

SEP 11, 2026 02:46 PM


Jennifer E. Jordan, Clerk
Pickens County, Georgia

IN THE SUPERIOR COURT OF PICKENS COUNTY
STATE OF GEORGIA

BIG CANOE PROPERTY OWNERS')
ASSOCIATION, INC.)

Plaintiff,)

v.)

BIG CANOE COMPANY LLC,)
BIG CANOE HOLDINGS GROUP LLC)

Defendants,)

Civil Action File No.
2026SUCV0326

**PLAINTIFF'S RESPONSE TO DEFENDANTS' BRIEF IN SUPPORT OF THEIR
MOTION FOR PROTECTIVE ORDER**

This litigation stems upon an Annexation Agreement ("Agreement") and Defendants refusal to provide answers regarding their intended development of the land discussed therein. This response stems from those Defendants' desire to shirk an agreement to answer discovery by a date-certain, again, in hopes of keeping Plaintiff (a signatory of the Agreement) in the dark for a bit longer. For the reasons that follow, the Court should deny that request and require the Defendants to honor their agreement to respond to Plaintiff's discovery requests.

STATEMENT OF FACTS.

On May 13, 2026, Plaintiff Big Canoe Property Owners' Association, Inc. ("BC-POA") filed the underlying Complaint. In tandem with that Complaint, Plaintiff delivered sets of interrogatories, requests for production of documents, and requests for admissions to both Defendants (collectively "Plaintiff's Written Discovery Requests"). Those discovery requests are at the heart of the present dispute and were attached to *Defendants' Brief in Support of Their Motion for Protective Order* ("Brief") as exhibits. The other operative document, which was a courtesy extended by Plaintiff, is not included in that Brief. The omission was intentional and the reason for it is simple; Defendants

agreed to respond to Plaintiff's Written Discovery Requests by August 8, 2026, and failed to honor that agreement.

On June 17, 2026, at the request of Defendants' counsel¹, Plaintiff agreed to a Stipulation for Extension of Time which provided Defendants:

[T]he time period to August 8, 2026 within which ... to file their respective answer, defensive pleadings, counterclaims, crossclaims, responses, objections, motions and/or initial responses to:

- (i) the First Amended Complaint for Equitable Relief, Declaratory Judgment and Fees (the "Amended Complaint") filed May 18, 2026 and served May 27, 2026 (the response thereto being deemed sufficient as Defendants' response to the original Complaint);
- (ii) Plaintiff's First Interrogatories to each Defendant;
- (iii) Plaintiff's First Request for Production of Documents to each Defendant; and,
- (iv) Plaintiff's First Request for Admissions to each Defendant.

This extension graciously provided an additional 43 days to respond to the Complaint. On August 7, 2026, Defendants filed Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted pursuant to O.C.G.A. § 9-11-12(b)(6). On August 10, 2026, Defendants filed the underlying motion and Brief. Defendants also tendered discovery responses which amounted to nothing more than an objection to responses being due. Defendants claim that their Motion to Dismiss absolves them of their contractually agreed to deadlines and obligations. It should not and does not.

ARGUMENT AND CITATION TO AUTHORITY

1. The Parties Agreed to a Set Time to Respond.

Parties are free to contract to provide each other with deadlines to respond to pleadings. Plaintiff and Defendants did so here, and Plaintiff understood that agreement to require Defendants

¹ At this point of the litigation, both Defendants were represented by John R. Grimes.

to “file their respective answer, defensive pleadings, counterclaims, crossclaims, responses, objections, motions and/or initial responses” to Plaintiff’s Written Discovery Requests by August 8, 2026.

Instead of honoring that understanding, Defendants filed a Motion for Protective order arguing that they are not beholden to the agreement and that “[t]here is no reason why an extension of time for the filing of an answer and other responsive pleadings and motions should obviate the application of” a statutorily created pause in discovery. (Brief pg. 5.) There is one simple reason why an agreement made between parties should obviate O.C.G.A. § 9-11-12(j): when a party agrees in writing to do something they can legally do, they should be required to do it. This is perhaps the most basic pillar of civil law and Plaintiff struggles to see how it should not be upheld here.

2. Holding that Stipulations are Superseded by O.C.G.A. § 9-11-12 Creates a Less Trustworthy Practice.

Defendants’ argument that the stay is effective regardless of agreement to respond by a date-certain simply cannot be the intent of the recent modifications to O.C.G.A. § 9-11-12. Parties have, since those recent modifications and for centuries prior, come together and agreed to provide extensions of time regarding statutorily provided deadlines. Plaintiff would not have agreed to the stipulation had it known that Defendants intended not to respond to Plaintiff’s Written Discovery Requests. Defendants were served on May 27, 2026, meaning answers would have been due by June 26, 2026. Had Plaintiff known Defendant intended to argue that they were not required to respond to discovery, Plaintiff would have declined to allow an extension. Instead, Plaintiff, in good faith that Defendants would honor their agreement, agreed to the extension. Plaintiff is now delayed further and has received no meaningful discovery responses. Thus, the benefit of the extension has become one-sided and benefits the very party attempting to break that agreement. This result cannot be correct.

If Defendants are correct in their position, parties will no longer be able to trust defendants at word value when they agree to respond to a complaint and discovery sent therewith. Instead, defendants can now do exactly what was done here, gain extensions they would not otherwise receive then shirk their responsibilities pursuant to that agreement by arguing that O.C.G.A. § 9-11-12(j) waives away a valid and binding agreement. This would result in improper gamesmanship and degrade trust amongst attorneys. The legislature surely did not intend for O.C.G.A. § 9-11-12(j) to be used in such a way.

3. This is Not a Case Where O.C.G.A. § 9-11-26 Applies.

Defendants allege that a protective order should be granted so that they will not be required to answer Plaintiff's Written Discovery Requests. Their belief stems from an argument that the stay provided by § 9-11-12(j) supplants prior agreements entered by parties to litigation and pursuant to O.C.G.A. § 9-11-26 (c), the discovery should not be had. For the reasons articulated herein the argument fails and O.C.G.A. § 9-11-26, therefore, does not apply.

4. Defendants' Motion to Dismiss and Refusal to Provide Information Show Why Discovery is Needed.

Defendants' conduct shows why Plaintiff seeks discovery and why the Court should force Defendants to provide it. Plaintiff's Complaint seeks declaratory judgment from the Court to ensure that it can require Defendants to develop the Waterford Property in accordance with the rights and regulations provided by the Agreement which concerns said property. Defendants have been unwilling to provide information regarding their intentions and have, by way of filing their Motion to Dismiss, shown they do not believe they need to adhere to the terms of the Agreement. Further, Defendants have begun the process of development itself. Shortly after purchasing the land, Defendant BC-HG cleared a road and laid gravel at the subject property. Defendants' utter refusal to

provide information has necessitated the filing of the suit. Their refusal to honor the terms of an agreement between the parties on the grounds that O.C.G.A. 9-11-12(j) supersedes that agreement simply compounds the issue and shows that absent a Court mandated response, Plaintiff will continue to not receive the information from Defendants that it is entitled to receive. Further amplifying the issue is the fact that Defendants' Motion to Dismiss incorporates documents from outside of the Complaint, namely a discussion of an ordinance, to which judicial notice cannot be taken. (See *Leger v. Ken Edwards Enters, Inc.*, 223 Ga. 536 (1967)). As a result, it seems that even Defendants tacitly agree that discovery must be conducted in the matter. Despite this, Defendants have refused to adhere to deadlines to respond to discovery that have been stipulated by the parties. The Court should decline the motion and require Defendants to end their gamesmanship and delay.

CONCLUSION

For the reasons discussed herein, Plaintiffs respectfully request that the Court deny Defendants' motion and require Defendants meaningfully respond to Plaintiff's Written Discovery Requests within 15 days from the date of the Court's denial of the underlying motion.

This, the 11th day of September, 2026.

WEISSMAN PC

/s/ Max S. Franco

Jeff H. Schneider

Ga. Bar No. 629545

Max S. Franco

Ga Bar No. 355592

*Attorneys for Plaintiff Big Canoe
Property Owners' Association, Inc.*

One Alliance Center, 4th Floor
3500 Lenox Road, NE
Atlanta, GA 30326
JeffS@weissman.law
MaxF@weissman.law

CERTIFICATE OF SERVICE

This is to certify that I have this date served the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS** upon all parties by filing through the Odyssey File and Serve System which will automatically send email notification of such filing to the following via email as follows:

This, the 11th day of September, 2026.

SMITH, GAMBRELL & RUSSELL, LLP

Edward D. Burch, Jr.

Amanda M. Cheek

eburch@sgrlaw.com

acheek@sgrlaw.com

LEFKOFF, DUNCAN, GRIMES, MCSWAIN HASS & HANLEY, P.C.

John R. Grimes

[Jgrimes@ldfirm.law](mailto:jgrimes@ldfirm.law)

WEISSMAN PC

/s/ Max S. Franco

Max S. Franco

Ga Bar No. 355592

*Attorney for Plaintiff Big Canoe
Property Owners' Association, Inc.*

One Alliance Center, 4th Floor
3500 Lenox Road, NE
Atlanta, GA 30326
JeffS@weissman.law