

Can One Claim That They Won't Pay to Force a Settlement Agreement?

Rabbi Shmuel Honigwachs

Case: Reuven lends Shimon one million dollars. When he comes to collect, Shimon says that he doesn't want to pay him, Reuven says that he will take him to Bais Din, and Shimon says he will say in Bais Din that doesn't have the money. Shimon says that he will offer Reuven a settlement agreement of 10-cents on the dollar.

Question: Reuven agrees to sign but wants to issue a separate *Shtar Moda'ah* that he does not really forgive the remainder of the loan. Can he do that?

Answer: Settlement agreements are one of the most common places where the concept of *Moda'ah* comes into play.

If a borrower has money, but simply refuses to pay in order to strong-arm the lender to sign an agreement to either accept less or lose all his money. That certainly can be considered coercion and the lender definitely can issue a *Moda'ah* to recoup the rest of his money. If, however, the borrower really doesn't have the money to pay back the loan, there is a dispute amongst the Poskim whether this is a valid excuse not to pay or not. If it is, then a *Moda'ah* will not work, as the borrower did nothing wrong and the lender cannot be considered coerced to accept.