

850.40 DEEDS - ACTION TO SET ASIDE - CONSTRUCTIVE FRAUD -
REBUTTAL BY PROOF OF OPENNESS, FAIRNESS AND HONESTY.

The (*state number*) issue reads:

"Did the defendant act openly, fairly and honestly in procuring
(*name grantor's*) [execution] [delivery] of (*identify deed*)?"¹

(You are to answer this issue 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,
that, with regard to (*name grantor's*) [execution] [delivery] of (*identify
deed*), the defendant made a full, open disclosure of material facts, that
he dealt with (*name grantor*) fairly, without oppression, imposition or
fraud, and that *he* acted honestly.²

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 defendant acted openly, fairly and honestly in procuring (*name
grantor's*) [execution] [delivery] of (*identify deed*), 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. *Wachovia Bank & Trust Co. v. Johnston*, 269 N.C. 701, 711, 153 S.E.2d 449, 457 (1967); *McNeill v. McNeill*, 223 N.C. 178, 25 S.E.2d 615 (1943); *In re Sechrest*, 140 N.C. App. 464, 537 S.E.2d 511, 516 (2000); *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 820, 487 S.E.2d 166, 168 (1997).

2. *Underwood v. Stafford*, 270 N.C. 700, 702, 155 S.E.2d 211, 212-13 (1967); *Mountain Top Youth Camp, Inc. v. Lyon*, 20 N.C. App. 694, 697, 202 S.E.2d 498, 500 (1974).