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STORYLINE

chametz **sell-off**

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

"I'm going to visit Mr. Morris in the hospital," Mr. Goodman called upstairs to his wife.

Mr. Morris was an elderly neighbor who lived alone. A week before Pesach, he had fallen and broken his hip.

When Mr. Goodman arrived, he greeted the old man. "How are you feeling?"

"Somewhat better," Mr. Morris replied. "They did hip replacement surgery yesterday."

"How long will you be in the hospital?" Mr. Goodman asked.

"Another three or four days," Mr. Morris answered. "I'll have to spend the Seder here."

"It's unpleasant," Mr. Goodman empathized. "But it's important that you recuperate now."

After a nice chat, Mr. Goodman wished Mr. Morris a "refuah sheleima" and headed home. On the way, he stopped off in shul to sell his chametz through Rabbi Tzedek.

"What about Mr. Morris?" he suddenly

thought. "He doesn't even have a phone and won't be able to sell his chametz."

In shul, Mr. Goodman met his friend, Leo Katz. "I just visited Mr. Morris in the hospital," he said. "I wonder if there's any way I can sell his chametz for him."

"I don't see how you can sell someone else's chametz without his authorization," Leo said. "Can you sell his house or car without his authorization?"

"Obviously not," replied Mr. Goodman. "But it's not the same. There he would be losing his house or car, even if he gets paid. But here, he has everything to gain and nothing to lose! Selling the chametz saves him from the prohibition of maintaining chametz over Pesach and spares the chametz from becoming prohibited. The chametz is also purchased back afterwards!"

"But who gave you the right to act on his

behalf?" Leo countered.

"No one," acknowledged Mr. Goodman. "But Rabbi Tzedek recently taught me the concept, 'zachin l'adam shelo b'fanav,' it is possible to acquire on behalf of someone not in his presence if it is for his benefit. Perhaps it's also possible to sell on behalf of someone when it's clearly for his benefit."

It was soon Mr. Goodman's turn. He authorized Rabbi Tzedek to sell his chametz, and then asked, "Mr. Morris will be in the hospital over Pesach. Can I sell his chametz also?" Rabbi Tzedek replied, "If it is not possible to contact Mr. Morris, selling his chametz is valid according to many authorities based on the rule of zachin l'adam shelo b'fanav, since it is an absolute benefit for him to have the chametz sold."

Rabbi Tzedek then explained: "The Gemara (Pesachim 13a) teaches that if you are en-

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FROM THE BHI HOTLINE

Submitted by
S. A.

sales and **stipulations**

I am a wholesaler and recently sold merchandise to a broker who sells to retailers. I specified in our contract that he may not sell the goods to a certain competitor of mine. He sold some goods to my competitor anyway, violating our contract. I demanded that he cancel his deal with this buyer and return all available merchandise to me. His defense was that he was finding it difficult to sell the goods and that this sale was his last option.

He feels that the sale will not harm me and, therefore, the stipulation doesn't apply.

Q: Was he allowed to make this sale?

A: It seems your stipulation falls into the category of conditional transactions, and since the broker violated this specification, you may retroactively cancel the deal. However, conditional transactions are subject to strict halachic guidelines known as the "Conditions of

the Children of Gad and Reuven": the pattern established by Moshe Rabbeinu as he made a conditional agreement with the children of Gad and Reuven to permit them to take possession of Transjordan (see Bamidbar 32). One basic feature requires spelling out explicitly that a deal is valid only if all conditions are met and cancelled if the conditions are not met ('tnai koful'). If both possibilities are not spelled out, any stipulations are rendered irrel-

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STORYLINE CONTINUED

trusted with chametz and the owner does not collect it before Pesach, you are supposed to sell it for him (Orach Chayim 443:2).

"In that case, however, you are entrusted with the chametz. Therefore, selling the chametz before it becomes prohibited is part of your responsibility, just as you are responsible to prevent it from becoming spoiled or ruined (C. M. 292:16; SM"A 292:40).

"There is a dispute among the authorities, though, whether it is possible to sell another person's chametz without his instruction when you are not responsible for it. Most authorities validate the sale on the basis of zachin, if the person would be interested in having it sold (Pischei Teshuva Y.D. 320:6)."

"What is the basis of the dispute?" asked Mr. Goodman.

"It relates to the nature of zachin," replied Rabbi Tzedek. "Tosfos (Kesubos 11a) explains that zachin is rooted in the law of shlichus, agency. Since this action is for the other person's clear benefit, you are considered a 'self-appointed' agent. Therefore, the

same way you can be an agent to acquire for someone's benefit (C.M. 243:1), you can also serve as a 'self-appointed' agent to sell for the owner's benefit. The Rama rules, on this basis, that a Jewish maid can separate challah from dough if the lady of the house is not available (Y.D. 328:3).

"Ketzos Hachoshen (243:7-8), however, maintains that a person cannot be considered an agent unless appointed by the owner. He understands zachin as a separate law that relates only to acquiring on behalf of someone, but not to other legal transactions. This is colloquially referred to as zachin l'adam, acquiring for a person; not zachin mei'adam, acquiring from a person (see Mirkeves Hamishneh, Hil. Gerushin 6:3).

"Most authorities rule, though, that whenever there is an unequivocal benefit for the owner, who is interested in the transaction, it is possible to act on his behalf when he not accessible. Therefore, if Mr. Morris cannot arrange the sale himself, it is possible to sell on his behalf (Piskei Teshuvos O.C. 448:21)."

FROM THE BHI HOTLINE CONTINUED

evant and the sale still stands, despite the fact that the conditions were not fulfilled. However, Nesivos HaMishpat (207:1, 241:11) writes that conditions to transactions that involve movable objects do not have to be made in accordance with the guidelines of the Children of Gad and Reuven. Mishpat Shalom (C. M. 207:1) explains that this practice was adopted to ease the flow of commerce. Otherwise, people might hesitate to engage in trade out of concern that a deal might be validated even if the conditions were not met. According to this, it would seem that your claim is valid, since your question involves movable objects and a simple stipulation is binding. The truth is, though, that in your case, the broker is not bound by your stipulation for a completely different reason. Nesivos HaMishpat (in his work on Hilchos Pesach, Mikor Chaim O.C. 248:6) explains that a con-

dition must be clearly worded as a condition to the transaction (e.g. "If this... then that") and not as an instruction to do something that is not conditional to the transaction. Therefore, if Reuven gives Shimon a gift and instructs him to return it, the gift is not cancelled even if Shimon fails to return it, since Reuven did not stipulate the return of the object as a condition to his gift (but see Mishpat Shalom 207:1, addressing a possible contradiction from C.M. 253:12). So in your case, although it was absolutely improper for him to violate your agreement, since this clause was not worded as a stipulation, the transaction is not cancelled because the instruction was not followed. His breach does not grant you a legal claim to the goods that are in his possession. It is regrettable that this contract - and, unfortunately, many others - was not drafted in a halachically correct way.

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MONEY MATTERS

payment of wages week #10

Q: My organization does not have sufficient funds to cover the entire payroll, other bills, and necessary purchases and orders. Is there a priority of payment?

A: A person is expected to pay all his monetary debts in a timely manner when he is able to. If he is unable to, covering the payroll takes a certain priority over other debts, since delaying payment of wages entails additional

prohibitions. If utilizing all the available funds for payroll will cause penalties or further loss on other obligations, a Rav should be consulted, since the additional prohibitions may not apply in many organizational or corporate situations. If an employer has funds to cover the payroll only partially, there is a priority to pay a needy employee over a wealthy one, even if the wealthy employee approached the employer first for his salary. If both employees

are of the same status, the employer should divide available funds fairly between the two. There is a dispute whether this means equally or by percent, proportional to the various salaries; the common local practice is also relevant. There is no priority given to an employee who is a relative, even though such a priority exists regarding distribution of charity (Ahavas Chesed 10:8-10; see C.M. 104:10 and Aruch Hashulchan 104:15).

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