



Connie Taylor, Clerk of Superior Court  
 Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY  
 STATE OF GEORGIA

THE TRUSTEES OF THE NORTH )	CIVIL ACTION FILE
GEORGIA CONFERENCE OF THE )	NUMBER: 21-1-06801-28
UNITED METHODIST CHURCH, )	
INC., )	
)	
Petitioner, and Respondent )	JURY TRIAL DEMANDED
in Counterclaim, )	
vs. )	
)	
MT. BETHEL UNITED METHODIST )	
CHURCH, INC. d/b/a MT. BETHEL )	
UNITED METHODIST CHURCH, )	
)	
Respondent, Counterclaim )	
and Third-Party Plaintiff, )	
)	
vs. )	
)	
THE NORTH GEORGIA )	
CONFERENCE OF THE UNITED )	
METHODIST CHURCH, INC., )	
SUE HAUPERT-JOHNSON, BISHOP;) )	
JESSICA E. TERRELL, DISTRICT )	
SUPERINTENDENT; JOHN DOE 1; )	
JOHN DOE 2; JOHN DOE 3; JOHN )	
DOE 4; JOHN DOE 5; )	
)	
Counterclaim and )	
Third-Party Defendants. )	

**MT. BETHEL'S CONSOLIDATED RESPONSE TO THIRD PARTY  
 DEFENDANTS' MOTIONS TO STRIKE/VACATE/DISMISS**

COMES NOW Respondent, Counterclaimant, and Third-Party Plaintiff Mt. Bethel United Methodist Church, Inc., d/b/a Mt. Bethel United Methodist Church ("Mt. Bethel") and files this Consolidated Response in Opposition to the Motions to Strike/Vacate/Dismiss filed by Third Party Defendants North Georgia Conference of

the United Methodist Church, Inc., Bishop Sue Hauptert-Johnson and District Superintendent Jessica E. Terrell (collectively, the “Third-Party Defendants”).

**INTRODUCTION**

The peculiar premise of the Third-Party Defendants’ November 4, 2021 Motions to “Strike/Vacate/Dismiss” is to ignore entirely that they have each, in fact, been pled and served by Mt. Bethel as third-party defendants pursuant to *O.C.G.A. § 9-11-14*. Omitting this fact from their Motions, the Third-Party Defendants inaccurately argue that leave of Court is first necessary to join them as counterclaim defendants pursuant to *O.C.G.A. § 9-11-13*. But no leave of Court was required, and the table below details the service upon each Third-Party Defendant and the date by which their responsive pleadings were due:

<b>3<sup>RD</sup> PARTY DEFENDANT</b>	<b>SERVICE</b>	<b>ANSWER DEADLINE</b>
The North Georgia Conference, Inc.	10/12/2021, at 2:52 pm, through its registered agent. <sup>1</sup>	<b>11/11/2021</b>
Bishop Hauptert-Johnson	10/14/2021, at 9:15 am, at 1 <sup>st</sup> United Methodist Church: 56 Whitlock Ave NW, Marietta, GA 30064 <sup>2</sup>	<b>11/15/2021</b>
District Superintendent Terrell	10/14/2021, at 9:10 am, at 1 <sup>st</sup> United Methodist Church: 56 Whitlock Ave NW, Marietta, GA 30064 <sup>3</sup>	<b>11/15/2021</b>

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<sup>1</sup> See Affidavit of Service, filed October 18, 2021

<sup>2</sup> See Affidavit of Service, filed October 15, 2021.

<sup>3</sup> See Affidavit of Service, filed October 15, 2021.

Burying their heads in the sand as to the service of the Third-Party Complaint does not entitle the Third-Party Defendants to any relief—instead, it places them in default.

### **ARGUMENT**

#### **A. Leave of Court was Not Required for Mt. Bethel to Serve its Third-Party Complaint.**

With their Motions, each of the Third-Party Defendants ask the Court to “strike, vacate and dismiss” the:

- Summons;
- Service of the Summons;
- Affidavit of Service of the Summons;
- Interrogatories;
- Requests for Admissions; and
- Rule 5.2 Certificates confirming service of the above discovery.

(Motions to Strike/Vacate/Dismiss, at 1, 8.) The basis for this relief, the Motions assert, is that:

[u]nless and until this Court enters its order joining [the Third Party Defendant] as a party . . . the Summons to [the Third Party Defendant] is void and must be stricken, vacated and dismissed.

(Motions to Strike/Vacate/Dismiss, ¶ 9.) The Third-Party Defendants’ Motions then cite to the joinder statute of Georgia’s Civil Practice Act, O.C.G.A. § 9-11-13. Id.

But Mt. Bethel pled and served the Third-Party Defendants pursuant to Georgia’s Third-Party Practice Act, O.C.G.A. § 9-11-14, which permits the addition of parties alleged to be secondarily liable *without* the need to obtain prior leave of Court. Specifically, Mt. Bethel’s Third-Party Complaint alleges that:

The North Georgia Conference of The United Methodist Church, Inc., Bishop Sue Hauptert-Johnson, District Superintendent Dr. Jessica Terrell, and John Does 1-5 . . . **are secondarily liable to Mt. Bethel—should Petitioner Trustees of the North Georgia Conference, Inc. (the “Trustees”) prevail on its claims against Mt. Bethel and the seizure of Mt. Bethel’s property—and are also added as parties by service of this Answer, Counterclaim and Third-Party Complaint pursuant to O.C.G.A. § 9-11-14.**

(Counterclaim and Third-Party Complaint, ¶11) (emphasis added).

Georgia’s Third-Party Practice Act further provides that it is not necessary to obtain leave of court, where, as here, a Third-Party Complaint is filed within ten days of an Answer:

The third-party plaintiff **need not obtain leave to make the service** if he files the third-party complaint not later than ten days after he serves his original answer.

O.C.G.A. § 9-11-14(a) (emphasis added).

“The impleader provisions of [O.C.G.A. § 9-11-14(a)] are to be liberally construed so as to avoid multiplicity of actions, save time and cost of reduplication of evidence, and to assure consistent results from similar evidence and common issues.” Voyager Life & Health Ins. Co. v. Pulaski Banking Co., 181 Ga. App. 201, 202 (1986). For that reason, although Mt. Bethel’s Answer denies that it is liable to Petitioner Trustees of the North Georgia Conference (“Trustees”), Mt. Bethel explicitly pleads O.C.G.A. § 9-11-14 by alleging *alternatively* that the Third-Party Defendants are liable to Mt. Bethel if and to the extent Mt. Bethel is ultimately found to be liable to the Trustees. (See Counterclaim and Third-Party Complaint, ¶¶ 11, 101, 106 and 112.)

The Third-Party Defendants make no attempt to dispute the procedural or substantive merits of Mt. Bethel's allegations and service upon them as third-party defendants. They instead ignore Mt. Bethel's Third-Party Complaint in asking the Court to strike the summonses issued to them for alleged lack of leave. But, per O.C.G.A. § 9-11-14, leave of court was not required.

**B. Alternatively Moving for Joinder of the Third-Party Defendants Does Not Nullify Service of the Third-Party Complaint.**

Joinder of additional parties, even where there is no basis for the assertion of a third-party claim, is permitted by O.C.G.A. § 9-11-13(h). But, unlike O.C.G.A. § 9-11-14, such joinder pursuant to O.C.G.A. § 9-11-13 requires a defendant to obtain prior leave of court. Here, Mt. Bethel took both steps: (1) asserting secondary liability under Georgia's third-party practice statute, O.C.G.A. § 9-11-14, thereby adding the Third-Party Defendants as a matter of right; and (2) by pleading and requesting joinder of the Third-Party Defendants pursuant to O.C.G.A. § 9-11-13(h). (See Counterclaim and Third-Party Complaint, ¶ 10.)

As such, even had the Third-Party Defendants contested any procedural or substantive basis for Mt. Bethel's third-party claims—and then succeeded in those arguments—it would remain that the Court could allow Third-Party Defendants to be brought into the action as a matter of discretion. Now though, it appears that this alternative request for joinder is unnecessary since the Third-Party Defendants have not objected to the appropriateness of their designation and service as third party defendants pursuant to O.C.G.A. § 9-11-14, and any potential objections have thus been waived. Therefore, a resulting joinder of *all claims* against them is now

appropriate, without leave, pursuant to O.C.G.A. § 9-11-18 (“A party asserting a claim to relief as [a] . . . third-party claim may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.”).

As Georgia’s Court of Appeals has held in situations where, as here, both third-party and independent direct claims are pled, “when impleader is proper under O.C.G.A. § 9-11-14 (a), joinder under O.C.G.A. § 9-11-18 (a) permits the direct claims.” Shleifer v. Bridgestone-Firestone, 223 Ga. App. 256, 257 (1996). And, joinder in such circumstances is a matter of right, not in the trial court’s discretion. See id. (“[third party defendant] cites no authority for the proposition that joinder under O.C.G.A. § 9-11-18 (a) is discretionary, and we find none”).

The Georgia Civil Practice Act’s “[g]eneral rules of pleading” expressly permit parties to assert and pursue alternative theories of relief by providing that:

**A party may set forth two or more statements of a claim or defense alternatively or hypothetically**, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has, regardless of consistency and whether based on legal or on equitable grounds or on both.

O.C.G.A. § 9-11-8(e)(2) (emphasis added). Thus, Mt. Bethel could properly assert in its Counterclaim and Third-Party Complaint that the Third-Party Defendants are secondarily liable third-party defendants, and also (or alternatively) necessary parties for permissive joinder to Mt. Bethel’s counterclaims. O.C.G.A. § 9-11-8 makes

clear that the assertion of the latter does nothing to negate the effectiveness of pleading the former.

Again, the Third-Party Defendants' Motions offer no explanation or justification for ignoring Mt. Bethel's verified pleading that has been properly served, adding them as third-party defendants pursuant to O.C.G.A. § 9-11-14. And, the Third-Party Complaint having been served, these Parties were obliged to answer—but have failed to do so. See O.C.G.A. § 9-11-14(a) (“The person served with the summons and third-party complaint . . . **shall** make his defenses to the third-party plaintiff's claim as provided in Code Section 9-11-12 [*i.e.*, within 30 days of service of process].”) (Emphasis added.)

### CONCLUSION

The Third-Party Defendants ignore being served with a Third-Party Complaint and argue as if a Motion for Joinder were the exclusive means by which they could be added by Mt. Bethel as a party. But the Civil Practice Act does not permit parties to simply stick their heads in the sand and ignore the actual filing and service of third-party complaint—as occurred in this case. For that reason, as noted above, the Motions to “Strike/Vacate/Dismiss” must be denied.

*(Signature page to follow)*

This 6<sup>th</sup> day of December, 2021.

MOORE INGRAM JOHNSON & STEELE, LLP

Emerson Overlook  
326 Roswell Street  
Marietta, Georgia 30060  
(770) 429-1499  
ringram@mijs.com  
jad@mijs.com  
dpconley@mijs.com

/s/ Robert D. Ingram  
Robert D. Ingram  
Georgia Bar No. 383405  
Jeffrey A. Daxe  
Georgia Bar No. 213701  
David P. Conley  
Georgia Bar No. 141760

8505 Cheetah Lane  
Spotsylvania, VA 22553  
(540) 538-3202  
kbminlaw@att.net

Keith Boyette  
*Pro Hac Vice*

288 Washington Ave.  
Marietta, GA 30060-1979  
770-422-3233  
770-423-1499 (F)  
[darden@colehousemediation.com](mailto:darden@colehousemediation.com)

DOWNEY & CLEVELAND, LLP

David P. Darden  
Georgia Bar No 205350

*Attorneys for Mt. Bethel*

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing CONSOLIDATED RESPONSE IN OPPOSITION TO THE MOTIONS TO STRIKE / VACATE / DISMISS upon the following by electronically filing same with the Court via Peachcourt, which will automatically send e-mail notification of such filing to the following attorneys of record, as follows:

T.E. Cauthorn, Esq.  
Cauthorn, Nohr & Owen  
212 Church Street  
Marietta, GA 30060  
tec@cauthornohr.com

J. Wickliffe Cauthorn, Esq.  
The Cauthorn Firm  
1984 Howell Mill Road  
Box 20059  
Atlanta, GA 30325  
wick@thecauthornfirm.com

This 6<sup>th</sup> day of December, 2021.

MOORE INGRAM JOHNSON & STEELE, LLP

/s/David P. Conley  
David P. Conley

Emerson Overlook  
326 Roswell Street, Suite 100  
Marietta, Georgia 30060  
770-429-1499