

## **COURT MAY CONSIDER REAL ESTATE AGENT'S IMPROPER CONDUCT IN DECIDING WHETHER PRINCIPAL IS ENTITLED TO SPECIFIC PERFORMANCE OF REAL ESTATE CONTRACT**

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*Queiroz v. Harvey*

Arizona Supreme Court, April 28, 2009

Authored by the [JSH Appellate Team](#)

Seller listed 10 acres of land for sale in Tonopah. Buyer, through Agent, offered to purchase the 10 acres, plus an additional 10 acres. Buyer offered to pay \$150,000, with \$68,000 due at signing, and a \$1000 earnest-money payment. Seller made a counteroffer, but changed only the escrow agent. Buyer's Agent faxed a contract to the escrow agent, but did not include any earnest money. After Seller could not reach Buyer's Agent, Seller decided to cancel the contract. Following this, Buyer's Agent suddenly deposited the \$1000 earnest-money payment with the escrow agent. Seller's written notice of cancellation then arrived at another branch of the escrow agent's office. Seller returned the \$1,000 earnest money to Buyer's Agent.

Buyer sued Seller for specific performance of the real estate contract. The trial court found that Buyer's Agent had acted improperly and denied Buyer specific performance on the basis that his Agent had purportedly lied about the source of the earnest money, among other things, testifying that it was Buyer's when, in fact, it was Buyer's Agent's. The trial court also found that Agent knew that Seller had canceled the contract before making the deposit and had not otherwise testified truthfully.

The Court of Appeals reversed and held that Agent's dishonest acts could not be imputed to Buyer unless Buyer knew of the acts or was somehow involved. Since the Court of Appeals could not find conclusive evidence as to whether Buyer knew of the acts, it remanded the matter for further proceedings.

The Arizona Supreme Court reversed, ordering judgment for Seller. A principal seeking specific performance may be bound by his agent's inequitable conduct and cannot benefit from the agent's inequitable conduct. This is consistent with principles of equity. Seller, the innocent third party in this case, not Buyer, needed protection.