

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

United States of America,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:08-cv-03525-JOF
0.30 Acres of Land more or less, <i>situate</i>	:	
<i>in Cobb County, State of Georgia</i> , et al.	:	
	:	
Defendants.	:	

OPINION & ORDER

This matter is before the court on Defendants Wayne and Jeanne Brackett’s motion to stay [14].

This condemnation case was filed by the United States of America on November 14, 2008. On November 21, 2008, the United States filed a notice of condemnation, which was addressed to the Bracketts, among others. Defendants Wayne A. Brackett and Jeanne V. Brackett answered the complaint on February 10, 2009. On March 10, 2009, the Bracketts filed the present motion for stay pending proper service. The motion claims that the Bracketts were not properly served, have not waived service in this action, and have formally reserved their defenses based on insufficient service. The Bracketts request that the court temporarily stay the litigation for thirty days so that the “AUSA may properly deliver

its pleadings in this matter to Defendants' counsel, at which time Defendants' counsel will waive service." Docket Entry [14]. In response, Plaintiff argues that the stay cannot be granted because the Bracketts have not properly challenged the service, nor have they stated their basis for challenging service. Furthermore, Plaintiff argues that by answering without asserting insufficient or improper service as a defense, they have now waived it. The Bracketts filed an amended answer in May of 2009 in which they assert insufficient service of process as a defense.

The Bracketts requested a thirty-day stay in March of 2009. The parties have now had more than nine months since that time to resolve any issues regarding service of process. The court declines to address Plaintiff's contentions that the Bracketts waived their rights to assert a defense of insufficient service, and the court makes no comment on the validity of the Bracketts' assertion that they were not properly served. However, the court does not find it prudent at the present time to stay the case. Defendants' motion to stay is DENIED [14]. **IT IS SO ORDERED** this 24th day of February 2010.

/s/ J. Owen Forrester
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE