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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

FURNITURE DIVIDE

Menashe and Efraim had shared an apartment for the year. When they had first moved in, they jointly purchased a computer desk and an eating table.

At the end of the year, Menashe wanted to move out to a different apartment. "What about the furniture that we bought together?" he asked Efraim. "What do you suggest, now that we are splitting?"

"I'm staying here, so I'm happy to keep it and pay you half of its value," answered Menashe.

"I also will need tables in my new apartment," said Efraim. "I'm willing to take them, and give you half the value!"

"I think it makes more sense to leave the furniture here," said Menashe. "If you insist, though, I don't have any more right to it than you do!"

"We can do a lottery to determine who gets the furniture," suggested Efraim.

"I think it would be simpler if you take one piece and I take the other," Menashe offered. "The computer desk and eating table were both about the same price."

"But each one serves a different purpose," Efraim said. "I am interested in having both pieces and willing to buy them both."

"I would like at least one table," said Menashe. "I'm not willing to sell both tables. We did buy the pieces as partners. I'm happy to remain in partnership; you're the one who's moving!"

"It's within my right to dissolve the partnership," said Efraim. "I own the tables just as much as you do!"

"That's why I suggested that you take one," said Menashe. "I prefer the computer desk; you can take the eating table."

"If I had to choose one," replied Efraim, "I also would prefer the computer desk, so that doesn't help."

The two could not reach a resolution. Each remained adamant in his position, wanting both pieces, or at least the computer desk.

The two decided to approach Rabbi Dayan, and asked:

"What can we do about dissolving our partnership in the furniture?"

"A partner is entitled to divide at any time, unless stipulated or accustomed otherwise," replied Rabbi Dayan. "If there are multiple items of the same kind, or a single item that is reasonably divisible, each partner takes half (C.M. 171:1).

"When there is a single item that is not divisible,

DID YOU KNOW?

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Ask your Rav or email ask@businesshalacha.com for guidance and solutions.

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

WHO OWNS THE BUNGALOW?

Q. Reuven borrowed a large sum of money from Shimon, and put his bungalow up as a collateral for the loan by transferring the deed into Reuven's name.

When Shimon demanded payment at the deadline, Reuven told him to take the bungalow as payment.

A few days later, Reuven regretted his hasty declaration and informed Shimon that he now had money to repay and wanted his bungalow back. Shimon was excited about owning the bungalow and didn't want to return it.

Who owns the bungalow?

A. There is a scenario discussed in halachah regarding a person whose wall collapses into his neighbor's garden. When the neighbor asks him to remove the bricks from the garden, he replies that the neighbor may take the bricks because he has no use for them. The halachah is that as long as the neighbor hasn't taken the bricks, he has not acquired them even though they are on his property, because in truth he never meant to give them to his neighbor; he simply wanted to delay removing them. Therefore, if the owner of the wall wants to renege, he may take the bricks back (*Shulchan Aruch Choshen Mishpat* 166).

For the same reason, even if the garden owner took the stones, but not in the presence of the wall owner, he does not acquire them (*Shach* 1; cf. *Sma* 2).

The *poskim* deliberate regarding a similar situation in which someone hired a worker to bundle straw or hay, and when he asked for payment, the employer told him to take the product as payment. In this case, if the worker accepts the offer, the employer cannot renege (*Shulchan Aruch* 366:2).

Some explain that the difference between these cases is that a person generally would not immediately remove bricks from a wall that fell, and the wall owner therefore assumed that it would take the garden owner a while to remove them, so he only told him to take them in order to procrastinate. In the case of the worker who produced something, however, it is more common for him to immediately take whatever he is offered as payment, and we

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each party can demand '*god o agod*' — take or I will take. One sets a price, and the other has the option of buying or selling at that price (C.M. 171:6).

"The Gemara (B.B. 13b) addresses the case of two similar, but distinct items, such as two maidservants, one who cooked and one who sewed. They are considered different items, since each serves a different function, so that one party cannot demand to divide one maid against the other, even if they are worth the same value. Furthermore, one cannot demand '*god o agod*' on both maidservants together, but rather on each one separately (C.M. 171:13).

"Here, too, the computer desk and eating table are considered different items. One of you should set a price on either, separately, and the other can buy or sell at that price.

"If the two tables were of the same kind, but one was worth more than the other, many authorities maintain that each party can demand through '*god o agod*' that the other party choose one table and settle the differential in value. However, some maintain that because of their different values, the tables are considered different items and the partners should do '*god o agod*' on each table separately (Sma 171:30,34; Taz 171:13).

"There is an opinion," concluded Rabbi Dayan, "that '*god o agod*' applies only to partners who jointly inherited an item or received it as a gift, but not to partners who willingly bought an item together. However, almost all authorities maintain that it also applies to partners who bought an item together (Shach 171:1; Pischei Choshen, Shutafim 6:24[61])."

Verdict: Partners in similar but distinct items can dissolve their partnership through "*god o agod*" on each item.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #15

(Bordering Property) Potential Loss to Seller

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

Q: I urgently need to sell a property to raise cash. Must I offer the property first to the bar-metzra?

A: When there is an urgent need to sell, imposing *bar-metzra* rights can delay the sale and be detrimental to the seller. Therefore, *Chazal* did not grant *bar-metzra* rights, which are based on doing what is "fair and good," in this case.

For example, if an inferior property is being sold in order to buy an opportuning superior one, or if a property is being sold to pay pressing taxes, cover funeral expenses, or buy food to sustain the family, *Chazal* did not grant *bar-metzra* rights. Similarly, some add when selling to marry off a child, and there aren't other assets to pay with. However, selling for regular business needs or to pay off regular debts is subject to *bar-metzra* rights (C.M. 175:42-43; Sma 175:76; Pischei Teshuva 175:17-18; Aruch Hashulchan 175:20).

There is a dispute whether the *bar-metzra* has priority in urgent cases if he comes with others to buy from the outset (Rama 175:43).

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therefore assume that if the employer offered something as payment, he truly meant to give it to him (*Rashba*, *Bava Metzia* 118a; *Sma* 226:9; *Shach* 5 according to the *Shulchan Aruch*).

But other *poskim* maintain that even a worker would not acquire the product unless he makes a *kinyan* in the presence of the employer, and until he does so, his employer can renege (*Ran Bava Metzia loc. cit.; Tur Choshen Mishpat* 336 citing *Ramah*; *Taz* according to *Shulchan Aruch*).

One practical difference between these two opinions is evident in the case of a borrower who gave the lender an object as collateral (*mashkon*), and when the lender came to demand payment, the borrower told him to keep the *mashkon*. According to the first opinion, since the *mashkon* is in the lender's property, he acquires it immediately through *kinyan chatzer*, but according to the second opinion, he doesn't (*Ran* ibid.).

The *Mechaber* (*Choshen Mishpat* 72:26) and the *Rema* (73:17) rule according to the second opinion, stating that the lender does not acquire the object immediately, because we assume that even in the case of a *mashkon* the borrower merely intended to procrastinate. The *Acharonim* deliberate what the final ruling for this case would be and why it would differ from an employee (*Shach* 72:114, 72:53, and 336:5; *Taz* 336, *Bei'ur HaGra* 72:129).

Some *poskim* write that if the lender wasn't pushing the borrower for payment – and certainly if the deadline for payment hasn't arrived – and the borrower nevertheless told the lender to take the *mashkon* as payment, he certainly acquires the *mashkon* and the borrower may not renege (*Shu"t Radvaz* 1:22; see *Shaar Mishpat* 73:16 and *Erech Shai* 336). Therefore, we would have to determine whether the borrower truly meant to give up his *mashkon* as payment for the loan, or he simply meant to delay the lender.

Returning to your *shailah*, it is clear that the borrower may renege, because generally, the main reason we would consider that perhaps a *mashkon* could be kept by the lender is that it is on the property of the lender, so he acquires it through *kinyan chatzeir*. In the case of the bungalow, no *kinyan* has been made at all.

Transferring a deed would generally be considered a *kinyan* according to the principle of *situmta*, because that's how business is generally done nowadays (see *Shach* 201:1). But in your case, the borrower did not transfer the deed as a *kinyan*. Rather, he transferred it only so the lender would feel secure that he would receive his money back. Therefore, despite the bungalow now being registered in the lender's name, it still belongs to the borrower, and since the lender didn't actually make a *kinyan* on it, it has not been transferred to his ownership (cf. *Choshen Mishpat* 204:10 and *Nesivos* 199:2).

Therefore, the bungalow still belongs to the borrower, and if he now prefers to repay the loan and keep his bungalow, the lender cannot stop him from doing so.

If, however, the lender did make a *kinyan* (i.e., a *chazakah*) on the bungalow in the presence of the borrower, then the transfer of ownership is final and the borrower may not renege.

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