

516.15 AGENCY—RATIFICATION.

*NOTE WELL: This charge should be used when the evidence of agency or authority is lacking or if the jury may resolve those issues against the plaintiff. Ratification applies if (1) the alleged agent represented [himself] [herself] to be acting for the principal (whether or not the plaintiff was aware of the alleged agent's lack of authority), and (2) the principal, having knowledge of the facts, thereafter ratified the contract negotiated by the alleged agent.*

This (*state number*) issue reads:

"Did the defendant ratify the (*describe transaction*) entered into by the plaintiff and (*name agent*)?"

[You will answer this issue only if you have answered (*specify issues and answers necessary to require an answer to this issue*), thus finding that (*name agent*) was not authorized to act as the defendant's agent in (*describe transaction*) [on] [at] (*specify date or time*).]

When a person without authority, or with limited authority, purports to act as an agent in doing an unauthorized act, the supposed principal, upon discovery of the facts, may ratify the act of the agent and thus give it the same effect as though it had been authorized.<sup>1</sup>

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 the following three things:

First, that (*name agent*) purported to act, or represented [himself] [herself] to be acting, as the agent of the defendant in (*describe transaction*). (When an act is done by a person acting on [his] [her] own, without representation or any suggestion that [he] [she] is acting as agent of the

alleged principal, then the law of ratification does not apply.)<sup>2</sup> (However, the fact that a person dealing with an agent knows at the time that the agent does not have authority to bind the principal in the matter does not prevent ratification of the agreement by the principal.)<sup>3</sup>

Second, that after (*specify transaction*) the defendant knew (or came to know) all the facts material to (*describe transaction*).<sup>4</sup> (The defendant was not required to make an investigation, or even a reasonable inquiry, to become informed of such facts.<sup>5</sup> However, if you find that a person of ordinary intelligence would have inferred or deduced the relevant facts, then you may find that the defendant had knowledge of those facts.<sup>6</sup>)

And Third, that the defendant, having such knowledge, ratified the transaction. "Ratification" means an unambiguous expression of an intent to accept or be bound by the transaction. This expression may be by word or deed (or even by silence), so long as it demonstrates an intent to ratify the agreement.<sup>7</sup> However, it is not necessary that the principal actually intend to ratify the unauthorized transaction so long as words or conduct reasonably tend to show an intention to ratify.<sup>8</sup> (Furthermore, I instruct you that the principal, upon discovering the relevant facts, may not ratify the transaction in part and reject it in part.<sup>9</sup> An intent to accept the benefits of an agreement is, in law, sufficient intent to ratify that agreement. (If the principal, by remaining silent, intends to have the benefits should the unauthorized transaction afterwards turn out to be profitable, then that silence amounts to ratification. In such a case, the principal must reject the entire agreement within a reasonable time after learning the facts, or be bound by it.))<sup>10</sup>

So, finally, upon this (*state number*) issue, on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that, in (*describe transaction*), (*name agent*) purported to act as the agent of the defendant, and that the defendant thereafter had knowledge of all facts material to (*describe transaction*), and having such knowledge ratified the agreement by word or deed (or by silence), 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.

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1. *Patterson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 266 N.C. 489, 492, 146 S.E.2d 390, 393 (1966).

2. *Inv. Props. of Asheville, Inc. v. Allen*, 283 N.C. 277, 288, 196 S.E.2d 262, 269 (1973).

3. *McCrillis v. A&W Enterprises, Inc.*, 270 N.C. 637, 643, 155 S.E.2d 281, 285 (1967).

4. Applying the doctrine of ratification in the digital age, the Court of Appeals in *IO Moonwalkers v. Banc of Am. Merch. Servs.*, affirmed partial summary judgment on the issue where defendant received and reviewed the proposed contracts via DocuSign, received and reviewed the purportedly final contracts via DocuSign, and then received services from plaintiff covered by those contracts for several months. \_\_\_ N.C. App. \_\_\_, \_\_\_, 814 S.E.2d 583, 588 (2018), *disc. rev. denied*, \_\_\_ N.C. \_\_\_, 814 S.E.2d 101 (2018).

5. *Carolina Equip.& Parts Co. v. Anders*, 265 N.C. 393, 401, 144 S.E.2d 252, 258 (1965).

6. *Id.*

7. *Carter v. TD Ameritrade Holding Corp.*, 218 N.C. App. 222, 229, 721 S.E.2d 256, 262 (2012) ("Intent to ratify can be evidenced by a course of conduct on the part of the principal which reasonably tends to show an intention on his part to ratify the agent's unauthorized acts.")

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8. *Carolina Equip. & Parts Co.*, 265 N.C. at 401, 144 S.E.2d at 258 (observing that words or conduct *inconsistent* with an intent *not* to ratify signify assent or intent to ratify).

9. *Id.*; *Patterson*, 266 at 494, 146 S.E.2d at 394 (1966). However, the ratification of one act does not require the ratification of another, entirely different act. *Id.*

10. *Greene v. Spivey*, 236 N.C. 435, 445, 73 S.E.2d 488, 495 (1952). For example, a principal may not wait and see if the price of a certain stock will go up before deciding whether or not to ratify the purchase of shares.