

N.C.P.I—Civil 814.55

FRAUDULENT TRANSFER—PRESENT AND FUTURE CREDITORS—INTENT TO DELAY, HINDER OR DEFRAUD—TRANSFEREE’S DEFENSE OF GOOD FAITH AND REASONABLY EQUIVALENT VALUE.

GENERAL CIVIL VOLUME

REPLACEMENT JUNE 2015

N.C. Gen. Stat. § 39-23.8(a)

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814.55 FRAUDULENT TRANSFER—PRESENT AND FUTURE CREDITORS—INTENT TO DELAY, HINDER OR DEFRAUD—TRANSFEREE'S DEFENSE OF GOOD FAITH AND REASONABLY EQUIVALENT VALUE.

The (*state number*) issue reads:

“Did [defendant] [state name of defendant’s predecessor in title]<sup>1</sup> acquire the (*name asset*) in good faith and for a reasonably equivalent value?”

You will answer this issue only if you have answered the (*state number*) 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, two things:<sup>2</sup>

First, [the defendant] [the defendant's predecessor in title (state name)] acquired the (*name asset*) in good faith.

And Second, [the defendant] [the defendant's predecessor in title] gave a reasonably equivalent value<sup>3</sup> for the (*name asset*).

Finally, as to this (*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] [the defendant's predecessor in title] acquired the (*name asset*) in good faith and for a reasonably equivalent value, 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, then it would be your duty to answer this issue “No” in favor of the plaintiff.

N.C.P.I—Civil 814.55

FRAUDULENT TRANSFER—PRESENT AND FUTURE CREDITORS—INTENT TO DELAY, HINDER OR DEFRAUD—TRANSFeree’S DEFENSE OF GOOD FAITH AND REASONABLY EQUIVALENT VALUE.

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1 N.C. Gen. § 39-23.8(a) (a transfer or obligation is not voidable against any subsequent transferee or obligee of a person who took in good faith and for a reasonably equivalent value).

*NOTE WELL:* If supported by the evidence, a separate issue should be submitted as to the defendant and each predecessor in title who the defendant contends took in good faith and for a reasonably equivalent value.

2 N.C. Gen. Stat. § 39-23.8(a). See *Estate of Hurst ex rel. Cherry v. Jones*, \_\_N.C. App. \_\_, \_\_, 750 S.E.2d 14, 20 (2013) (discussing burden of proof on person who invokes defense under N.C. Gen. Stat. § 39-23.8(a)).

3 “To evaluate whether reasonably equivalent value was exchanged, we examine the net effect of the transaction on the debtor’s [financial condition] and whether there has been a net loss to the debtor’s [financial condition] as a result of the transaction.” *Estate of Hurst*, \_\_N.C. App. at \_\_, 750 S.E.2d at 20.