
501.20 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF LACK OF
MENTAL CAPACITY - REBUTTAL BY PROOF OF RATIFICATION
(INCOMPETENT REGAINS MENTAL CAPACITY).

The (*state number*) issue reads:

"Did the defendant regain *his* mental capacity and ratify the contract entered into with the plaintiff?"

(You will answer this issue only if you have answered the (*state number*) issue¹ "Yes" in favor of the defendant.)

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 defendant regained *his* mental capacity after *he* entered into the contract with the plaintiff. This means the defendant must have regained *his* ability to understand the nature, scope and effect of the contract, to understand what *he* contracted to do or refrain from doing, to know with whom *he* contracted, and to understand the purpose for which *he* contracted and the scope and consequences of *his* act. A person can regain mental capacity but still not act wisely or discretely, or drive a good bargain. A person may regain mental capacity even while continuing to suffer from mental weakness or infirmity.²

Second, that, after regaining mental capacity, the defendant knew or, under the circumstances, had reason to know of all of the material facts and circumstances involved with the contract.³ A person knows something when *he* has actual knowledge of it. A person has reason to know something when, under the same or similar circumstances, a reasonable person would have known it or would have been put on notice

of its existence.

And Third, that, after regaining mental capacity, the defendant retained the benefit of the plaintiff's performance.⁴

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 defendant regained *his* mental capacity and ratified the contract entered into with 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. See N.C.P.I.-Civil 501.05 (Contracts-Issue of Formation-Defense of Lack of Mental Capacity).

2. *Id.*, n. 3.

3. *Puckett v. Dyer*, 203 N.C. 684, 690, 167 S.E. 43, 46 (1932); *Sherrill v. Little*, 193 N.C. 736, 740, 138 S.E. 14, 16 (1927).

4. *Id.*