
800.06 CONSTRUCTIVE FRAUD-REBUTTAL BY PROOF OF OPENNESS,
FAIRNESS AND HONESTY.

The (*state number*) issue reads:

"Did the defendant act openly, fairly and honestly in bringing about (*identify transaction*)?"¹

(You are to 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, that, with regard to (*identify transaction*), the defendant made a full, open disclosure of material facts, that *he* dealt with the plaintiff fairly, without oppression, imposition or fraud, and that *he* acted honestly.²

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 acted openly, fairly and honestly in bringing about (*identify transaction*), 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.

¹ The presumption of constructive fraud may be rebutted by the fiduciary's "showing, for example, that the confidence reposed in him was not abused." *Forbis v. Neal*, 361 N.C. 519, 529, 649 S.E.2d 382, 388 (2007) (citation and internal quotation marks omitted); see *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).

² *Underwood v. Stafford*, 270 N.C. 700, 702, 155 S.E.2d 211, 212-13 (1967); *Poore v. Swan Quarter Farms, Inc.*, 95 N.C. App. 449, 450, 382 S.E.2d 835, 836 (1989) (observing that it is the fiduciary's burden to establish fairness, openness, and absence of

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imposition, undue advantage, actual or constructive fraud); *Mountain Top Youth Camp, Inc. v. Lyon*, 20 N.C. App. 694, 697, 202 S.E.2d 498, 500 (1974) (fiduciary must make affirmative showing of full disclosure and fair dealing).