

# BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### FRUIT OF ISRAEL

Mrs. Lander was buying fruit for Tu BiShvat. Her local fruit store had designated a special section for Tu B'Shevat with a large sign: "Fruit of Israel."

Mrs. Lander bought a box of dates with Hebrew and English writing on it. They were more expensive than the California dates on a nearby shelf, but she preferred produce of Israel for Tu BiShvat.

When Mrs. Lander got home she started setting out the dates on a fruit platter. Only afterwards, did she note the small writing on the back of the box: "Product of Egypt."

Mrs. Lander was furious. "The last thing I want is to eat Egyptian dates for Tu BiShvat!" she exclaimed.

Mrs. Lander brought the half-used box back to the store the following day. "I'd like a refund for the dates," she said.

"I'm sorry, but the box was already opened," the store owner said. "I cannot take it back."

"But you cheated me," Mrs. Lander complained. "In a section titled 'Fruit of Israel' you put Egyptian dates!"

"We did not promise that all those fruits are imported from Israel, although most are," said the store owner. "Dates are one of the seven species, so that they are inherently fruit of Israel. Furthermore, people eat all kinds of fruit on Tu BiShvat, not all of which are imported from Israel."

"But you displayed the box as fruit of Israel," said Mrs. Lander. "This is misleading advertising and the sale is void! I never would have bought dates not from Israel."

"Many people bought dates for Tu BiShvat," countered the store owner. "Some bought these dates, but many bought the cheaper dates from California."

Rabbi Dayan happened into the store. The seller turned to him and asked:

**"Is this considered *mekach ta'us* (mistaken sale)?"**

"*Terumas Hadeshen* (#332), cited by the Rama, derives from the *Gemara* (*Beitzah* 7a) that if someone asked to buy meat from an animal that was raised a certain way, which is supposed to be tastier, but was sold meat from a regular animal, it is not considered *mekach ta'us*," replied Rabbi Dayan, "unless the customer is known to be particular to buy only the more delectable meat" (Rama, C.M. 233:1).

"The sale remains valid, despite the discrepancy, since the food is essentially of the same type, and most people are not particular about the method of raising. The seller only has to return

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## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

### CONSTRUCTION DELAYS

**Q:** I hired a contractor to renovate my house. We agreed on a price for the full job, and initially the work proceeded according to our agreement. My house is almost done, but the contractor has suddenly disappeared and isn't showing up to put on the finishing touches. I heard from others that contractors don't enjoy the last stages of construction projects and often procrastinate at this stage.

What recourse do I have if the contractor isn't finishing the job? Am I obligated to pay him all the money I owe for the work he *has* completed, or may I withhold the amount due to him in order to force him to finish the job? And if I have to hire others to finish the work, and it costs me more than I would have paid him, can I subtract the difference from the amount I owe him? What if I already paid him so much that I cannot cover the price of the new workers even if I deduct it from the amount I still owe him — can I sue him in *beis din* to cover their payment?

**A:** We will preface our discussion by differentiating between two types of workers:

1) A *sechir yom* (day laborer) is paid by the hour, whether he finishes the job he was hired to do or not. In *Halachah*, a *sechir yom* is considered akin to an *eved* (slave) in that – during the agreed-upon hours – he obligates his person to do the work.

2) A *kablan* (contractor) is hired to complete a job and is paid a flat rate to do the work, which he may do at his convenience. Hiring this type of worker is similar to making a purchase, as the *kablan* is doing the work for himself, and eventually selling it to the person who hired him.

If someone hires a *sechir yom* to do a job and the worker wants to renege, if the work can be delayed without causing harm to the owner (i.e., it will not cause something to rot or deteriorate while the owner seeks other workers), he may renege and



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any differential in cost, even if less than a sixth" (*Pischei Teshuvah*, C.M. 233:1).

"However, many *Acharonim* question or reject the Rama's ruling, and compare this case to that of a person who asked to buy high quality produce and was sold poor quality, which is considered *mekach ta'us*, since he specifically asked for high quality" (*Bach* 233:1; *Nesivos* 233:3; *Aruch Hashulchan*, C.M. 233:4; *Pischei Choshen*, *Geneivah* 12:30).

"In our case, most people are not particular to buy only fruit from Israel for Tu BiShvat, although it is certainly preferable, so according to the Rama the sale is valid, and the seller only has to return any differential. The other *Acharonim* might also consent here, since Mrs. Lander did not specifically ask for Israeli produce. However, if it is clear that she was particular to buy only Israeli fruit, it would be considered *mekach ta'us*.

"Furthermore, Mrs. Lander could have checked the package, despite the large sign. Some authorities maintain regarding defective merchandise that if the customer could easily see the defect before buying but did not bother checking, he forgoes his claim (*Sma* 232:10; *Pischei Teshuvah* 232:1).

"I should note," concluded Rabbi Dayan, "that it is prohibited to mislead people with false advertising, even if there is no differential in price" (C.M. 228:6; *Sma* 228:7).

**Verdict: Since many people are not particular about the source of the fruit, the sale is valid according to the Rama, unless the customer is known to be particular about buying only fruit of Israel. Even the *Acharonim* who disagree might consent in this case.**



## MONEY MATTERS

### BAR METZRA #4 Multiple Neighbors

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים דו"ג חי' בת ר' שמואל חיים ע"ה

**Q: My property has adjacent owners on three sides. Who has the right of *bar-metzra*?**

A: All the adjacent owners of the property have the right of *bar-metzra*, even if one neighbor has a longer adjacent edge. Therefore, if any one of the adjacent owners came first and bought the property, or removed it from a third party, he retains it (C.M. 175:11).

If the adjacent neighbors come simultaneously to remove the property from a third party, they divide it, and each receives the part adjacent to him.

There is a dispute whether the owner himself is also required to sell to them all when they come simultaneously, or whether he can sell to any one of the neighboring owners, since the primary obligation of *bar-metzra* is not on the seller. According to the first opinion, if he sold to one, that neighbor is required to share the property with the others; each gets the part adjacent to him (*Rama* and *Taz* 175:11; *Sma* 175:20).



## BHI HOTLINE

demand payment for the hours that he worked, even if the rate for such work has since risen and the employer will now have to pay more to hire someone else to finish the job.

The basis for this *halachah* is the *passuk* that states, "*Ki li bnei Yisrael avadim* – for *Bnei Yisrael* are my servants," from which *Chazal* inferred that we are servants only of Hashem, and not of other humans. Therefore, even though a day laborer has submitted his person to the work he agreed to do – similar to a slave – he is still entitled to back out at any point (*Shulchan Aruch*, C.M. 333:3). Nevertheless, the employer does have a valid grievance (*taaromes*) against him (*ibid.* 333:1), and, according to many *poskim*, the *sechir yom* is also categorized as *mechusar amanah* (untrustworthy) for reneging (*Sma* *ibid.* 1, *Perishah* *ibid.*; *Shu"t Chasam Sofer*, C.M. 122, cited in *Pis'chei Teshuvah* 333:8; see *Mishpetei Hachoshen* p. 104).

A *kablan*, on the other hand, who is not categorized as a slave, actually bears more liability toward the person who hired him. If he reneges on the deal, he holds the weaker hand (*yado al hatachtonah*); if the employer can only find workers who will finish the job at a higher price, he may deduct whatever he must pay the new workers from the amount owed to the original contractor (C.M. 333:4).

In any case, one may not demand that the contractor pay out of pocket if the amount he now owes the new workers exceeds the amount he paid him, because he never agreed to pay out of pocket, only to finish the job or deduct from funds already paid (*Shach* *ibid.* 21).

Since your contractor is a *kablan*, he holds the weaker hand, and the only question is what recourse you have going forward.

According to many *poskim*, just starting the job is a partial *kinyan* on the contractor's part, to the extent that he holds the weaker hand if he reneges, but if you did not make an additional proper *kinyan* (an action that cements each side obligating themselves to the deal), you have no way of forcing him to actually come back and finish the job (*Shach* 333:4; *Nesivos* 181:5). Other *poskim* write that just beginning the job is a full *kinyan*, and you can even force him to come finish the job (*Machaneh Efraim*, *Sechirus Poalim* 5; *Minchas Pittim* 333:4).

According to all *poskim*, then, you may hire other workers to finish the job and deduct their pay from the amount you owe your contractor – even if it means that he will lose his entire profit on the job.

If you already paid him for the entire job, you can sue him in *beis din* to demand that he return the amount you paid the workers you hired to finish the work (C.M. 333:5).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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