

HOW CAR CREDITORS SHOULD RESPOND TO MECHANIC'S LIEN CLAIMS

By Michael W. Dunagan, Attorney

Most vehicle lien holders have at one time or another received the ominous letter advising of a mechanic's lien claim. The letter, sometimes originating from a title service, advises that, unless the claim amount is paid in 30 days, the vehicle will be sold to satisfy the claim. The claims are usually suspicious, often for an amount that equals or exceeds the value of the vehicle. Many times, hundreds if not thousands of dollars of storage charges are added. More often than not, there was no written work order.

In most cases, the vehicle in question has been on the lien holder's skip list and the debtor-owner has not been heard from or seen in months. The lien holder's first reaction upon receiving the letter is: Can they legally do this? The answer, with some exceptions, is: Yes they can. And, unless the mortgage holder takes some affirmative action to stop it, the state will issue a negotiable title certificate to the applicant.

Prior to 1975, Texas law treated mechanic's liens like any other lien. That is, in a dispute between multiple lien claimants, the general rule of "first in time, first in right" applied. Usually the mortgage lien holder, who has recorded its lien on the title certificate immediately after the sale, would prevail over a mechanic's lien that arose later in time. But a series of seemingly unrelated events, culminating in a 1975 Texas Supreme Court decision, changed the priority of the liens.

In Gulf Coast State Bank vs. Nelms, the Texas Supreme Court ruled that a prior revision of the Uniform Commercial Code has the effect of reversing the priorities

between mortgage and mechanic's liens on personal property. It didn't take the vehicle repair industry long to figure this one out.

Texas law grants to a mechanic a possessory lien to a vehicle if (1) the work is authorized by the owner or the owner's agent; (2) the work is actually performed; and (3) the charge is reasonable. Obviously, then, the lien claim can be attacked by showing that (1) the work wasn't authorized; (2) the work wasn't actually performed; or (3) the charge for the work is unreasonable. Since the lien is a possessory lien, the return of the vehicle to the owner cuts off the lien. We also have successfully argued that the mechanic's personal use of a vehicle cuts off the lien. On more than one occasion, a vehicle subject to an alleged lien has been repossessed from the home driveway of a mechanic or an employee.

Under the current system, anyone can submit an application for a mechanic's lien to TxDOT. No check is made as to the accuracy of the claim, or whether the services were actually rendered. If the paperwork appears to be in order, the state will issue a negotiable title document to the applicant. The only way to stop the issuance of mechanic-lien title is to file a lawsuit naming as defendants the applicant and the State of Texas, and obtain an injunction against the issuance of the title.

Fraudulent mechanic-lien claims rank right up there with consumer bankruptcies as the greatest cause of losses for the car creditor. Some repair shops, with the assistance of private title services, have become experts in inflating repair charges when they know they can either force the lien holder to pay, or obtain a title to the vehicle that would supersede the creditor's ownership rights. In recent months, we have represented dealers against a claim made by a shop being investigated by the police for fraud, and a shop and

title service that were found by a county tax assessor-collector to having submitted fraudulent mechanic lien papers. We have also seen cases where title services use fraudulent mechanic-lien claims to obtain title certificates for persons that simply want to avoid car dealers' unpaid liens.

We are particularly suspicious about lien claims that come from friends or relatives of the debtor. Collusion can often be inferred from such cozy arrangements, especially when the amount of the claim is unusually high. We also closely examine claims that come from mechanics with non-existent addresses, residential addresses or P.O. boxes. We once received a claim of \$4000 for a paint job that was performed under a tree in a residential back yard. Also, any claim for a small amount of repairs but a large amount of storage charges raises concerns. Our position is that while a bona fide repair charge is superior to the mortgage lien, storage charges aren't.

Another scam we occasionally see is the attempt to hold a vehicle for charges on work done on another car or for rental charges advanced on substitute transportation. Neither of these charges is a legitimate reason to claim a possessory lien on a vehicle.

What can a lien holder do to protect its lien interest? Here are some suggestions.

First and foremost, titles should be timely transferred to perfect the mortgage lien and place it of record in the state's title records. If a title hasn't been transferred, the lien holder's position isn't perfected against most third-party claims, and the lien holder is not entitled to notice on mechanic's and storage lien claims.

Second, all mechanic's lien claims should be investigated. Most legitimate shops will let lien holders see the work order and other paperwork, and examine the vehicle. Take along a mechanic who can tell from looking at the vehicle whether the work has in

fact been done. We've had cases where the mechanic quickly dropped a \$5,000 engine overhaul bill when an expert witness confronted him with evidence that the engine still had its original parts, and the block had simply been painted.

A certified mechanic can make a good witness at trial if litigation over the matter ensues. There is little that can be done, however, if the vehicle gets sold and disappears before your expert can make his inspection. Photos and videos can also be used to assist in evaluating whether work was done.

If the mechanic won't allow an inspection, make written demand. We've had mechanics refuse to show the paperwork or the vehicle until payment was made (in cash). When later confronted in court they changed their story and denied refusing access.

If a mechanic's lien claim appears to be illegal, and no agreement can be reached, it may be necessary to seek a court order that the sheriff take possession of the vehicle pending a trial on the dispute. The party seeking the writ must swear to facts sufficient to justify the issuance of the order, and must post a bond. But if the value of the vehicle justifies the cost, this is an effective method of forcing the mechanic to justify his charges under oath. It also protects the vehicle from sale or alteration pending the trial. My firm has been successful in getting vehicles returned to dealers who have been victimized by dishonest mechanics. Often, the mechanic doesn't even show up in court to explain his actions.

Another option is to simply pay the disputed mechanic's lien charge to get the vehicle, then sue to the extent that you can prove the charges to be improper. The downside of this procedure is that the type of mechanic who files false lien claims probably doesn't have the assets to satisfy a judgment.

Another suggestion we make is that lien holders encourage their customers to come to them when problems arise. Of course, if the customer has larceny on his or her mind and conspires with a mechanic to create a bogus lien, there is little the dealer can do to prevent this from happening. However, selling all vehicles “as is” and emphasizing to customers that they are on their own on repair is often the cause of honest customers placing their cars with mechanics who seek only to force the dealer to pay or acquire the vehicle through a mechanic’s lien foreclosure. The refusal to assist or participate in an expensive repair, or to at least steer the customer to an honest mechanic is usually enough to drive the debtor to a dishonest one.