

N.C.P.I.—Civil 814.65
FRAUDULENT TRANSFER—PRESENT AND FUTURE CREDITORS—LACK OF
REASONABLY EQUIVALENT VALUE.
GENERAL CIVIL VOLUME
FEBRUARY 2017
N.C. Gen. Stat. § 39-23.4(a)(2)

814.65 FRAUDULENT TRANSFER—PRESENT AND FUTURE CREDITORS—
LACK OF REASONABLY EQUIVALENT VALUE.¹

The (*state number*) issue reads:

“Was (*name debtor's*)² [transfer³ of the (*name asset*)⁴ a fraudulent transfer] [incurring of the (*name obligation*) a fraudulently incurred obligation]?”

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, two things:⁵

First, (*name debtor*) [transferred the (*name asset*)] [incurred the (*name obligation*)] without receiving a reasonably equivalent value in exchange for the [transfer] [obligation].⁶

And Second, at the time [of the transfer] [the obligation was incurred], (*name debtor*):

[was engaged or was about to engage in a business or a transaction for which *his* remaining assets were unreasonably small in relation to the business or transaction]⁷

[intended to incur or believed *he* would incur debts beyond *his* ability to pay them as they would become due].⁸

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the (*name debtor's*) [transfer of the (*name asset*) was a fraudulent transfer] [incurring of the (*name obligation*) was a fraudulently incurred obligation], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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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.

1 Section 39-23.9 of the Uniform Voidable Transactions Act (the "Act"), entitled "Extinguishment of claim for relief," is a statute of repose, establishing a finite and fixed time within which claims for relief under the Act may be brought. *KB Aircraft Acquisition, LLC v. Jack M. Berry, Jr., et al.*, ___ N.C. App. ___, ___, 790 S.E.2d 559, 568 (2016), *cert. granted*, 797 S.E.2d 3 (2017). For a claim to which N.C.P.I.-Civil 814.65 would apply, one brought pursuant to Section 39-23.4(a)(2), the period of repose is four years after the transfer was made or the obligation was incurred. N.C. Gen. Stat. § 39-23.9(2). Section 39-23.6 of the Act defines when a transfer is made or an obligation is incurred for purposes of the Act. The period of repose runs from the as-defined date of the transfer or obligation, not the date when a claimant first learns of the fraudulent nature of the transfer or obligation. *KB Aircraft v. Berry*, ___ N.C. App. at ___, 790 S.E.2d at 568.

2 A "debtor" is someone who is liable on a "right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." N.C. Gen. Stat. § 39-23.1(3) and (6).

3 A "transfer" includes "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance." N.C. Gen. Stat. § 39-23.1(12).

4 "Assets" do not include "property to the extent it is encumbered by a valid lien; property to the extent it is generally exempt under nonbankruptcy law; or an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant." N.C. Gen. Stat. § 39-23.1(2).

5 If a transfer made or obligation incurred by a debtor meets the requirements set forth below, it is immaterial whether the creditor's claim arose before or after the debtor made the transfer or incurred the obligation. N.C. Gen. Stat. § 39-23.4(a).

6 N.C. Gen. Stat. § 39-23.4(a)(2). "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 ex rel. Cherry v. Jones*, 230 N.C. App. 162, 169, 750 S.E.2d 14, 20 (2013).

7 N.C. Gen. Stat. § 39-23.4(a)(2)(a).

8 N.C. Gen. Stat. § 39-23.4(a)(2)(b).