

If a Contractor Raises The Price in The Middle of Construction, Will a Modaah Work to Negate The New Terms?

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Question: Yankel is building an extension on his house and he hires a contractor to do the job. They agree that Yankel will pay cost price plus 15%. When the job is 75% completed, the contractor tells Yankel that his costs have gone up and he can only finish the work if they raise his rate to 20%. He says that he will not finish the extension unless they sign a new contract with the new terms.

After the job is completed, Yankel comes to bais din with a *Modaah* that says that he was forced to sign the new contract and never really consented to it. Does he have to pay the contractor 15% or 20%?

Answer: Bais din will assess whole situation to determine if the *Modaah* was warranted.

It happens to be that, in this case, there is a possibility that no *Modaah* is needed at all. The halacha is that although a worker is usually allowed to back out of a job in the middle of the work, if it is a "*davar ha'avid*" (a matter that will cause the employer a large loss), the employer is allowed to trick the worker in order to convince him not to leave. He is permitted to do this by promising to pay him more, even though he has no intention of doing so. If it would be determined that this is a case of a *davar ha'avid*, Yankel would not be beholden to the new terms, even if he hadn't been *moser Modaah*.

On the other hand, there are cases where a worker has a legitimate complaint and is permitted to change the terms of a payment agreement. If that is the case here, he is not asking Yankel for a *matanah*; rather, this case would be comparable to a case of a sale, where each party is receiving something from the other. As we have said, a forced sale is valid, which would mean that Yankel would be beholden to the new terms and bais din would have to sit down and determine whether a *Modaah* could work in this instance to prove that he was forced into it.

Another factor to consider is that some Acharonim say that a forced sale is only valid if it is an actual sale and not merely a "*hischayvus*", where one party obligates himself to give something to the other. As we said, the reason a forced sale is valid is because we assume that the seller really does consent to sell when faced with the threats of the buyer; however, this reason may not apply in the case of a *hischayvus*, where the seller is not really receiving anything and, therefore, may not really consent.

The Chochmas Shlomo uses this idea to explain the Gemara that says that Klal Yisroel has a "*modaah rabbah l'ohraysa*", meaning that we can say that we were forced to accept the Torah. Although a forced sale is valid, this is still a good claim because receiving the Torah was a *hischayvus*, not a sale.