

Sauls argue that under either the Sauls' or Luchi's view of the evidence, the Sauls' earnest money deposit should have been returned. The only legal argument offered by Sauls is that the court should grant a motion for J.N.O.V. when the jury's verdict is not supported by substantial and competent evidence. Motion for Judgment N.O.V., p. 1., citing *Brand S Corp. v. King*, 102 Idaho 731, 732, 639 P.2d 429, 430 (1981).

Luchi argues Sauls' complaint never demanded a return of the deposit or "earnest money" and did not seek restitution. Opposition to Plaintiffs Motion for Judgment N.O.V., p. 1. Luchi notes the jury answered question number three on the verdict form which asked what were plaintiff (Sauls') damages as a result of defendant's (Luchi's) breach of contract or fraud, with "\$0". *Id.* at p. 2.

In ruling on a motion for judgment n.o.v., the trial court must view the facts as if the moving party has admitted the truth of all the non-moving parties evidence. I.R.C.P. 50(b); *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 736, 518 P.2d 1194 (1974); *Quick v. Crane*, 111 Idaho 759, 763, 727 P.2d 1187 (1986). If, after reviewing the evidence in this manner, the court finds that the evidence is of sufficient quantity and probative value that reasonable minds could have reached the same conclusion as did the jury, then the jury's verdict will be upheld. *Quick v. Crane*; *Smith v. Praegitzer*, 113 Idaho 887, 749 P.2d 1012 (Ct.App.1988) review denied, 116 Idaho 467, 776 P.2d 829 (1988). Furthermore, the determination of whether the evidence before the Court considering the judgment n.o.v. is sufficient to create an issue of fact is purely a question of law. *Quick v. Crane*, 111 Idaho at 759, 727 P.2d at 1187 (1986).

Hudson v. Cobbs, 118 Idaho 474, 478, 797 P.2d 1322, 1326 (1990).

Earnest money is, "[a] deposit paid by a prospective buyer to show a good-faith intention to complete the transaction." *Black's Law Dictionary*, (8th ed. 2004). The primary purpose of earnest money is to ensure that the seller will recover damages if the buyer defaults. *Id.* (quoting John Q. Reilly. *The Language of Real Estate* 131, (4th ed. 2004).

Earnest money agreements are typically divided into two categories: "[t]hose which contemplate a sale pursuant to a future land sale contract between the buyer and the seller and...those which contemplate closing at sale for cash." *White v. Rehn*, 103 Idaho 1, 4, 644 P.2d

323 (1982). Under the first category, an earnest money agreement, “will not be specifically enforced if its terms are too indefinite, uncertain or incomplete to ascertain.” *Id.* (quoting *Ford v. Lord*, 99 Idaho 580, 586 P.2d 270, 273 (1978)). However, when the earnest money agreement is meant as a cash sale, it is less likely that the court will impose terms which were not actually agreed on by the parties. *Id.* at 5. Furthermore, “the need for specificity in written subsidiary terms” is reduced in an earnest money agreement for cash sale. *Id.*

In this case, the earnest money agreement, “contemplate[d] closing at sale for cash.” Plaintiffs’ Exhibit 1; Complaint Exhibit A. Consequently, the earnest money agreement is deemed complete as long as the parties have included all the essential terms of the contract. *Wolcott v. Booth*, 101 Idaho 89, 91, 609 P.2d 156 (1980). Most earnest money agreements include a description of the land, amount of initial deposit, terms and price of future installments, etc. If the earnest money agreement contains the necessary terms, then it can be specifically enforced. *Id.*

Conversely, an earnest money agreement is not complete if it, “contemplates that the parties will enter into a land sale contract which would provide the rest of the details of the transaction.” *Id.* at 90 (citing *Luke v. Conrad*, 96 Idaho 221, 526 P.2d 181 (1974)). Incomplete earnest money agreements cannot be specifically enforced. *Id.*

A buyer is entitled to recover an earnest money deposit when the seller breaches, and the buyer elects to rescind the contract. *McMahon v. Cooper*, 70 Idaho 139, 147, 212 P.2d 657. In order for the buyer to be able to rescind the contract, the seller’s breach must be substantial and, “of such character as to indicate an intention on the part of the [seller] to abandon the contract.” *Id.* at

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Furthermore, a buyer may recover an earnest money deposit under a special lien if the seller fails to provide consideration. Idaho Code § 45-804 reads:

One who pays to the owner any part of the price of real property, under an agreement of the sale thereof, has a special lien upon the property, independent of possession,

for such part of the amount paid as he may be entitled to recover back, in case of a failure to consideration.

In *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020 (1954), a buyer was able to recover a down payment, including an earnest money deposit, after the buyer breached the sales contract. In *Graves*, the buyer breached the contract and retained possession of the property as a security for the return of her down payment. The court held that the buyer did not have to have possession of the land to secure the return of her down payment because Idaho Code § 45-804 guaranteed the return of it regardless of possession. *Id.*, at 460.

In the present case, the jury found that the seller did not breach the contract nor did the seller commit fraud. Thus, the buyer cannot recover his earnest money deposit on the theory of rescission. However, the buyer can recover the earnest money deposit under Idaho Code § 45-804, because the seller failed to provide consideration by failing to deliver the property that was the subject of the agreement.

Parties cannot recover an earnest money deposit if they breach and there is a valid liquidated damages clause. *Graves*, 75 Idaho at 456. Damages or forfeiture clauses have to bear, “a reasonable relation to actual damages,” in order to be valid. *Id.* However, if the forfeiture or damages stipulated by the contract are arbitrary and unreasonable in light of the anticipated damages, they are invalid as a penalty. *Id.* In the present case, the buyer did not breach the contract, so even if the forfeiture clause is valid regarding the earnest money deposit, it is not applicable.

Sauls are entitled to recover the earnest money deposit under Idaho Code § 45-804 because Luchi failed to provide consideration by failing to deliver the property that was the subject of the agreement. Luchi cannot be allowed to sell the property twice, keeping the first earnest money deposit. Luchi knows that, as he tried to return the earnest money to the Sauls, but they ripped up the check. That sequence of events does nothing to change the legal consequence of Idaho Code § 45-804.

III. ORDER.

IT IS HEREBY ORDERED plaintiffs' "Motion for Judgment Not Withstanding the Verdict" is **GRANTED**, plaintiffs are entitled to judgment against Luchi in the amount of \$3,000.00. Plaintiffs' counsel is to prepare an Judgment consistent with this Order.

Entered this _____ day of June 2005.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of June, 2005, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
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