

Can a Modaah Overturn a Partnership Dissolution Agreement Signed Under Duress?

Rav Yosef Dovid Josilowsky

Question: Two partners want to dissolve their partnership but are unable to come to terms on an agreement. One of them tells the other that if he doesn't agree to his terms, he will sue him in court. The other partner doesn't want to waste time and money in court so he agrees to sign, but he issues a Modaah before signing. Is that mesiras Modaah valid?

Answer: This seems to be a case that would be considered a mechira, a forced sale agreement that, without a Modaah, would be valid. The question is if it could be considered a Modaah of a true *oness*, a real duress which would invalidate it.

The early Achronim discuss whether a threat to turn to a secular court is considered a real duress, because we don't know if the party will seriously take his adversary to court, and even if he does take that course of action, it is far from certain whether he would win or lose in court. On the other hand, we previously mentioned the opinion of the Maharsham, who says that the threat of dragging someone to court and forcing him to spend a lot of money on legal expenses is already a real threat, even if he may ultimately win.

Furthermore, the Maharchash says that if a Modaah is made in reaction to such a threat, the very fact that one party found it necessary to make the Modaah proves that he felt threatened and forced to agree with the settlement. This would demonstrate that the transaction was done under duress and negate it.

Accordingly, the best thing to do would be to have the witnesses write exactly what happened and give this over to the bais din. They will then determine, based on the specifics of the case, whether it qualifies as an *oness* that could overturn the settlement.