



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**IVO QUEIROZ v. DANIEL HARVEY  
No. CV-08-0308-PR**

**PARTIES AND COUNSEL:**

- Petitioner:* Daniel Harvey (“Seller”) is represented by David B. Earl, Garrett Olexa and David Brnilovich of Jennings, Strouss & Salmon, P.L.C.
- Respondent:* Ivo Queiroz (“Buyer”) is represented by Charles W. Wirken of Gust Rosenfeld, P.L.C.
- Amicus Curiae:* Arizona Association of Realtors, John Hall & Associates, Inc. and West USA Realty, Inc. are represented by Neal B. Thomas of Thomas, Thomas & Markson, P.C.

**FACTS:**

Buyer and Seller entered into a contract for the sale of real property located in Tonopah. Seller’s real estate agent was Debra Walters. Buyer was represented in the transaction by his friend and roommate, real estate agent Charles Harrison. After Seller listed the property for sale, Buyer made an offer, Seller made a counter-offer, and Buyer accepted the counter-offer. Buyer’s agent, Harrison, faxed the signed contract to the escrow agent, Westland Title, on Friday, December 10, 2004. The contract called for most of the purchase price to be seller-financed and for escrow to close on February 15, 2005. The receipt portion of the contract stated that Buyer had given a \$1,000 personal check to his agent, Harrison, as earnest money. In fact, Buyer had not given Harrison a check for the earnest money. The contract provided that “upon acceptance” the broker would “promptly deposit” the earnest money into escrow. This was not done. The escrow agent called Harrison several times over the week following receipt of the contract, but Harrison did not answer and did not return the calls. On Friday, December 17, 2004, Seller’s agent, Walters, called the escrow agent and learned that the earnest money had not been deposited. Walters advised the escrow agent that the deal was cancelled. Walters also called Harrison and left a message that the contract was cancelled. Harrison returned the call, and Walters explained that the contract was cancelled because of the failure to deposit earnest money. The contract provided that, in the event of a breach by one party, the other party could cancel the contract by giving written notice to the breaching party or to the escrow agent. Early Monday morning, December 20, Harrison withdrew \$1,000 out of his personal account, bought \$1,000 in money orders, and went to the escrow company’s Phoenix office. (The file was at the company’s Glendale office.) Harrison deposited the earnest money and was given a receipt. Later that day, Seller’s written cancellation notice was faxed to the escrow agent. The escrow agent treated the contract as cancelled, and returned the earnest money.

Buyer filed this suit against Seller, alleging breach of contract and seeking specific performance. After a two-day bench trial, the trial court ruled for Seller. The trial court found that Buyer's failure to deposit the earnest money in escrow within seven days of entering into the contract was a material breach of the contract, triggering the Seller's right to cancel the contract. The trial court found that this breach was not cured when Buyer's agent won the "rush to the escrow agent" after learning that Seller was cancelling the contract. The trial court also found that, even if the payment of the earnest money were to be considered "prompt," the trial court would still deny Buyer's claim for specific performance based on equitable considerations. The trial court found certain conduct by Buyer's agent, Harrison, to be inequitable, and found further that, "Where the buyer and the agent live together, as here, the Court attributes the agent's conduct to the buyer."

The court of appeals reversed, finding that Buyer cured his breach by depositing the earnest money before the Seller gave written notice of cancellation. The court of appeals also held that "inequitable conduct by a principal's agent without the principal's knowledge or participation may not be a ground on which to deny equitable relief to the principal." *Queiroz v. Harvey*, 2008 WL 2058233, ¶ 31. The court of appeals vacated the trial court's judgment and remanded the matter for the trial court to determine whether Buyer was aware of the inequitable acts by Harrison that the trial court had cited, or whether Harrison's misrepresentation that he possessed Buyer's check at the time the contract was executed (a misstatement of which Buyer must have known) was sufficient ground for denying specific performance.

#### **ISSUES:**

1. Whether a court can consider an agent's inequitable conduct in deciding whether the agent's principal should be entitled to specific performance.
2. Whether a party to a real estate contract procured by his agent's misrepresentations and/or "sharp practices" is entitled to seek specific performance, whether or not the principal knew of the agent's conduct.
3. Whether a principal who signs a contract knowing or having reason to know that it contains a misleading or false representation of material facts is entitled to seek specific performance.

#### **Definitions:**

*Specific performance:* An order compelling specific performance requires a party to a contract to perform according to the terms of the contract. In the case of a contract for the sale of land, an order for specific performance would require that the sale be completed as provided in the contract.

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