
800.10 NEGLIGENT MISREPRESENTATION.[1]

The (state number) issue reads:

"Was the plaintiff financially damaged by a negligent misrepresentation of the defendant?"

A person who obtains or communicates information to other persons knowing or intending that it be relied upon has a duty to exercise reasonable care or competence in obtaining or communicating that information.[2] A breach of this duty is a negligent misrepresentation.

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, six things:

First, that in the course of [the defendant's [business] [profession] [employment]] [a transaction in which the defendant had a financial interest], the defendant supplied information to [the plaintiff] [a limited group of persons of which the plaintiff was a member] [the defendant's client with the knowledge that the client intended to supply the information to the plaintiff].

Second, that the defendant

[intended for the plaintiff]

[intended for a person within a limited group of which the plaintiff was a member]

[knew that the defendant's client intended for [the plaintiff] [a person within a limited group of which the plaintiff was a member]]

to rely on that information for guidance or benefit in a particular business transaction (or one substantially similar to it).

Third, that the information supplied by the defendant was false.

Fourth, that the defendant failed to exercise reasonable care or competence in obtaining or communicating the false information. [Reasonable care or competence means that degree of care, knowledge, intelligence or judgment which a prudent person would use under the same or similar circumstances.][3] [Reasonable care or competence in the case of a (state category of business person or professional, e.g., lawyer, accountant, appraiser, engineer) is (state standard of care applicable to the particular profession).][4]

Fifth, that the plaintiff actually relied on the false information supplied by the defendant, and that the plaintiff's reliance was justifiable.[5] Actual reliance is direct reliance upon false information.[6] Reliance is justifiable if, under the same or similar circumstances, a reasonable person, in the exercise of ordinary care, [would have relied on the false information] [would not have discovered the information was false].[7]

And sixth, that such reliance proximately caused the plaintiff to incur financial damage.[8] Proximate cause is a cause which in a natural and continuous sequence produces a person’s damage, and is a cause which a reasonable and prudent person could have foreseen would probably produce such damage or some similar injurious result.

There may be more than one proximate cause of damage. Therefore, the plaintiff need not prove that the defendant’s [false representation] [concealment] was the sole proximate cause of the plaintiff’s damages. The plaintiff must prove, by the greater weight of the evidence, only that the defendant’s [false representation] [concealment] was a proximate cause.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff was financially

damaged by a negligent misrepresentation of the defendant, 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. *See generally Raritan River Steel Co. v. Cherry, Bekaert & Holland*, 322 N.C. 200, 206, 367 S.E.2d 609, 612 (1988) ("The tort of negligent misrepresentation occurs when a party justifiably relies to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care." (citation omitted)); *Forbes v. Par Ten Group, Inc.*, 99 N.C. App. 587, 595, 394 S.E.2d 643, 648 (1990); *Blackwell v. Dorosko*, 93 N.C. App. 310, 313, 377 S.E.2d 814, 817 (1989); *Stanford v. Owens*, 76 N.C. App. 284, 286, 332 S.E.2d 730, 731-32 (1985), *disc. rev. denied*, 314 N.C. 670, 336 S.E.2d 402 (1985); *Davidson & Jones, Inc. v. County of New Hanover*, 41 N.C. App. 661, 669, 255 S.E.2d 580, 585 (1979), *cert. denied*, 298 N.C. 295, 259 S.E.2d 911 (1979).

2. *See Raritan River Steel Co.*, 322 N.C. at 214, 367 S.E.2d at 617 (adopting the standard set forth in the *Restatement (Second) of Torts* § 552 (1977)), the Court states that this approach "recognizes that liability should extend not only to those with whom the accountant is in privity or near privity, but also to those persons, or classes of persons, whom he knows and intends will rely on his opinion, or whom he knows his client intends will so rely").

3. See *Glover v. Dailey*, 254 N.C. App. 46, 53; 802 S.E.2d 136, 141 (2017) (where a question is susceptible to more than one interpretation, selection of a reasonable interpretation is evidence of reasonable care when communicating an answer).

4. The Court should instruct the jury in conformity with the applicable standard of care. In most cases, the standard may be stated in the language of the first alternative. With regard to certain professionals, the standard of care stated in certain charges or cases should be followed: Attorneys (*see* N.C.P.I.-Civil 811.00 ("Legal Negligence: Duty to Client")); Accountants (*see Raritan River Steel Co.*, 322 N.C. at 206, 367 S.E.2d at 612-13); Appraisers (*see Ballance v. Rinehart*, 105 N.C. App. 203, 207-08, 412 S.E.2d 106, 109 (1992); *Alva v. Cloninger*, 51 N.C. App. 602, 611, 277 S.E.2d 535, 540-41 (1981)); Architects (*see Davidson & Jones, Inc.*, 41 N.C. App. at 666-67, 255 S.E.2d at 584); Engineers (*see Stanford v. Owens*, 46 N.C. App. 388, 400, 265 S.E.2d 617, 625 (1980)); Health Care Providers (*see* N.C.P.I.-Civil 809.00 ("Medical Negligence: Direct Evidence of Negligence Only")); Property Inspectors (*see Johnson v. Beverly-Hanks & Assoc., Inc.*, 97 N.C. App. 335, 345, 388 S.E.2d 584, 590 (1990)); Realtors (*see Spence v. Spaulding & Perkins, Ltd.*, 82 N.C. App. 665, 667, 347 S.E.2d 864, 865-66 (1986)); Surveyors (*see Stanford*, 46 N.C. App. at 400, 265 S.E.2d at 625).

5. *NOTE WELL: In Crawford v. Mintz, 195 N.C. App. 713, 673 S.E.2d 746 (2009), the North Carolina Court of Appeals rejected the dicta appearing in Forbes, 99 N.C. App. at 598, 394 S.E.2d at 649; Blackwell, 93 N.C. App. at 313, 377 S.E.2d at 817; and Owens, 76 N.C. App. at 287, 332 S.E.2d at 732, suggesting that contributory negligence is an affirmative defense to an action for negligent misrepresentation.*

In a previous footnote to this instruction, the North Carolina Pattern Jury Instruction Civil Subcommittee recommended against a charge on contributory negligence, pointing out that the foregoing cases did "not appear to recognize that an inconsistent verdict would result from a 'yes' on the first issue (where the plaintiff proves by the greater weight that his reliance was justifiable) and a 'yes' on the issue of contributory negligence (where the defendant proves by the greater weight that the plaintiff's reliance was unreasonable)."

In Crawford, the Court stated that it found the "reasoning in the North Carolina Pattern Jury Instructions persuasive," Crawford, 195 N.C. App. at 717-718, 673 S.E.2d at 749, explaining that the trial court's use of the pattern instruction set out above required the jury to find that Plaintiffs had proved they exercised due care in relying on Defendants' representation, and that Plaintiffs could not have discovered that the property was not connected to the city sewer system through the exercise of due care. This instruction therefore required the jury to make a determination that Plaintiffs were not contributorily negligent in order for the jury to decide the issue of negligent misrepresentation in Plaintiffs' favor. Further, unlike an instruction on contributory negligence, where the burden of proof would have been on Defendants, the burden of proof for negligent misrepresentation remained with Plaintiffs. Id.

6. *See Raritan River Steel Co.*, 322 N.C. at 209, 367 S.E.2d at 614. Note that, because actual reliance may or may not be justified, evidence of actual reliance alone does not satisfy a plaintiff's burden to show justifiable reliance. *See Cordaro v. Harrington Bank, FSB*, 260 N.C. App. 26, 36, 817 S.E.2d 247, 255 (2018).

7. *See Arnesen v. Rivers Edge Golf Club & Plantation, Inc.*, 368 N.C. 440, 449, 781 S.E.2d 1, 8 (2015) ("Reliance is not reasonable if a plaintiff fails to make any independent investigation or fails to demonstrate he was prevented from doing so.") (citations omitted) (internal quotation marks omitted); *see also Ke v. Zhou*, 256 N.C. App. 485, 488, 808 S.E.2d 458, 460 (2017) (standing for the proposition that reliance *may* be reasonable where limited independent investigation is supported by reasonable statements from the defendant to induce reliance).

8. *See Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 40, 626 S.E.2d 315, 322 (2006) (finding no allegation that "the information provided was prepared without reasonable care, or that any supposed breach was a proximate cause of the injury," and finding a "fail[ure] to allege sufficient facts which . . . would state a claim for negligent misrepresentation").