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by his son, R' Shlomo Werdiger

STORYLINE

widgets **contract**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

Weiss' Widgets were capturing the market as the most highly acclaimed widgets. When they announced a sealed bidding for retail rights of their newest widget, the offers were highly competitive.

Reiss Retail was ultimately awarded the rights. A contract was drawn up: "Weiss' Widgets agrees to sell Reiss Retail Distributors 100,000 widgets at $23@ with a 20% down payment."

The 100,000 widgets were unpacked from the warehouse and sent on rail.

While in transit, the eccentric Mr. Weiss suddenly decided that he wanted to retail the widgets directly. "Weiss' Widgets belong with Weisses, not Reisses!" he insisted.

Weiss' lawyer immediately sent a notice to Reiss Retail that they were retracting the sale and would return the down payment.

Reuven Reiss was dumbfounded when he received the message. "I've already begun a whole ad campaign," he exclaimed: "Ride the Widget Wave! Reiss retails Weiss!"

Reiss immediately responded to Weiss: "You already signed a binding contract to sell us the widgets. You can't back out."

"Check out the halacha," Weiss wrote back.

"I'm not a halacha expert," answered Reiss. "But I know without question that it is morally reprehensible to retract from such an agreement, even if legally possible. Such an action indicates a lack of trustworthiness and is unethical, wicked, and deserving of a curse (C.M. 204:1, 7)."

However, Weiss remained adamant. "We are not interested in ethics and moral considerations. Unless the agreement is legally binding in halacha, we intend to retract the sale and retail the widgets ourselves!"

Reiss's lawyer sent a formal legal notification: "Widgets were sold under contract and a cash deposit was paid by my client. If the legally binding arrangement is not honored, we intend to take legal action."

Weiss' lawyer responded: "For a transaction to be binding in halacha, it must be accompanied by an appropriate kinyan, a formal act of acquisition. Neither a contract nor a cash payment serves as a kinyan to finalize a sale for moveable items such as widgets. As such, we are able to retract the sale according to halacha."

Reiss was infuriated, but intrigued, by this response. He had learned in Maseches Kiddushin about the need for an appropriate kinyan for each item.

"I know that a contract and cash serve as kinyan for real estate, not for moveable items," he mused. "Could it be that the sale is not halachically binding?"

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FROM OUR HOTLINE

Submitted by
F. W.

the worth **of a wig**

I needed a new sheitel for a long time but delayed getting one, since I couldn't justify the money it would cost to get a nice new sheitel. Last week, I saw an advertisement that one of the local sheitel machers was having a half-price sale on all the $1,000 wigs. I went in to look at what was available and found a beautiful piece. I purchased the sheitel and my friend, who is also a sheitel macher, cut it for me.

Yesterday, the seller called to tell me that the wig I bought was not one of the sheitels that was on sale. She doesn't know how it got placed with the sheitels that were on sale, but this particular piece was from the line that is normally sold for $1,800 – and it was not part of the sale. The sheitel macher now wants me to pay her the remaining balance of the correct price of the sheitel.

Q: Am I obligated to pay her an additional $1,300?

A: The first issue that must be clarified is the determination of what halacha applies in this circumstance. At first glance, it seems that this is a case of ona'ah. The prohibition

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STORYLINE CONTINUED

Reiss asked Rabbi Tzedek to summon Weiss to a din Torah. The two appeared before the Beis Din.

"What do you claim?" asked Rabbi Tzedek of Reuven Reiss.

"We demand that Weiss' Widgets honor its contract and sell us the widgets!" Reuven stated.

"And what do you say?" Rabbi Tzedek turned to Mr. Weiss.

"We explained to Reiss," responded Mr. Weiss, "that neither a document nor a cash payment serves as a binding kinyan for moveable items."

Rabbi Tzedek and his Beis Din conferred and ruled: "The contract is binding on the basis of situmta and hischayvus."

"What's that?!" asked Weiss.

Rabbi Tzedek explained, "Each transaction must indeed be accompanied by a kinyan. However, the Gemara in Maseches Bava Metzia (74a) introduces a form of kinyan called situmta.

"Situmta was a practice of wine merchants to mark the barrels in their warehouse that were already ordered. If the practice of the merchants is to consider this mark as finalizing the sale, it is validated by halacha, as well. The Shulchan Aruch expands this concept to any common commercial practice. Thus, any act that merchants do to express completion of the transaction, even if not enumerated in halacha, is binding (C.M. 201:1-2).

"A common example of situmta is a contract, since merchants consider this agreement binding. Other possible examples are handshakes, down payments, and 'mazal u'bracha' in the diamond trade. If the local law considers the contracts legally binding, it could also be granted halachic validity on the basis of dina d'malchusa (Pischei Teshuva 201:2).

"Furthermore, the Nesivos (203:7) writes that a person can obligate himself to sell something, the same way he can obligate and accept upon himself a debt (hischayvus). The language, 'agree to sell,' can be understood nowadays as accepting an obligation to do so.

"Therefore, the widgets contract is absolutely binding also in halacha, and you have no legal ability to retract."

FROM OUR HOTLINE CONTINUED

of ona'ah is to exploit another person's ignorance in a business transaction. In the event that a merchant charges one-sixth more than the market price, or if the customer pays less than one-sixth of the market price, the transaction can be cancelled.

Applied to our case, it seems that you unknowingly exploited the sheitel macher when you purchased a wig worth $1,800 for only $500. The truth is, however, that this transaction is null and void for a more fundamental reason. Ona'ah is an issue that is relevant when the object that was to be sold was not properly priced. The issue in this case is that the seller did not intend to sell this particular sheitel. This is a form of mekach taus – mistaken transaction – and is not binding in halacha. Once it is determined that a transaction was a mekach taus, the buyer has the right to cancel the transaction. Furthermore, according to some opinions, even the seller may cancel the deal before the buyer accepted the deficiency (C.M. 232:4, S'ma 12).

What this means for you is that the sheitel macher cannot demand that you pay her the remaining balance on the sheitel; you can just return it to her and ask for a refund of the money you already paid. Furthermore, since you handled the sheitel in a normal manner before the mekach taus was discovered, you are not obligated to pay for the loss of value that resulted from having the sheitel cut (see Choshen Mishpat 232:13).

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

business competition week #3

Q: I operate a long-distance telecommunication company. Verizon and Sprint are constantly running campaigns aimed at my clients and offering incentives for them to "switch over."

May I run a similar campaign to attract new clients, which will also target customers of another Jewish-owned telecommunication company?

A: We learned last week about the law of "ma'arufya," which restricts the right to target another company's established clients. However, this law does not seem to apply to the current long-distance telecommunication industry.

In this field, there are ongoing battles over clients, and constant offers to switch from one company to another. For this reason, no company has the expectation that its current clients will necessarily stay with them. Certainly, when there is consistent client competition by non-Jewish companies, it is not possible to restrict a Jew from competing, since restricting him will not protect the other Jewish business anyway (see Rama C.M. 156:5 and Pischei Choshen, Geneivah ch. 9 n. 20).