

501.40 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF DURESS.

The (*state number*) issue reads:

"Did the defendant enter into the contract with the plaintiff as a result of duress?"<sup>1</sup>

(You will answer this issue only if you have answered the (*state number*)<sup>2</sup> issue "Yes" in favor of the plaintiff.)

On this issue the burden of proof is on the defendant.<sup>3</sup> This means that the defendant must prove, by the greater weight of the evidence, that *he* entered into the contract with the plaintiff as a result of duress.

Duress occurs when a wrongful act, a threat or coercion is used to force a person to enter into a contract against *his* will.<sup>4</sup> (Duress may exist even though a person is fully aware of the nature and consequences of *his* act.)<sup>5</sup>

The existence of duress is for you to determine from all the facts and circumstances in evidence. You may consider the following:<sup>6</sup>

the defendant's:

[age]

[physical condition]

[mental condition]

[access to or opportunity to have independent advice]

[the fairness of the transaction]

[the existence of independent consideration for the transaction]

[the relationship between the defendant and [the plaintiff] [*name person allegedly exerting duress*]]

[the value given up by the defendant in the transaction compared to the defendant's total net worth]

[the degree to which [the plaintiff] [*name person allegedly exerting duress*]] sought or solicited the defendant to enter into the transaction]

[the degree to which the defendant was already susceptible to pressure or coercion by reason of [personal distress] [family emergency]]

*[state other situation supported by the evidence].*

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 entered into the contract with the plaintiff as a result of duress, 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.

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1. *Harshaw v. Dobson*, 67 N.C. 203 (1872).

2. See N.C.P.I.-Civil 501.01 (Contracts-Issue of Formation).

3. Where the defendant contends that a fiduciary relationship was created between he and the plaintiff, see N.C.P.I.-Civil 501.55 (Contracts- Issue of Formation-Defense of - Constructive Fraud).

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4. *Reynolds v. Reynolds*, 114 N.C. App. 393, 442 S.E.2d 133 (1994).

5. *Link v. Link*, 278 N.C. 181, 191, 179 S.E.2d 697, 703 (1971).

6. *Coppley v. Coppley*, 128 N.C. App. 658, 664, 496 S.E.2d 611, 616, *disc. rev. denied*, 384 N.C. 281, 502 S.E.2d 846 (1998); *Stegall v. Stegall*, 100 N.C. App. 398, 397 S.E.2d 306 (1990), *disc. rev. denied*, 328 N.C. 274, 400 S.E.2d 461 (1991).