

SLANDER OF TITLE.<sup>1</sup>

The (*state number*) issue reads:

"Did the plaintiff suffer a monetary loss as a result of a false and malicious statement by the defendant about (*name property*)?"

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, five things:<sup>2</sup>

First, that the plaintiff owned (*name property*).<sup>3</sup>

Second, that the defendant made a statement about the (*name property*). (Such statement may be oral or in writing.)

Third, the defendant's statement concerning (*name property*) was false.<sup>4</sup>

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<sup>1</sup>This instruction states the common law standard. There is also a statutory right of action where a property owner is injured as a result of a registration of a claim or notice on the public registry "for the purpose of asserting false or fictitious claims to real property." N.C.G.S. §47B-6 (1984). The statutory right of action also authorizes an award of attorneys fees and treble damages. *Id.*

<sup>2</sup>*Cardon v. McConnell*, 120 N.C. 461, 462, 27 S.E. 109, 110 (1897) (discussing the elements of slander of title); *Selby v. Taylor*, 57 N.C. App. 119, 120-21, 290 S.E.2d 767, 768 (1982) (listing the elements of slander of title).

<sup>3</sup>The property may be real or personal, tangible or intangible. *Selby*, 57 N.C. App. 119, 290 S.E.2d 767 (real property); *McElwee v. Blackwell*, 94 N.C. 261 (1886) (trademark).

<sup>4</sup>*Selby*, 57 N.C. App. 119, 290 S.E.2d 767; *Cardon*, 120 N.C. 461, 27 S.E. 109 (1897). The filing of a truthful *lis pendens* is not grounds for a claim of slander of title. *Mecimore v. Cothren*, 109 N.C. App. 650, 656, 428 S.E.2d 470, 474 (1993); *Whyburn v. Norwood*, 47 N.C. App. 310, 267 S.E.2d 374 (1980).

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Fourth, that the defendant made the statement with malice.<sup>5</sup> A person acts with malice when he makes a statement about another person's property with the express intent<sup>6</sup> of causing injury. You may infer, but you are not compelled to find, that the defendant acted with malice if [the statement, under the circumstances, was not made in good faith to assert a real claim] [was without a substantial basis in fact] [a reasonable person would not have had a good faith belief in the truth of the statement].<sup>7</sup>

And Fifth, that the plaintiff suffered a monetary loss as a result of the defendant's statement about (*name property*).<sup>8</sup>

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 suffered a monetary loss as a result of a false and malicious statement by the

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<sup>5</sup>*Texas Co. v. Holton*, 223 N.C. 497, 27 S.E.2d 293 (1943); *Cardon*, 260 N.C. 461, 27 S.E. 109; *DuPont de Nemours and Co. v. Moore*, 57 N.C. App. 84, 291 S.E.2d 174 (1982).

<sup>6</sup>For an instruction on intent, see N.C.P.I.--Civil 101.46.

<sup>7</sup>*Cardon*, 260 N.C. 461, 27 S.E. 109. However, malice is not present where the statement is made in good faith, even if mistaken. *Harriss v. Sneed*, 101 N.C. 273, 7 S.E. 801 (1888).

<sup>8</sup>The monetary loss can be almost any cognizable economic harm resulting from a lost sale, *Selby*, 57 N.C. App. 119, 290 S.E.2d 767, or a loss of business or goodwill, *McElwee*, 94 N.C. 261.

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defendant about (*name property*), 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.

