

Disputes Over Motor Vehicle Repair Fees and the Consumer's Dilemma: Advising consumers of motor vehicle repairs.

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When disputes arise between a consumer and a mechanic over vehicle repair charges, the end result is often the assertion of a mechanic's lien. If the facility has overcharged or performed those repairs without authorization, then the consumer may be shocked to hear that the mechanic is now refusing to return the vehicle based on non-payment. In these situations, the consumer may feel that the vehicle is being held for ransom, and the only available way of getting it back is to pay the bill.

This familiar consumer dispute presents a dilemma for both the consumer and the practitioner. If the consumer pays the bill, then he must sue to regain any illegally charged portion of the repair bill. On the other hand, if he refuses to pay, then he must sue to recover the vehicle and any other damages, such as rental costs.¹ In either event, the consumer must bring an action to be made whole. The question then is which course of action to advise.

For the practitioner, this situation presents a dilemma of another kind. As attorneys we tend to want to plead as many theories as possible and take the best one to trial. But in this kind of case, advising any course of action at this early stage of the dispute means an irrevocable election of remedies for the client. Therefore, advising the client requires a clear understanding of the remedies available under the Motor Vehicle Service And Repair Act (MVSRA).²

The Possessory Lien -- The Garage Keeper's Lien Act

The principal tool of the repair facility is the assertion of a garage keeper's lien. The Garage Keeper's Lien Act³ provides this lien to repair facilities for any work or storage charges attributable to the vehicle. However, the statute provides rigorous deadlines if the garage keeper wishes to assert the lien.

¹Claim and delivery actions under MCL 600.2920 are subject to MCR 3.105 and, the consumer may bring a motion for possession pending the outcome of the case under MCR 3.105(e).

²MCL 257.1301 *et seq.*

³MCL §570.301 *et seq.*

The possessory lien by the facility can be asserted only within the first 90 days after the repair services were rendered. After that 90 days has expired, there is no statutory authority for the facility to retain the vehicle, so the facility must act quickly to execute upon this statutory lien.⁴ While the facility may retain the car in their possession within this 90 days, it may not move to sell the vehicle until 45 days after it has delivered a claim of lien and final bill to consumer. The garage must move to sell the vehicle between 20 and 60 days after the expiration of that 45 day grace period. No less than 10 days before that sale, the facility must notify the Secretary of State and owner of its intent to dispose of the vehicle.

The overall effect of this statute is plain. The facility can retain possession of the vehicle for a period of 90 days during which it must move to execute on the lien. The consumer cannot regain possession of the vehicle unless the facility's bill has been satisfied, the lien is waived or a court orders otherwise.⁵

The Basics: Motor Vehicle Service & Repair Act

The election of remedies problem in this situation is raised by the MVSRA. This statute regulates repair facilities, mechanics, and the process of motor vehicle repairs. Additionally, the statute has two principal remedies for aggrieved consumers.⁶ First, repair facilities are barred from bringing any action, asserting any lien, or collecting any fee if they have committed an unfair or deceptive practice.⁷ Second, the consumer may bring action for unfair or deceptive acts and recover damages, costs and attorney fees, and⁸ in the event of

⁴While the statutory lien expires after 90 days, the Court of Appeals has held that the facility may retain a common law artisan's lien. Nickell v Lambrecht, 29 Mich App 191 (1970) This position, however has not been reviewed by the Supreme Court in any published opinion. This ruling appears to be inconsistent with the preemptive nature of a comprehensive statutory framework and the clear legislative intent to put in place time limitations and procedural safeguards for consumers who would not otherwise have any protections against unlawful or untimely assertions of a lien. C.f., Smith v. YMCA of Benton Harbor/Saint Joseph, 216 Mich App 552 (1996), c.f. also Jackson v. PKM Corp., 430 Mich 262 (1988).

⁵Under regulations promulgated under the MVSRA, it is an unfair or deceptive practice to refuse to return a vehicle if the owner has demanded its return and paid all the sums which he has agreed to pay, Rule 257.135(d). Reading the MVSRA together with the Garage Keepers Lien Act leads to the conclusion that the repair facility may attempt to assert its lien on the vehicle for unauthorized repairs. However, the facility does so at the risk illegally converting the vehicle. If the consumer has offered to pay the agreed amount and a trier of fact concludes that remaining charges were not authorized, then the conclusion must be that the consumer was then entitled to possession, and the facility had no right to possession. Such illegal concealment of personal property violates MCL 600.2919a and is subject to treble damages for the value of the goods.

⁶The MVSRA provides several remedies in addition to those discussed in this article including administrative mediation, licensing sanctions, and corporate veil piercing.

⁷MCL §257.1331.

a willful violation, the consumer may recover double his damages.⁹

The first of these remedies under MCL §257.1331 provides the consumer with an absolute defense to the assertion of any claim or lien by the repair facility. In effect, this section is a shield which can be used against any legal action and bars any action by the facility at law or equity for the collection of a repair bill.

More importantly, this shield provision does not differentiate between portions of the bill that are legitimately charged and those that are unlawful. Rather, this affirmative defense effectively penalizes repair facilities for illegal acts by removing the ability to collect for legitimate repairs if there has been an unfair or deceptive act.

Thus, if the consumer waits for the facility to assert a claim for repairs, he may effectively seek to have the entire claim barred, and regain the vehicle without paying for any of the repairs. The consumer receives a statutory windfall and the facility is penalized for its actions in using a court process to collect an illegal bill.

The second remedy lies in MCL §257.1336. This section provides the consumer with a cause of action for unfair or deceptive acts by a repair facility. If a consumer has been damaged by an illegal act, he can bring an action to recover damages, costs, and attorney fees. Together, these sections represent a sword and a shield. The first section shields against suits by repair facilities, and the second provides a cause of action for unfair or deceptive acts. But, in examining how these sections function in a litigation setting, the practitioner must realize that they can't both be effectively asserted at the same time. There must be an election of remedies.

The Practitioner's Dilemma

⁸MCL §257.1336.

⁹Id.

Since MCL §257.1331 establishes an affirmative defense, it can only be used as a shield against a claim or lien asserted by the repair facility. If the facility has not asserted any such claim or lien, the consumer cannot use it as a cause of action.¹⁰ Rather, if a facility has given an estimate of \$100 for a repair and then performs an additional \$900 in repairs, the client would be able to assert MCL §257.1331 as a defense to a collection action or lien for the \$1,000. If the client prevails he may obtain the benefit of \$1,000 in free repairs, which would effectively be a penalty against the facility.

On the other hand, if the client pays the entire bill, then this provision is of no use. Having paid the \$900, the client could not use MCL §257.1331 as a claim. Instead, the client would have to bring an action under MCL §257.1336 for performing unauthorized repairs. Consequently, the client would seek \$900 as damages representing the amount that the client had not authorized. At the same time, there would be no defense to the \$100 in charges which he had agreed to pay. Therefore, your client cannot effectively use the penalty provisions of this statute if he has already paid the bill.

The practitioner's dilemma is this, by refusing to pay the bill, the client loses the benefit of having his vehicle and will be greatly inconvenienced. The client retains the ability to use the shield portion of the MVSRA against any claim for recovery and may assert claims for rental car costs as a consequential damage for the illegal possession. And if the client has offered to pay the agreed amount, then the client also has a viable claim for conversion. Nonetheless, the leverage of having the penalty portion of the MVSRA available along with a conversion claim comes at the price of a serious inconvenience to the client.

On the other side of the dilemma, if the client pays for the repair, then he loses the ability to take advantage of the penalty provisions of the MVSRA's shield and gives up the leverage of a conversion. However, the client may benefit by having the continued use of the repaired vehicle and retains the right to sue for damages arising out of illegal conduct.

Advising The Client And Early Elections of Remedies

There are no hard and fast rules about which course of action to adopt for a particular client, but the practitioner must be able understand the ramifications of each course of action and move decisively to pursue the appropriate remedies. In making that decision, the following factors are important decision point:

1. How much money does the legal charge represent? If your client has authorized a relatively large amount of repairs and the facility has overcharged a substantial sum, you can gain considerable bargaining leverage by leaving the vehicle in the hands of the facility. If you are able to secure a finding that the facility has violated the MVSRA, then your client will be able to assert that violation as a defense to any claim for the repairs. Thus, if the amount of legal charges is large, the facility will not want to forego that amount, and instead may opt for a swift settlement rather than sustain the penalty of losing the ability to charge any fee.

¹⁰See Ballman v Borges, CA No 193746.

2. Can the client afford the bill? If the client cannot afford to pay the overcharges, then clearly you must tailor your claims to that fact. In short, if your client cannot pay, then your course of action must be to leave the vehicle with the repair facility until you can obtain a court order granting him possession. On the other hand, if the client does have the means to pay the bill, you must advise the client by paying the bill, he is electing to forego the penalty provision of MCL §257.1331. If the client does elect to wait for the court's order, the practitioner should make sure to assert the MVSRA violations as well as claim that no charges may be levied against the vehicle.
3. How quickly can you obtain possession of the vehicle? In some courts, you may be able to obtain an order of possession within a week of filing the complaint. In other courts, the time may approach several months. Therefore, it is important to know in advance where your client's claims may be brought, as well as the local procedure for bringing a motion for possession. If you can obtain swift relief for your client, you may want to leave the vehicle in possession of the facility and bring your motion for possession. If the time frame for a hearing is short enough, there may be little difference between the time necessary to bring the motion and the time necessary to obtain funds and discharge the facility's lien. In so doing, you can forestall the election of remedies until trial.
4. How much is the vehicle worth? If the vehicle is worth a substantial sum of money, then the assertion of an improper lien has behind it the specter of a conversion claim. Therefore, if the vehicle is worth a substantial sum, the treble damage provisions of the conversion statute represent a substantial incentive for settlement.
5. Does the client have access to alternative transportation? If your client has no alternate means of transportation and must have access to the vehicle, you need to give that consideration first priority. While incidental damages are recoverable in a claim for conversion¹¹ and your client has no duty to mitigate¹², judges and juries may be hostile to what may be perceived as "manufactured" damages due to lost wages or employment termination. Simply put, it is imprudent to sacrifice a client's job to the vagaries of the judicial system. In the vast majority of cases, it behooves your client to keep their damages as low as possible, irrespective of any rules relating to mitigation.

Conclusion

In advising clients regarding MVSRA claims, practitioners must keep one eye peeled for an election of remedies, and the other on the client's particular circumstance. If the client redeems his vehicle prior to obtaining a court order, then he waives the ability to invoke the penalties provided by statute. On the other hand, if the client awaits a court order for possession, he may incur additional damages in alternate transportation costs. In either

¹¹Central Transport, Inc v Fruehauf Corp., 139 Mich App 536 (1984).

¹²Rohe Scientific Corp v National Bank of Detroit, 135 Mich App 777 (1984).

event, practitioners should be prepared to evaluate what kinds of claims and benefits will be forgone by choosing to between these two alternatives. And ultimately, clients should be advised as to these choices when they are presented.