N.C.P.I.—Civil—501.30
CONTRACTS—ISSUE OF FORMATION—DEFENSE OF MUTUAL MISTAKE OF FACT
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501.30 CONTRACTS—ISSUE OF FORMATION—DEFENSE OF MUTUAL MISTAKE OF FACT

The *(state number)* issue reads:

"Did the defendant enter into the contract with the plaintiff under a mutual mistake of fact?"[1]

(You will answer this issue only if you have answered the *(state number)*[2] issue "Yes" in favor of the plaintiff.)

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence,[3] three things:

First, that the defendant entered into the contract with the plaintiff while mistakenly [believing] [assuming] that (*state past or existing fact*[4] *comprising the mistaken belief or assumption*).

Second, that, but for the defendant's mistaken [belief] [assumption], the

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1 In these types of cases, a decree setting aside the contract is not the only remedy. In many instances, the court will reform the contract so that it conforms to the parties' original mutual intent. *Maxwell v. Wayne Nat'l Bank*, 175 N.C. 180, 183, 95 S.E. 147, 149 (1918).

2 See N.C.P.I.—501.01 (Contracts—Issue of Formation).

3 *NOTE WELL: For conveyances, the burden of proof is higher. "Although this Court will readily grant equitable relief in the nature of reformation or rescission on grounds of mutual mistake when the circumstances require such relief, we jealously guard the stability of real estate transactions and require clear and convincing proof to support the granting of this equitable relief in cases involving executed conveyances of land."* Marriott Fin. Services, Inc. v. Capitol Funds, Inc*., 288 N.C. 122, 139, 217 S.E.2d 551, 562 (1975);* see also Inland Harbor Homeowner's Ass'n, Inc. v. St. Joseph's Marina*, __ N.C. App. __, __, 724 S.E.2d 92, 97 (2012) ("[T]he evidence presented to prove mutual mistake must be clear, cogent, and convincing, and the question of reformation on that basis is a matter to be determined by the fact finder."), disc. rev. allowed on other grounds, No. 156P12, 2012 N.C. LEXIS 806 (June 13, 2012), remanded to __ N.C. App. __, 731 S.E.2d 704 (2012). Compare N.C.P.I.—850.10 (Deeds—Action to Set Aside—Mutual Mistake of Fact).*

4 The mistake must concern a past or existing fact. A mistaken belief or assumption as to a future performance or predicted future event does not qualify. *Opsahl v. Pinehurst, Inc.*, 81 N.C. App. 56, 62, 344 S.E.2d 68, 72 (1986).

defendant would not have entered into the contract with the plaintiff.[5]

And third, that the [plaintiff] [plaintiffs' agent][6] [had the same mistaken [belief] [assumption] as the defendant][7]

[knew or had reason to know that the defendant entered into the contract based upon a mistaken [belief] [assumption]][8]

[caused the defendant's mistaken [belief] [assumption]].[9]

Finally, as to the *(state number)* issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant entered into the contract with the plaintiff under a mutual mistake of

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5 "[T]he mistake must be of an existing or past fact which is material; it must be as to a fact which enters into and forms the basis of the contract, or in other words it must be of the essence of the agreement . . . and must be such that it animates and controls the conduct of the parties." *MacKay v. McIntosh*, 270 N.C. 69, 73, 153 S.E.2d 800, 804 (1967) (quoting 17 Am.Jur.2d Contracts §143).

6 If a party's agent knows or has reason to know of the mistake, *Howell v. Waters*, 82 N.C. App. 481, 487-88, 347 S.E.2d 65, 69 (1986), *disc. rev. denied*, 318 N.C. 694, 351 S.E.2d 747 (1987), or causes the mistake, *MacKay*, 270 N.C. at 72-73, 153 S.E.2d at 803, the agent's state of mind or conduct is imputed to its principal. *Id*.

7 "A unilateral mistake, unaccompanied by fraud, imposition, undue influence or like oppressive circumstances, is not sufficient to avoid a contract or conveyance." *Marriott Fin. Servs.*, 288 N.C. at 136, 217 S.E.2d at 560. *See also Tarlton v. Keith,* 250 N.C. 298, 305, 108 S.E.2d 621, 625 (1959)*; Stevenson v. Stevenson*, 100 N.C. App. 750, 398 S.E.2d 334 (1990). *Howell,* 82 N.C. App. at 487, 347 S.E.2d at 69. A mistake of law, even if mutual, will not justify the setting aside of a contract. *Foster v. Carolina Tile & Marble Co.*, 132 N.C. App. 505, 509, 513 S.E.2d 75, 78, *disc. rev. denied*, 350 N.C. 830, 537 S.E.2d 822 (1999); *Swain v. C&N Evans Trucking Co., Inc.*, 126 N.C. App. 332, 484 S.E.2d 845 (1997); *Vernon v. Steven L. Mabe Builders*, 110 N.C. App. 552, 430 S.E.2d 676, *review granted*, 334 N.C. 689, 436 S.E.2d 388 (1993), *rev'd on other grounds*, 336 N.C. 425, 444 S.E.2d 191 (1994). Furthermore, one who signs a paper writing is under a duty to ascertain its contents and, in the absence of a showing that he was misled willfully or misinformed by the other party as to those contents, he is held to have signed with full knowledge and assent as to what is therein contained. *Martin v. Vance*, 133 N.C. App. 116, 514 S.E.2d 306 (1999); *Massey v. Duke Univ.*, 130 N.C. App. 461, 503 S.E.2d 155 (1998).

8 *Creech v. Melnik*, 347 N.C. 520, 495 S.E.2d 907 (1998).

9 *Howell*, 82 N.C. App. at 487-88, 347 S.E.2d at 69.

fact, then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, it would be your duty to answer this issue "No" in favor of the plaintiff.