THE WERDIGER EDITION

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #612 | Naso | Friday, June 10, 2022 | 11 Sivan 5782

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

EARNINGS — EXTRA

Dr. Bomzer had done some freelance work for one of his clients. He sent him an invoice for $2,000.

A month passed with no response; Dr. Bomzer inquired about the payment. "I'm sorry, but I can't pay you right now," replied the client. "B'e"H, I'll send a check in the next week or two."

Another two months passed before Dr. Bomzer finally received the check. With it was a note: "Attached is payment for your services. I added $100 for the delay."

"That was considerate," Dr. Bomzer thought to himself. He deposited the check, but was concerned that the additional $100 might entail prohibited *ribbis* that he had to return.

"You didn't ask the client for extra," one person said. "He added the $100 of his own accord. What's the problem?!"

"That doesn't make a difference," insisted another. "In all cases of *ribbis*, the borrower agrees, and even so the Torah prohibits it!"

"It's irrelevant at this point," claimed a third person. "You already deposited the check. There's no point in returning the money now."

"Why not?" chimed in a fourth. "If you hold money that you shouldn't have taken, you should return it!"

"Who said there's any problem here of *ribbis*," argued a fifth person. "You didn't lend your client anything. He withheld your payment, which was wrong of him in the first place! He owes you some compensation!"

Dr. Bomzer considered the various viewpoints. "You're all raising valid points," he said. "What should I do?"

"Why don't you call Rabbi Dayan and ask," one of them suggested.

Dr. Bomzer called Rabbi Dayan and asked:

"Am I required to return the extra $100?"

"The rules of returning *ribbis* depend on the severity of the *ribbis*," replied Rabbi Dayan. "The *Gemara* (*B.M.* 61b) teaches that *ribbis ketzutzah* – standard, stipulated, interest for a loan, which is Biblically prohibited – must be returned and the borrower can demand it in *beis din*. Returning *avak ribbis* – most forms of rabbinically prohibited *ribbis* – is not enforceable. Nonetheless, many *Rishonim* write that the lender has a moral responsibility to return even *avak ribbis*" (*Y.D.* 161:2,5; *Machaneh Efraim*, *Ribbis* #15).

"However, Rama, based on Responsa of the Rashba, rules that there is not even a moral obligation to return *ribbis me'ucheres* – which

DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos

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

BHI HOTLINE

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

SMALLER SIZE, LOWER PRICE?

Q. I own a 30-foot lot in Boro Park that I put up for sale. A few months ago, I received a reasonable offer, and I have been in the contract process since. Last week, the buyer informed me that he had paid for a survey of the property, and it measured only 29.5 feet. [Upon investigation, we determined that the property had originally measured, thirty feet, but a neighbor had encroached onto my lot when he renovated his house — but that is a *she'eilah* we will have to deal with separately.] The buyer asked that I drop the price $50,000.

Since we went to contract, however, the real estate market in this area has caught fire, and I can easily sell this property for at least an additional $200,000.

My question is: Am I obligated to drop the price, or can I tell him that I had no idea that the lot was smaller than advertised, but the price is final — take it or leave it?

A: First, we must clarify that the *halachah* would be the same whether the buyer realized that the property is smaller than advertised before the transaction was finalized or afterward.

It is obvious that a buyer is entitled to back out of his commitment if the property is smaller than the seller indicated. Furthermore, even if the seller is willing to give him a refund, the buyer would be allowed to back out of the deal, since he never committed to buy a property that was smaller than advertised.

Furthermore, even if the sale was finalized, the buyer is still entitled to cancel it, despite the negligible discrepancy in size. There is also no time limit on his right to nullify the transaction (*Shulchan Aruch, C.M.* 232:1; *Beis Yosef* ibid.; *Sma* ibid. 2; and *Shulchan Aruch* ibid. 218:27;

CASE FILE

the borrower gives on his own initiative after repaying the loan. Gra (161:8) explains that this is because the borrower gave it as a gift to the lender.

"Seemingly, the rationale is that since the borrower gives the additional amount on his own initiative as a gift – there is sincere *mechilah*, were it not for the prohibition of *ribbis*. Thus, while the lender is not allowed to accept *ribbis me'ucheres*, – once it was already given, post facto there is not even a moral obligation to return it" (*Bris Yehuda* 8:32-33[110]).

"When the borrower adds extra of his own accord when returning the loan, not afterwards, regarding certain *halachos* this is more severe than *ribbis me'ucheres*. Regarding this *halachah*, there is a dispute whether there is a moral responsibility to return the extra. Many *Achronim* rule that it is like *ribbis me'ucheres* and the lender does not have even a moral obligation to return it. The aforementioned rationale applies here, as well" (*Shach* 160:4; *Chavos Daas*, *Y.D*. 160:2).

"In addition, some authorities rule that debt emanating from work is different from a loan, so that an employer who withheld wages is permitted to compensate the employee for the delay. Although others do not differentiate, it is not clear that this is prohibited *ribbis*" (see *Bris Yehuda* 2:17).

"Thus," concluded Rabbi Dayan, "while it is questionable whether you were allowed to deposit the large check, post facto you do not have even a moral obligation to return the extra $100."

Verdict: Although there is a moral responsibility to return *avak ribbis*, the lender does not have to return *ribbis me'ucheres*, which the borrower gives on his own initiative, especially for withheld work earnings.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Mechilah (Forgoing) #28
Mechilah* of *Ribbis

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

Q: Can the borrower forgo the lender ribbis that he charges?

A: Because the Torah prohibited *ribbis*, it is considered a form of theft, even though the borrower agrees to pay it. Therefore, even if the borrower says that he forgoes the *ribbis* to the lender or gives it as a gift, the borrower cannot accept it (*Y.D*. 160:5).

Moreover, in many cases, the lender is required to return interest that he took. However, regarding such *ribbis* that was already collected, the *poskim* write that *mechilah* of the borrower is valid to exempt the lender from returning the *ribbis*, like *mechilah* of other theft. The lender may then keep the money. As with other *mechilah*, no *kinyan* is required for this (*Bris Yehuda* 8:9; *Toras Ribbis* 1:14).

Nonetheless, to exempt the lender, the borrower must explicitly forgo returning the *ribbis*. His silence in not demanding the money back is not sufficient to exempt the lender from his obligation to return the money (*Pischei Teshuvah, Y.D*. 160:6).

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Nesivos 182:8). If this were a case of *onaah* (exploitation) — which would occur if the buyer received whatever he purchased, and the discrepancy was only in the price — he would only have a valid case if the discrepancy was over a certain percentage, and there would be a time limit for filing the claim (*Shulchan Aruch* 227:7), and *onaah* doesn't apply to real estate sales (ibid. 29). In a case of a blemish or a *mekach ta'us* (mistaken purchase), however, none of those limits apply.

Since in this case, the lot is not the size you advertised, your buyer would have a valid claim no matter how small the discrepancy in size and no matter when he realizes the mistake.

Now we will come to your original question if the seller also has the right to back out of the sale.

Rabbeinu Yonah maintains that if there was *onaah* or a blemish in the commodity that was sold, we assume that the person who was exploited will want to nullify the sale when he becomes aware of it. As long as that party hasn't declared that he wants the sale to stand, and the time limit for complaining about *onaah* has not passed, the party who perpetrated the *onaah* is also permitted to nullify the sale (*Rema* 227:4, but the *Mechaber* disagrees).

Nevertheless, if it seems likely that the buyer will not want to void the sale — e.g., if the value of the commodity has risen dramatically since the sale — the seller may not cancel the sale (*Shulchan Aruch* 227:10, with *Sma* 21).

In your case, since your buyer is not trying to nullify the sale — and it is obvious that he would never want to cancel it because of the increase in value — you have no right to use his complaint regarding the size of the lot as an excuse to nullify the sale so that you can sell it at its current value; only he may insist that it be canceled (see *Sma* 232:12 and *Mishpat Shalom* 182:8).

On the other hand, the buyer cannot insist that the seller drop the price because of the smaller size of the lot — whether before the sale is finalized or afterward. The seller may offer that refund, but he may also tell the buyer to either buy the property at the agreed-upon price or cancel the sale, because he can counter that he never intended to sell the property at a lower price (ibid. 232:4. Cf. *Beis Yosef* and *Rabbi Akiva Eiger* to *Sma* 2 regarding the view of the Rashba).

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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