

Can a Homeowner Pay Subcontractors Directly?

Rabbi Shmuel Honigwachs

Case: A contractor accepts a job from a homeowner on a cost-plus basis and hires subcontractors to take care of some of the work (plumbers, electricians, etc.). After the work is done, he requests payment from the homeowner for the subcontractors. But the homeowner responds, "*lav ba'al devarim didi at*," "you have no claim against me, and I will deal with the subcontractors myself."

Question: What halachic recourse does the contractor have in enabling the subcontractors to get paid? Is he allowed to make a claim against the homeowner in *Bais Din* on behalf of the subcontractors? It should be noted that the contractor is also concerned that his relationship with the subcontractors stands to suffer if they do not get paid, since they will not want to work with him again.

Answer:

A similar case was heard recently in the Bais Havaad where a contractor working with a builder was concerned that his subcontractors were not getting paid and his relationship with them would suffer. The contractor called the builder to *Bais Din* to attempt to force him to pay the subcontractors. The builder responded that "it is not your business, since you are just their messenger. I will deal with the subcontractors myself. Tell them to call me to *Bais Din* themselves."

This is often a hard question to decide, and the *Bais Din* may try to avoid issuing a definitive *pesak*. In the above case, the Bais Havaad first noted that even if we assume that the contractor does have standing to make the case in *Bais Din*, the builder would still have to be protected to make sure he would not face double charges – even if he wins the case against the contractor, perhaps the subcontractors will then summon him to a different Bais Din and force him to repeat the case again.

The Bais Havaad recommended that the builder receive something from the subcontractor stating that he agrees if he loses the case, the case is over, and he will not try to summon him to a different *din torah* elsewhere.

The halacha with regard to the case itself is also complex. The Gemara (*Bava Kamma* 8b) states that in a case where Reuven says to Shimon (who claims money from him), "*lav ba'al devarim didi at*," and that Levi must make the claim against him, Shimon can respond that he is still considered a *ba'al davar* and may claim the money from Reuven if otherwise Levi will have *Tarumos* (justifiable complaints) against him. It seems that even if Reuven has no financial obligation to Shimon, the *Tarumos* factor still renders Shimon a *ba'al davar*, and he may claim the money.

The question is whether this case in the Gemara is sufficiently comparable to the case at hand that the same halacha would apply (that the contractor is considered a *ba'al davar* due to *Tarumos* from the subcontractor). There are many who assume that the case is entirely unrelated, since the context in the Gemara there refers to where Shimon was indeed a real *ba'al davar*

in the case previously, but by the time they appear in Bais Din, his concern is merely that of *Tarumos* from Levi. This would be different than our case, where the contractor was never a direct *ba'al davar* against the homeowner or builder; rather, it was always one where he was concerned about *Tarumos* from the subcontractors (and he is merely their agent). Nevertheless, there are Rishonim and early Acharonim that do compare the two cases and assume that even when Shimon was never a real *ba'al davar* vis-à-vis Reuven, he can make a claim against Reuven in Bais Din due to the *Tarumos* concern.

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