

Dealing with bad debts: liens and other remedies

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If you are a mechanic, or run a vehicle repair business, the chances are you will have come across a customer who refuses to pay the repair costs. Or perhaps they simply fail to collect the car when they find out how much they have to pay. What are your rights?

Enforcement Action

The debt collection remedies available to you include enlisting the help of a debt collection agency (often they work on a commission) or instructing your lawyer to get judgment against the debtor. Once you have judgment, there are a number of different types of action that can be taken to enforce payment, and you will need to discuss these with your lawyer to see what is likely to be the most effective. Your lawyer can have the debtor examined in front of a court registrar to see whether they have the means to pay the debt. If the examination shows that they can pay the debt on an instalment basis, then an attachment order against the debtor's wages is a useful remedy. If the debtor has property, then a charging order against the property will secure the debt. Other options include a distress warrant (served by a court bailiff who is looking to seize property to satisfy the debt) and bankruptcy.

Liens

A much more immediate remedy is available to you if you have carried out repairs to a vehicle, and the vehicle is still in your possession. Provided you have carried out work to improve or repair a vehicle, and that work has been authorised by or on behalf of the owner at the time of delivery, then you can claim a lien over the vehicle for the cost of that work. The right to incur a lien can be implied if the person delivering the vehicle has lawful use of the vehicle and the right to incur a lien is incidental to its reasonable use.

It is a particular and not a general lien, which means that it only applies to charges which relate to the actual work carried out on the vehicle. Once the vehicle has been collected by the owner, you lose the right to a lien in respect of those charges.

If the vehicle comes into your possession for further work, and there are old accounts which the customer has not paid, you cannot refuse to release the vehicle until all charges are paid. As soon as the customer pays the amount actually secured by the lien (being the amount actually due for the repairs) then the vehicle must be released to the customer. If the vehicle is not released when payment is made, it is retained unlawfully and you will be liable to pay damages to the customer.

What happens if the account is disputed

A real difficulty arises if there is a dispute over how much is due, and the customer tenders payment for a lesser amount which later (through court action) is found to be the proper amount for the work carried out. Failing to release the vehicle after tender of the proper amount is unlawful, and opens up liability to the customer in damages. You need to be aware of this potential trap if the account is in dispute. If you have made it very clear that you will accept nothing less than payment in full, the customer doesn't even need to tender a lesser amount before this liability for damages arises.

What happens if the vehicle is subject to hire purchase?

Lawful use of the vehicle by the customer is enough to give you the right to claim a lien for non payment. If the right to incur a lien has been expressly excluded in the hire purchase agreement, your right to a lien will only be lost if you have express notice of that.

Selling the vehicle

Contractor's liens and the formalities which you have to comply with in selling a vehicle are regulated by section 3 of the Wages Protection and Liens Act Repeal Act 1987. You can sell the vehicle by auction if the account remains unpaid for not less than 2 months after payment was due.

At least one week's notice of the sale must be given to the owner of the vehicle. The notice does not have to be personally delivered. It can be posted to or left at the owner's usual or last known home address or place of business. You will need to show proof of delivery, so if the notice is posted, it should be sent by registered letter.

At least one week's notice of the sale must be given in a newspaper circulating in the area that the work was carried out.

The notice must state the name of the person entitled to the lien, the amount of the debt, a description of the vehicle, the time and place of sale, and the name of the auctioneer.

Once the vehicle is sold, the proceeds of sale go first to pay the costs of advertising, and second to pay the debt. Any surplus is to be paid to the Registrar of the District Court closest to the place of sale. It is then held by the Registrar for the benefit of the person entitled to it.

Conclusion

Liens are an effective "self help" remedy, but there are potential pitfalls. Before endeavouring to exercise any of the rights discussed in this article, I strongly recommend that you seek advice from your lawyer. Each situation is different, and if the correct procedures are not followed you may become exposed to potential liability. In most cases you will be dealing with customers who simply don't have the means to pay, and selling the vehicle is your best option. But if a customer has a genuine dispute about the value of the work carried out, you risk costly litigation and damages.

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