THE WERDIGER EDITION

BUSINESS WEEKLY

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

Issue #588 | Vayechi | Friday, December 17, 2021 | 13 Teves 5782

In honor of the bar mitzvah of Moishe Schonfeld

CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

TENANT IMPROVEMENTS

Yeshivah Harchev Picha had grown in recent years and was tight on classrooms. Adjacent to the yeshivah was empty office space that was in very poor condition. The yeshivah arranged to rent some of the space at a minimal cost to use as classrooms.

The office space was poorly insulated, though, and did not have proper heating. The yeshivah's administrator, Rabbi Gross, turned to the landlord to make the premises more accommodating for their needs.

"I rented the property as is," replied the landlord. "I'm not interested in investing to upgrade it. You can do what you want."

The yeshivah hired someone to winterize the rooms and install doors and wall heaters. It cost a fair amount, but the yeshivah was pressed for the space.

Two years later the yeshivah found more suitable premises and was preparing to move out.

Rabbi Gross turned to the landlord and asked for reimbursement for the improvements they'd made to the property.

"I didn't ask you to invest in those repairs," replied the landlord. "You did them for your own benefit!"

"But we enhanced your property," countered Rabbi Gross. "If you're not going to pay, then we will remove everything we can, including the doors and wall heaters."

"If you're going that route, I'm willing to pay half their base cost," replied the landlord. "The labor you paid for anyway for your own use; I shouldn't have to pay now."

"But you would have to pay for labor if you want intact doors and heating," argued Rabbi Gross.

Despite efforts to reach an agreement, Rabbi Gross and the landlord remained at odds. They came before Rabbi Dayan and asked:

"Does the landlord have to pay? Alternatively, can the yeshivah remove what it installed?"

"The *Gemara* (*B.M.* 101a) teaches that a person who improves another person's property, is entitled to reimbursement," replied Rabbi Dayan. "The degree of reimbursement depends on the suitability of the improvements.

"If the improvements are warranted, the person is entitled to the going rate for such improvements. If they are not warranted, he is entitled to the lower of either his expenditures (plus minimal payment for his time) or the value of the improvement" (*C.M.* 375:1; *Sma* 375:2).

DID YOU KNOW?

Using another person's credit card for your purchase and paying back the cost including the interest accrued can entail ribbis.

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

BROKEN BROKERAGE DEAL

Q: While being shown a building by a broker, a potential buyer offered to give the broker a certain percentage of the building as payment, rather than paying the standard brokerage fee upfront.

After the closing, however, the buyer regretted making that offer and wants to pay the typical brokerage fee.

Is he allowed to renege, or is the broker entitled to insist on receiving a percentage of the building?

A: If an employer agrees to pay a worker with a certain object, although it is not proper to renege on that offer, he is not *obligated* to give it to him (*Terumas Hadeshen* 230, *Rema* 332:4).

Since the employee did not make a *kinyan* on the object, he has no halachic claim to it. Although a *kinyan* is not usually necessary for an employer to be obligated to pay a worker's wages – since his doing the work suffices to obligate the employer to pay – that *halachah* applies only to monetary payment, which is the typical payment for services rendered. Since wages generally are not paid with objects, the work being done does not constitute a *kinyan* on the object – even if both parties agreed to that form of payment (*Shach* ibid. 18).

Nevertheless, the employer must pay the worker the value of the object, even if it is more than the price a worker would typically be paid for the service rendered (*Rema* ibid.).

In our case, although the work the broker did does not obligate the buyer to make him a partner in the building, he is required to pay him the fair market value of such a share, even though it exceeds the amount typically paid as a brokerage fee (see *Shu"t Maharshag* 3:100).

There are a few principles we must explain to understand why the broker did not make a *kinyan*:

1. *Halachah* views a service rendered as equivalent to the worker paying money for the object the two parties agreed would serve as payment (cf.

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"However, when a person invested *for his own benefit*, he is not necessarily entitled to reimbursement from others who also benefited from his actions" (see *Rama* 264:4).

"Thus, if the tenant, who improved *for his own needs*, did not initially intend to demand reimbursement from the landlord, the landlord's benefit is considered incidental, *zeh neheneh v'zeh lo chaser*, and he is exempt.

"Even if the tenant who improved for his needs did intend to claim from the landlord, *Nesivos* (246:6) indicates that the landlord has to pay only in situations where the tenant could have forced him to participate (such as communal projects, or a partnership).

"However, others disagree, especially in a case that the landlord remains with a capital improvement. They maintain that the landlord's liability depends on the need for the improvement, as above" (*Pischei Teshuvah* 264:3, citing *Shevus Yaakov* 1:158; *Pischei Choshen*, *Geneivah* 8:[56]).

"Nonetheless, if the landlord indicated from the beginning that he was not interested in paying for improvements, as in this case, there is a further dispute whether he is liable" (*Pischei Teshuvah* 264:3).

"In cases when the landlord is exempt or refuses to pay," concluded Rabbi Dayan, "the tenant can remove what he added (such as doors and heaters), provided that this will not ruin the building more than what it was beforehand. If the landlord refuses to allow the tenant to remove them, this indicates that he wants the improvements, and he is then liable for the going rate of the improvements."

(See *Pischei Choshen*, *Geneivah* 8:24-25; *Hayashar V'hatov*, vol. 19, pp. 291-296.)

Verdict: Whether the landlord is liable, and how much, depends on several factors — the contract or agreement between them, the nature of the improvements, and the initial intent of the tenant.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Mechilah (Forgoing) #5
Intent to Forgo

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

Q: I decided definitively to forgo someone's debt, but said nothing. Is such *mechilah* valid? Can I retract?

A: Ketzos (12:1) cites Maharshal who maintains that *mechilah b'lev* (intent to forgo) is valid, provided that the intent is definitive, as we find that a widow who does not claim her *kesubah* for 25 years, under certain circumstances forgoes it, even though she said nothing explicitly (see *Even Ha'ezer* 101:1).

Ketzos (12:1) disagrees, though, since intent alone – without even speech, almost never suffices elsewhere.

He further cites from Maharit (*C.M.* #45), who also addresses this question and concludes that intent alone does not suffice other than in cases in which the intent is evident to all, as in the case of *kesubah*. Nesivos (12:5) and most other authorities concur that intent alone does not suffice (see *Pischei Choshen*, *Halvaah* 12:7[11]).

Some link this question, as well, to the debate we mentioned whether *mechilah* is merely waiving of rights or returning them to the debtor (*Imrei Binah*, *Dayanim* 20:1-3).

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Chazon Ish, Even Ha'ezer 44:2). Since paying money alone is not a valid *kinyan* on *metaltelin* (objects), however, the employer may renege, if he is willing to accept a *mi shepara* (a curse that applies to someone who reneges on the sale of an object once money has changed hands [see *C.M.* 204:1&4]).

But money changing hands *is* a valid *kinyan* for the purchase of real estate, so the seller may not renege (see *C.M.* 190). Therefore, if an employer agreed to pay with real estate for a service rendered, then as soon as the worker did his job, it's as though he paid the employer for the real estate, and the employer may not renege (*Ketzos* 203:4. See, however *C.M.* 190:7, with *Pischei Teshuvah* 204:2).

2. The *halachah* is (*Even Ha'ezer* 28:15) that a worker earns his pay moment by moment as he works, and the money he is owed for each moment of work is considered on loan to his employer until he completes the job and gets paid.

   But since the last increment of work is generally not worth a *perutah* (the smallest monetary value that can be used to purchase something), the worker cannot use that last moment of work to make a *kinyan,* and the "loan" owed to him cannot effect a *kinyan* – even to make his employer accept a *mi shepara* if he reneges on an earlier compensation agreement (*C.M.* 204:10).

   But a real estate broker gets paid only if the deal is finalized, so the entire fee is earned at the moment of the closing. Since the amount he earns at that moment is more than a *prutah*, he is able to make a *kinyan* with it (*Ketzos* 332:4, *Machaneh Ephraim*, *Sechirus* 14, see *Maharsham* 4:86).

3. If an employer says, "If you do this job, I will *give* (*etein*) you this object," that term does not connote that a *kinyan* is taking place, so he is not obligated to follow through on his offer. If he says, "If you do this job for me, this object will be yours," that would constitute a *kinyan* (*Nesivos* 203:7).

We will now apply these elements to your case.

Although we are dealing with real estate (so money changing hands does qualify as a *kinyan*), and the brokerage fee is all due at the moment of closing (so more than a *prutah* is earned at that moment), the buyer offered *to give* (*etein*) the broker a percentage of the building, so no *kinyan* took place, and the buyer may renege.

Another reason why this deal was not binding is that when the deal was made, the building did not belong to the buyer. He therefore offered a portion of something that wasn't in his possession (*davar she'eino b'rishuso*). He is therefore obligated to pay only the value of the percentage of the building to the broker, not give him the actual share in the building (see *Imrei Yosher* 1:91).

If in the future the broker wants to ensure enforceability of such an agreement, the contract should state that the buyer obligates himself to make the broker a partner in the building. Such a clause would be binding even if the building is a *davar she'eino b'rishuso* (*C.M.* 60:6).

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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