

CONTRACTS--ISSUE OF FORMATION--DEFENSE OF CONSTRUCTIVE FRAUD--
REBUTTAL BY PROOF OF OPENNESS, FAIRNESS AND HONESTY.

The (*state number*) issue reads:

"Did the plaintiff act openly, fairly and honestly when inducing the defendant to enter into the contract?"¹

(You are to answer this issue only if you have answered the (*state number*)² issue "Yes" in favor of the defendant.)

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that, prior to the defendant's entry into the contract, the plaintiff made a full, open disclosure of material facts, that he dealt with the defendant fairly, without oppression, imposition or fraud, and that he acted honestly.³

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff acted openly, fairly and honestly when inducing the defendant to enter into the contract,

¹*Wachovia Bank & Trust Co. v. Johnston*, 269 N.C. 701, 711, 153 S.E.2d 449, 457 (1967); *McNeill v. McNeill*, 223 N.C. 178, 25 S.E.2d 615 (1943); *In re Will of Sechrest*, 140 N.C. App. 464, 471, 537 S.E.2d 511, 517 (2000), *disc. rev. denied*, 353 N.C. 375, 547 S.E.2d 16 (2001); *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 820, 487 S.E.2d 166, 168 (1997).

²See N.C.P.I.--Civil 501.55 (Contracts--Issue of Formation--Defense of Constructive Fraud).

³*Underwood v. Stafford*, 270 N.C. 700, 702, 155 S.E.2d 212-13 (1967); *Mountain Top Youth Camp, Inc. v. Lyon*, 20 N.C. App. 694, 697, 202 S.E.2d 498, 500 (1974).

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(Continued).

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

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