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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

PIECE OF SCAFFOLD

Mr. Cooper was renovating his house completely. The contractor had set up scaffolding all around the house. While dismantling the scaffold, one of the workers accidentally dropped a piece, which

fell on the neighbor's roof and damaged it.

The neighbor, Mr. Flaum, came to Mr. Cooper. "It's nice that you were able to renovate your home," he said. "Unfortunately, this caused damage to my roof. I expect you to make good on that."

"I'm sorry that your roof was damaged," apologized Mr. Cooper, "but it has nothing to do with me. The scaffolding is the contractor's issue."

"I have no connection with the contractor," argued Mr. Flaum. "He was doing work for you, though, so as far as I am concerned, you're liable."

"I have nothing to do with this," insisted Mr. Cooper. "The contractor is coming this afternoon. You can speak with him."

That afternoon, Mr. Flaum showed the contractor the damage to his roof.

"What do you want from me?" asked the contractor. "I was not involved in doing the damage. If the worker was careless, you can sue him; speak with him directly."

Mr. Flaum approached the worker. "You dropped a piece of the scaffold on my roof and damaged it," he said.

"I'm sorry," said the worker. "I was trying to be careful, but it slipped out of my hand. In any case, I'm just working for the contractor, so he carries any liability for what I do."

"This is crazy!" exclaimed Mr. Flaum. "It's become a run-around!" Finally, he called Rabbi Dayan and asked:

"Who is liable for the damage to my roof: Mr. Cooper, the contractor or the worker?"

"The primary liability for damage," replied Rabbi Dayan, "rests on the person who did the damage, as the *Mishnah* (B.K. 26a) teaches: 'A person is always prone [to damaging], whether unintentional or intentional'" (C.M. 378:1).

"Elsewhere (B.M. 118b), the *Mishnah* addresses workers who were hired to build a stone wall. It teaches that each worker — the one who hewed the stone, who finished it, who transported it, who put it on the wall, and who positioned it — each is responsible for damage while the stone was in his care, since the damage emanated from his actions. If the stone fell after it was already positioned on the wall, if the workers were partners in a contracted team (*kablanim*) — they share the liability, since they jointly accepted the

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

COVID INFLATION

Q: A while back, a contractor committed to renovate my house for a certain price. He recently contacted me and told me that because the price of building supplies has increased exponentially over the last few months due to COVID-related supply issues, he can no longer honor the original price and has to charge me significantly more.

Is he allowed to renege on the original price quote? And if he insists on charging the higher amount, am I required to use him, or can I find a less expensive contractor?

A: As you can imagine, this sort of *she'eilah* is difficult to address in this forum. We would have to hear numerous details regarding the original deal in order to issue a full answer.

The core question at the root of your *she'eilah* is whether a person is obligated to honor a commitment if the price of honoring that commitment has risen to an unforeseeable degree.

A case that deals with this question is discussed in the *Poskim*: A landlord agreed to include firewood in the price of a rental unit. During the winter, the price of firewood more than doubled — far beyond typical inflation — and the landlord no longer wants to provide the firewood, claiming that he never agreed to spend so much to honor that commitment.

The *Poskim* (*Nachlas Tzvi*, C.M. 312:10) compare this to a case in *Shulchan Aruch* (*Even Ha'ezer* 114:1) that is the subject of a dispute: A man agreed to support his wife's daughter from a previous marriage for a certain period, but at some point during that period, the price of food rose dramatically.

Some *Poskim* rule that since it is obvious that the stepfather had no intention of committing to pay



CASE FILE

job; if they were hired workers (*poalim*), only the final worker is liable, because each one completed his task and transferred liability to the other" (Rashi, *ibid.*; *Pischei Choshen, Sechirus* 7:25-26).

"Thus, in principle, Mr. Flaum's claim should be directed to the worker who dropped the piece of scaffold while working. Nonetheless, some *poskim* rule that when a person hires a contractor who has workers, the implicit understanding is that the contractor takes responsibility for any damage done by his workers. Even so, this might apply only if the worker damaged the person's own property, whereas there is no implicit "agreement" between the contractor and the neighbor" (see *Binas Hamishpat*, vol. II, #57).

"Even so, many countries hold an employer liable for damage done by his workers (at least when not through gross negligence); most often the contractor's insurance will cover the damage done by his workers. It is questionable whether *dina d'malchusa* applies to damage claims between Jewish individuals, but it should be considered *minhag hamedinah* (common commercial practice) between the contractor and his worker. Thus, although the neighbor's immediate claim is to the worker, the worker can often transfer the liability to his employer, or his employer's insurance, to cover him.

"In any case," concluded Rabbi Dayan, "Mr. Flaum has no claim against Mr. Cooper, since he did not do the damage and took no responsibility for the worker's damage."

Verdict: The primary liability rests with the worker who damaged, but in many instances he can transfer the liability to his employer (the contractor).



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #37
(Bordering Property)
Buyer Who Sold, Gave, or Died
and His Heirs Inherited

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

Q: Reuven bought a property. Before the *bar-metzra* was able to claim it, Reuven sold it or gave it to another, or passed away and his heirs inherited. Does the *bar-metzra* retain a claim to the property?

A: If Reuven gave the property as a gift, or passed away before the *bar-metzra* had the chance to take the property, *Shulchan Aruch* writes that the *bar-metzra* cannot take it from the inheritor or recipient, since it is not "fair and good" to force him to sell a property that was received as an inheritance or gift. Rama, however, rules that the *bar-metzra* can take the property, since Reuven can only bequeath or give in accordance with his rights (*C.M.* 175:17-18; *Sma* 175:29).

However, if Reuven, his inheritor or recipient, sold the property to a third party, the *bar-metzra* can take the property from him even according to the *Shulchan Aruch*. Since the third party is buying anyway, he can buy a property elsewhere (*C.M.* 175:19; *Sma* 175:31).



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that much to support his stepdaughter, he is not obligated to pay more than the original price of food (*Taz* *ibid.*, 2 and *Beis Shmuel* *ibid.* 3, based on *Shulchan Aruch, C.M.* 225:3), with an adjustment for typical inflation (*Pischei Choshen, kinyanim* 18:[27]. Also see *Even Yashfe* 48:11).

Other *Poskim* rule that he is required to honor his commitment and support her in full, because the moment he made the commitment, it was as though the stepdaughter already "owned" the support, and it is the stepfather's bad *mazel* that caused him to have to pay extra to honor the commitment (*Avnei Miluim* 114:2, *Shaar Mishpat, C.M.* 60:4; see *Beis Meir, Even Ha'ezer* 114:1).

Some *Poskim* are uncertain what the *halachah* is (*Mishpat Shalom* 209:4, s.v. *Vehinei HaTaz*), and due to the uncertainty, *beis din* cannot force the stepfather to honor his commitment, because he is the *muchzak* (has possession of the money), and due to the principle of *hamotzi meichaveiro alav haraayah*, the daughter must bring positive proof that he is obligated to pay (see *Imrei Binah, Halvaah* 49).

Returning to the rental case, according to the first approach in the case of the stepdaughter, the landlord is not required to provide firewood at the higher price, because he never committed to that expense, but according to the second approach, he is required to honor his commitment.

But even according to the first approach, the tenant is not obligated to honor his commitment either, because he never agreed to pay rent for an unheated dwelling. He is therefore entitled to either leave the dwelling without paying rent for the rest of the lease period, or to renegotiate his lease based on the estimated value of an unheated dwelling.

Returning to our current *she'eilah*: Based on the above dispute, if you negotiated the price of your renovation *before* COVID began to disrupt the supply chain, which catalyzed hyperinflation of buildings materials, you cannot obligate your contractor to renovate your house at the original price. But you are not bound to the agreement either, and you may bring new contractors down to offer competing prices. If, however, the price was negotiated when it was already possible to foresee that building material prices might skyrocket, the contractor is not allowed to renege (see *Kovetz Teshuvos* 2:165).

As we said at the outset, however, this is just one aspect of this *she'eilah*, and a Rav or *beis din* would have to hear all the details of this case from both parties before ruling (for example, there is a possibility that the *halachos* of *onaah* (exploitation) might pertain to such a marked price inflection — see *Pis'chei Teshuvah* 227:7 and 26).

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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