

N.C.P.I.-Civil. 814.90

FRAUDULENT TRANSFER - PRESENT CREDITORS - TRANSFER TO INSIDER
WHILE INSOLVENT - DEFENSE OF GOOD FAITH EFFORT TO REHABILITATE.

GENERAL CIVIL VOLUME

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N.C. Gen. Stat. § 39-23.8(f)(3)

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INSIDER WHILE INSOLVENT - DEFENSE OF GOOD FAITH EFFORT TO
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The (*state number*) issue reads:

"Did the defendant acquire the (*name asset*) pursuant to a good faith effort to rehabilitate (*name debtor*)?"

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

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

First, the defendant acquired the (*name asset*) pursuant to a good faith effort to rehabilitate² (*name debtor*).

And Second, the transfer was provided as security for the present value³ given to rehabilitate (*name debtor*) as well as a previous debt of (*name debtor*).

Finally, as to this (*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 acquired the (*name asset*) pursuant to a good faith effort to rehabilitate (*name debtor*) and that the transfer was provided as security for the present value given to rehabilitate (*name debtor*) as well as a previous debt of (*name debtor*), 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 This defense is limited to "insiders" who have received transfers voidable under N.C. Gen. Stat. § 39-23.5(b). See N.C.P.I.-Civil 814.75.

2 Rehabilitation means an effort "to save a debtor from a forced liquidation." Uniform Fraudulent Transfer Act § 8(f)(2) cmt. (6) (1984). "[A]n insider who has previously extended credit to a debtor should not be deterred from extending further credit to the debtor in a good faith effort to save the debtor from a forced liquidation...." *Id.* When determining whether the challenged transfer was made in good faith, "[t]he amount of present value given, the size of the antecedent debt secured, and the likelihood of success for the rehabilitative efforts are relevant considerations." *Id.*

3 "Value" is given "for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person." N.C. Gen. Stat. § 39-23.3(a).