

IDENTITY THEFT—IDENTIFYING INFORMATION. N.C. GEN. STAT. §§ 14-113.20(a) & 1-539.2C(a).<sup>1</sup>

The (*state number*) issue reads:

“Was the property or person of the plaintiff injured by reason of the defendant’s [obtaining] [possessing] [using] identifying information of the plaintiff?”

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, four things:

First, that the defendant [obtained] [possessed] [used] identifying information of the plaintiff.<sup>2</sup> Identifying information includes a person’s [social security or taxpayer identification numbers] [drivers license, State identification card, or passport numbers] [checking account, savings account, credit card or debit card numbers] [Personal Identification (PIN) Code<sup>3</sup>] [electronic identification numbers or electronic mail names or addresses] [internet account numbers or internet identification names] [digital signatures] [any numbers or information that can be used to access a person’s financial resources] [biometric data] [fingerprints]

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1. “Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes . . . may sue for civil damages.” N.C. GEN. STAT. § 1-539.2C(a) (2009).

Article 19C of Chapter 14 of the General Statutes deals with “Identity Theft” and N.C. GEN. STAT. § 14-113.20(a) (2009) therein states:

A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person’s name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony . . . .

2. *See supra* note 1.

3. “‘Personal identification code’ means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card [(FTC)] by the issuer to permit authorized electronic use of that FTC.” N.C. GEN. STAT. § 14-113.8(6) (2009).

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[passwords] [parent’s legal surname prior to marriage].<sup>4</sup>

[I instruct you that (state type of identifying information) would be identifying information.]

Second, that the defendant acted knowingly and with the intent<sup>5</sup> to fraudulently represent that the defendant was the plaintiff;<sup>6</sup>

Third, that the defendant acted for the purpose of [making financial or credit transactions in the plaintiff’s name] [obtaining something of value, benefit, or advantage]<sup>7</sup> [avoiding legal consequences<sup>8</sup>]<sup>9</sup>; and

Fourth, that the person or property of the plaintiff was injured by reason of the defendant’s [obtaining] [possessing] [using] identifying information of the plaintiff.

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4. N.C. GEN. STAT. § 14-113.20(b).

5. If an instruction on intent is required, see N.C.P.I.—Civil 101.46 (“Definition of [Intent][Intentionally]”).

6. N.C. GEN. STAT. § 14-113.20(a).

7. See N.C. GEN. STAT. § 14-113.20(c), which provides that it is not a violation of Article 19C “for a person to do any of the following”:

- (1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
- (2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
- (3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

If the defendant claims the applicability of one of the foregoing exceptions, then this instruction may need to be modified accordingly, e.g., “This element would not be satisfied if the defendant lawfully obtained credit information of the plaintiff in the course of a bona fide consumer or commercial transaction.”

8. See *State v. Dammons*, 159 N.C. App. 284, 293, 583 S.E.2d 606, 611 (2003) (concerning avoidance of trial on felony charges).

9. N.C. GEN. STAT. § 14-113(a).

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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 defendant [obtained] [possessed] [used] identifying information of the plaintiff, that the defendant acted knowingly and with the intent to fraudulently represent that the defendant was the plaintiff, that the defendant acted for the purpose of [making financial or credit transactions in the plaintiff's name] [obtaining something of value, benefit, or advantage] [avoiding legal consequences], and that the person or property of the plaintiff was injured by reason of the defendant's [obtaining] [using] identifying information of the plaintiff, 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.

