration date and, as such, a bank check with such a notation is the same as one without such notification. The Court rejected Trexis' argument and reliance on the statute, noting that OCGA § 11-4-404 did not mandate the expiration of checks following 180 days after their issuance, but instead, merely provides that a bank is not obligated to honor them. Moreover, the Court determined that Trexis could have utilized a different method of payment to Pierce, but elected to use a payment method that "could not have satisfied the terms of the offer."

With the foregoing established, the Court reversed the decision of the trial court. In states where such standards are applied, insurers must be very alert as to the terms of a settlement offer. In particular, insurers must closely analyze the terms offered, determine whether those terms are acceptable and, if so, meticulously adhere to the terms in order to ensure an enforceable settlement.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.