Mariner Life - Legal Desk

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Marine Law Myth #17: Repairer's Storage Costs are a Valid Claim against Goods

A Common Problem: Bill Disputes and Storage Charges

It is all too common a scenario in marine industry that a repairer, such as a shipyard or independent machinist, welder or shipwright, completes work on a vessel or piece of marine equipment and the owner challenges the bill on the basis that it is excessive or the work was not completed properly. The owner refuses to pay all or part of the bill, and the repairer refuses to release the equipment. The repairer is stuck with having to store and preserve the owner's goods and to wait for payment, and the owner is without their property. The repairer feels cheated and the owner feels that their property is being held for ransom. This is not to say that either the repairer or the owner have acted improperly, only that invariably, people have different views on what is a fair charge for repair work, and what is good work.

These types of disputes almost always give rise to a claim by the repairer for additional monies owning for storing the equipment (be it moorage charges for dock space at the shipyard, or dry-land and shop-space storage charges) after the time the invoice is due and when the repairer releases the goods to the owner. Until the dispute is resolved, the owner's bill continues to grow and the repairer's costs eat further and further into their profit. It is a dilemma for both parties.

The Myth:

It is a myth that charges for storing and preserving the equipment pending payment of the invoice form a valid part of the repairer's claim for monies owing. In other words, if there is a dispute between a repairer and an owner of goods and the repairer refuses to release the goods until the invoice is paid, the repairer cannot claim for costs for storing the goods and money spent on preserving the goods.

This comes as a surprise to many repairers. From a repairer's perspective it seems unjust that, after having completed good work on equipment and charged a fair price, an owner can refuse to pay the bill, and the repairer will be stuck with the cost of keeping the goods. In many cases it is not the repairer's fault that the owner refuses, or cannot pay – why should the repairer cover the cost of storage that the owner would have paid elsewhere had they simply paid the bill and taken their goods? From the owners perspective, why should they have to pay an excessive bill for poor work in order to have their vessel released, as well as have to pay the repairer more money because they refuse to release the boat in the meantime?

An Example: The "Freedom Eagle"

The B.C. Supreme Court considered this law in the 1993 case of *MacNaughton v. Stewart*, which involved the vessel the "Freedom Eagle". In this case the owner of the "Freedom Eagle" entrusted the vessel to two prospective buyers. One of the potential buyers represented himself as the owner of the vessel and contracted a shipyard to do work on the vessel. The work was concluded after two days in July and the shipyard rendered an invoice. The invoice went unpaid and the vessel sat at the shipyard until November when, in expectation that the bill would not be paid any time soon and with winter approaching, the shipyard carried out work to winterize the vessel. The shipyard then rendered another invoice for the cost of the original work, the winterizing and storage charges for the period of July to November.

Upon receipt of the November invoice the true owner offered to pay the shipyard the amount of the original invoice in exchange for release of the vessel, but this was refused. The owner then sued the shipyard for release of the vessel, asking the court to find that the shipyard was owed only the amount for the original work, and that the shipyard could not assert a lien for the storage charges and the winterizing.

In deciding the case, Justice Owen-Flood distinguished between value the shipyard had imparted on the vessel in making the original repairs and improvements, which he found formed a valid repairers lien on the vessel, and the monies spent on the vessel for storage and winterizing. Owen-Flood found that the monies spent for storage and winterizing were not spent for the purposes of *improving* the vessel (which is necessary to have a repairer's lien), but were spent for the purposes of protecting the repairer's position, that is their security in the vessel. Therefore, the shipyard could not charge for the storage or winterizing.

No Storage Charges under a Marine Possessory Lien as well

After considering the repairers lien, Owen-Flood in the *MacNaughton* case also considered whether the storage charges formed part of the shipyard's *marine possessory lien*. A *marine possessory lien* is different from a repairers lien, though they are both types of security for work done on goods (a repairer can have both types of liens at the same time). Unlike a repairers lien (which is created by statute – the provincial *Repairers Lien Act* - and provides an automatic right of sale of the goods if the invoice goes unpaid for 90 days) marine possessory lien only gives the repairer the right it keep the vessel until the bill is paid. A repairer can sue for payment of their bill and hold the vessel as security, but the marine possessory lien gives no automatic right of sale – the court has to grant this. Looking to several old commonwealth cases Owen-Flood confirmed that, like a repairers lien, storage charges did not form part of a marine possessory lien.

In essence, the court's view is that the purpose of incurring storage and preservation costs of the vessel is not for the benefit of the owner, but for the benefit of the repairer in

preserving their lien on the vessel. This is because, at the end of the day, if the invoice is not paid and the only security to satisfy the bill is the sale proceeds of the vessel (whether the vessel is sold by automatic right under a repairers lien or by court order under a marine possessory lien), it is in the repairer's interest that the vessel be preserved.

The Cure for Repairers: Contracting for Storage Liens

For repairers, there is a light at the end of this dismal legal tunnel of having to pay for storing someone's goods when they refuse to pay a bill. That light is that the repairer can include in their contract with the owner terms that if the original invoice for repair work goes unpaid for so many days (either because the owner fails or refuses to pay all of the bill), another separate contract automatically arises, a storage contract for the goods.

The terms of the storage contract, which would be part of the terms of the original Work Order signed by the owner when they deliver their goods for repair, would provide that in the event the owner does not take possession of the goods (either voluntarily or because the repairer will not release them with the repair bill unpaid), the repairer has the contractual right to charge for storage and that these storage charges, by agreement, form a lien against the goods.

In other words, where the repairer cannot rely on the common-law (law that comes from cases like the *MacNaughton* case above) to give them the right to claim a lien for storage charges, they can expressly contract with the owner to do so. I would estimate that less than 10% of the repairers on the coast have such a clause in their Work Orders. The wording on the Work Order must be clear and specific and preferably brought to the owner's attention when they first deliver the goods for repair.

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