

635.35 ACTION ON ACCOUNT STATED.

This issue reads:

"Did the defendant agree to pay the statement of account submitted by the plaintiff?"

An account stated is an [express] [implied] agreement between the parties to the account that it is correct, owing and will be paid.¹

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, three things:

First, that the plaintiff calculated the account balance.

Second, that the plaintiff submitted a statement of that account balance to the defendant for payment.

Third, that the defendant (either)

[expressly admitted the correctness of the statement of account balance] (or)

[acknowledged receipt of the statement of account balance and [expressly] [impliedly] agreed to pay it].

(A person's agreement to pay a statement of account balance may be implied from *his* conduct. If a reasonable time passes during which the recipient of the statement of account balance, without excuse,² fails to protest or object to the statement of account, you may find, but are not compelled to do so, that the recipient has by *his* conduct agreed to pay the statement of account as submitted. What is an acceptable excuse for not protesting or objecting, or what is a reasonable time in which to make a protest or objection is for you to decide from all the evidence. In making this determination, you may consider, among other things, the nature of the transaction, the relationship of the parties, their distance from one another, the means of communication between them, their

business capacity, their intelligence or lack of intelligence and the usual course of their business.)³

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 agreed to pay the statement of account submitted by 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.

1 *Carroll v. McNeal Indus., Inc.*, 296 N.C. 205, 209, 250 S.E.2d 60, 62 (1978). *Teer Co. v. Dickerson, Inc.*, 257 N.C. 522, 531, 126 S.E.2d 500, 507 (1962). A finding of "no account stated" does not preclude a successful action on account. *Franklin Grading Co., Inc. v. Parham*, 104 N.C. App. 708, 713, 411 S.E.2d 389, 392 (1991). N.C.P.I.-Civil 635.20 may be given along with or as an alternative to N.C.P.I.-Civil 635.35.

2 *Teer*, 257 N.C. at 530-531, 126 S.E.2d at 507; *Woodruff v. Shuford*, 82 N.C. App. 260, 262, 346 S.E.2d 173, 174 (1986); *Mahaffey v. Sodero*, 38 N.C. App. 349, 351, 247 S.E.2d 772, 774 (1978).

3 *Teer*, 275 N.C. at 532, 126 S.E.2d at 508. See also *Mast, Mast, Johnson, Wells & Trimyer, P.A. v. Lane*, ___ N.C. App. ___, ___, 745 S.E.2d 56, 60 (2013) (finding an account stated existed where defendant made payments on the account and wrote plaintiff apologizing for late payments but not disputing the amount, and holding that issues concerning the reasonableness of the fees sought to be collected by plaintiff are foreclosed once an account is stated).