

Can Someone Force a Sale on a Mashkon That Is In His Possession?

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Question: Reuven asks his associate, Shimon, for a loan of \$100k. Shimon only agrees to give the loan if Reuven signs over to him the deed of a property worth \$500k that will serve as collateral until the loan is repaid. Reuven agrees to these terms.

After a while, Shimon decides that he wants to purchase this property. He tells Reuven that he has two choices - either he legitimately sells him the property for its value, or he will keep it for himself without paying, as the deed has already been signed over to him in any case. Left with no other option, Reuven agrees to sell the property to Shimon.

Sometime later, Reuven finds a *shtar* in which Shimon acknowledges that the property was originally given to him as a *mashkon*. Can he now use this proof to invalidate the sale?

Answer: All of the Rishonim agree that if someone simply takes something and pays for it without doing anything else to force the sale, that is not considered the type of sale under duress that is valid in halacha. On the other hand, if there is a clear duress placed upon the owner until he agrees to sell, it would be valid.

But in this case, it is not clear whether it would be the type of forced sale that is valid or not. The reason is that perhaps a forced sale is only considered valid when there is an "outside" duress at play, such as bodily harm. If there is no duress besides the forced sale itself, it could be argued that it is not a valid sale because we have no reason to assume the seller has consented. There appears to be an argument between the Rambam and the Ramban on this point, and consequently, it will be difficult to prove that the sale is invalid unless he declared a *Modaah*.