

Can a Homeowner Tell a Subcontractor to Collect Payment from the Contractor?

Rabbi Shmuel Honigwachs

Case: Someone built a house using a contractor. The house was completed, but shortly thereafter, an electrician came to the door, claiming to be a subcontractor, asking to get paid.

Question: Can the homeowner say that he has nothing to do with the subcontractor, and the latter must demand his payment from the contractor?

Answer: There was a similar case addressed by the Bais Havaad, where the homeowner, contractor, and subcontractor were all present in Bais Din (and all were quite upset). In that case, the homeowner argued that he had stipulated that the maximum amount of money that should be spent on the job was \$200,000, and that the contractor had exceeded the limit by a significant amount.

The contractor responded that they had never made any such agreement. Even if there was, he argued that the homeowner had demanded numerous unusual specifications and additions, and that was the reason why the total amount spent was significantly more than the limit.

As a result of this confusion and the additional expenses, the subcontractor did not get paid, and he demanded his payment as well. The homeowner responds to the subcontractor, "*lav ba'al devarim didi at*," "you have no standing to bring a case against me" (see previous sessions for more about this concept), and that he has no responsibility to pay him.

During the time that this case was continuing, I gave a ride to a prominent *talmid chacham* and asked him what he thought about it. He responded that he had actually been consulted by the homeowner and had told him that he should be *patur*, as an agreement had been drawn with the contractor that the expenses would not exceed \$200,000 without notifying the homeowner, and that agreement was not upheld. Thus, it seems that the responsibility for the situation should fall upon the contractor. (Note that the case was where the contractor was to receive payment cost-plus, based on the expenses, and not a set fee; if that were not the case, then there would be no question that the contractor was responsible to pay the subcontractor.) However, I later realized (and the *talmid chacham* subsequently agreed as well) that this issue is actually addressed explicitly by the Gemara in *Bava Metzia* (sixth *perek*). The Gemara says that if someone appoints another as an agent to hire workers for a price of three coins, and the *shaliach* hires the workers for a price of four instead, if the work that was done is worth four coins in the marketplace, then the homeowner must certainly pay them four coins.

It seems clear from the Gemara that even if there was an agreement between workers and an employer as to the amount of compensation, but the final work was worth a higher value, the homeowner must still pay (Note: This is assuming that the work was actually worth the higher amount). Accordingly, in our case the homeowner would be responsible to

pay the subcontractors for the work they did, even if it amounted to more than the total to which he had originally agreed. This is one of the few cases where a complex case in Bais Din is addressed by an explicit passage in the Gemara.