



Contract Disputes



By Steven Crea

“I’m not paying that!”

Anyone who has stood behind an automotive service counter has heard this phrase, or a variation of the theme. Customers are understandably upset when asked to pay for repairs they believe weren't agreed to or the work performed on their vehicle is not what they wanted or the final cost is higher than expected. This awkward situation has obvious implications from a customer relations perspective, but where do you stand legally?

For an invoice to be valid, there must be a valid contract behind it. For a contract to be valid, an agreement must have been reached through what is referred to in contract law as 'offer and acceptance'. This means your customer must have agreed to the work (including all associated costs) that is to be carried out on their vehicle. Agreement, or lack of it, is the area where most disputes with auto repairers are won or lost.

To ensure you have agreement and avoid disputes regarding work performed you can follow a few simple steps:

1. Clearly record on the work order the customer's instructions for the job. It may be necessary for you to inspect the vehicle and provide the customer with your initial advice from which you will together determine the extent of the job.
2. Advise the customer the expected cost of the work (or method of calculation when, for example, the exact scope of work is unknown and an hourly rate will be charged), prior to commencing any work.
3. Have the customer agree to proceed with the job by accepting the costs. If they are in person, by signature, or if not, by email or phone. If by phone, make comprehensive notes of the verbal acceptance including what you said and what they said.

Often it is not the initial job that is challenged, but additional work or parts. Additional items should also be agreed to before such work is carried out. If the agreement is reached over the

phone, record the time and date along with the agreed variation on the work order. Remember, a verbal agreement can still form a valid contract, but proof is more difficult than a written one. It may be prudent to go to the trouble of getting the variation signed if the new work is of significant cost and you suspect the customer may take issue with it later.

If you are in the habit of including extra services (and charging for them), such as wiper blades or oil additives, make sure this is clear to the customer. Undisclosed fees and charges may be deemed to be outside of the contract and therefore not recoverable.

If you do have a valid invoice (including acceptance of the costs) but the customer is refusing to pay, what are the options?

Payment for a valid invoice can be secured by way of a 'lien' over the subject vehicle. This means that you have a legal right to keep possession of the customer's vehicle as security for payment for the services or parts furnished in respect of the vehicle. Be aware that you will still have a general duty of care over the vehicle while it is in your possession.

Alternatively or additionally, you can seek a legal remedy in the courts but it is unlikely that the costs associated with legal action can be justified against the value of the claim. The civil list of the state tribunals may provide a more viable option as these will be low cost, informal and user friendly but they may require a time investment by the business owner to attend the hearing as lawyers are not generally used. If you do obtain a tribunal judgment but the debtor still won't pay, you will have to transfer the matter to the magistrates court for enforcement measures anyway.

As always, the best option is to avoid legal disputes from the outset. We advise that the operational measures suggested above are built into your workshop systems and processes. It might seem onerous at first if you are not used to it, but over time it will become standard operating procedure and a good business discipline to have. Being proactive and making the up-front investment in time will minimise the risk of bad debts and maximise good customer relations in the future.

For advice on this or any other automotive business matter, please contact Steven Crea of CreaLegal on 0411 777 695 or email enquiries@crealegal.com.au. A contribution from Wayne Turner in is acknowledged in writing this article.



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The Editor's Desk

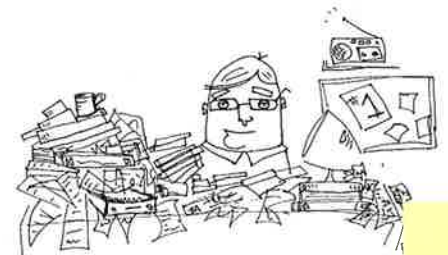
I recently had my Lada serviced at my local independent repairer. Fred mentioned that the brake pads were due for replacement and of course I gave him the okay to proceed.

Upon arrival to pick up my chariot and pay the account I was met by Fred and a box of old parts showing what had been replaced etc. I personally did not need to see these but Fred said he was in the habit of doing this for all his customers and therefore he had them waiting for me too.

It's a sad reflection of today's society where many people don't trust workshops. The problem is of course is that most replaced components in a service or repair can't be seen. So, some of your customers will take up the offer to see used components. Maybe it's a good idea to offer this service when they initially check in at your reception desk.

"We usually throw out any used components during a service, but would you like us to keep them for you in case you'd like us to explain any issues?"

As we have said before most of our customers are not mechanically minded so by providing proof of any replaced parts etc



will help build customer loyalty and ensure they will be a returning customer and they will recommend you to their friends.

"when I collected my car after being serviced they offered me a box of the parts they replaced."

Speaking of customers, the MD's article in the last issue page 22 "The customer is Not always right" caused a stir and has created a Forum with some readers agreeing with MD's comments whilst others were critical. It's even prompted one of our expert contributors Steven Crea to write an article on Contract Disputes.

Feel free to give us feedback on this subject or better still, we would like to hear some of your experiences where you felt, "The Customer Is NOT Always Right."

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Cheers Ed.