

501.25 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF LACK OF
MENTAL CAPACITY - REBUTTAL BY PROOF OF RATIFICATION (BY AGENT,
PERSONAL REPRESENTATIVE OR SUCCESSOR).

The (*state number*) issue reads:

"Did [an] [a] [agent] [personal representative] [heir] [*name other successor*]¹ of the defendant ratify the contract entered into between the plaintiff and the defendant?"

(You will answer this issue only if you have answered the (*state number*)² issue "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 (*name agent, etc.*) was an [agent] [personal representative] [heir] [successor] of the defendant with authority to act on the defendant's behalf.

Second, that (*name agent, etc.*) knew or, under the circumstances, had reason to know all 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 [the defendant] [(*name agent, etc.*) on behalf of the defendant] retained the benefit of the contract with the plaintiff.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 [an] [a] [agent] [personal representative] [heir] [*name other successor*] of the defendant 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. *Walker v. McLaurin*, 227 N.C. 53, 40 S.E.2d 455 (1946).

2. See N.C.P.I.-Civil 501.05 (Contracts-Issue of Formation-Defense of Lack of Mental Capacity).

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.*