

502.60 CONTRACTS - ISSUE OF BREACH - DEFENSE OF ACCORD AND SATISFACTION.

The (*state number*) issue reads:

"Did the plaintiff settle *his* contract claims with the defendant?"

(You will answer this issue only if you have answered the (*state number*)¹ issue "Yes" in favor of the plaintiff.)

On this issue the burden of proof is on the defendant.² This means that the defendant must prove, by the greater weight of the evidence, two things:³

First, that the plaintiff and the defendant mutually agreed⁴ that the plaintiff would accept a lesser [amount] [value]⁵ in full satisfaction of that which the plaintiff claimed was owed under the contract.

And Second, that

[the defendant [delivered] [caused to be delivered] the lesser [amount] [value] in conformity with *his* agreement with the plaintiff]

[the defendant was willing and able to [deliver] [cause to be delivered] the lesser [amount] [value] in conformity with *his* agreement with the plaintiff and would have done so but for the [repudiation]⁶ [unjustified prevention]⁷ of the plaintiff].

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 plaintiff settled *his* contract claims with the defendant, 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.

1. See, as appropriate, N.C.P.I.-Civil 502.00 (Contracts-Issue of Breach By Non-Performance) or N.C.P.I.-Civil 502.05 (Contracts-Issue of Breach By Repudiation), or N.C.P.I.-Civil 502.10 (Contracts-Issue of Breach By Prevention).

2. *Baillie Lumber Co. v. Kincaid Carolina Corp.*, 4 N.C. App. 342, 349, 167 S.E.2d 85, 90 (1969).

3. N.C. Gen. Stat. § 1-540 provides: "In all claims, or money demands, of whatever kind, and howsoever due, where an agreement is made and accepted for a less amount than that demanded or claimed to be due, in satisfaction thereof, the payment of the less amount according to such agreement in compromise of the whole is a full and complete discharge of the same."

4. General principles of contract law are used to determine whether the parties formed a contract of compromise sufficient to resolve all claims arising out of the earlier contract that was breached. *Baillie Lumber Co.*, 4 N.C. App. at 352, 167 S.E.2d at 92. Thus, this instruction should be supplemented as necessary from N.C.P.I.-Civil 501.01 (Contracts-Issue of Formation) if there are technical contract formation matters at issue. Likewise, this affirmative defense is subject to rebuttal by the plaintiff if the agreement of compromise is void or voidable by reason of, *e.g.*, fraud, undue influence and mistake. See *Holley v. Coggin Pontiac, Inc.*, 43 N.C. App. 229, 234, 259 S.E.2d 1, 5 (1979).

5. "Less amount" is the wording of N.C. Gen. Stat. § 1-540 but that term has been construed to include non-monetary consideration. *Baillie Lumber Co.*, 4 N.C. App. at 352, 167 S.E.2d at 92; *Griffin v. Petty*, 101 N.C. 380, 7 S.E. 729 (1888) (lumber).

6. As necessary, explain the meaning of "repudiation" by reference to N.C.P.I.-Civil 502.05 (Contracts-Issue of Breach by Repudiation).

7. As necessary, explain the meaning of "unjustified prevention" by reference to N.C.P.I.-Civil 502.10 (Contracts-Issue of Breach By Prevention).