

When Restorations Go Bad

If the shop is not doing the job right — or at all — get the car and take it somewhere else



Nine years and \$300,000 later, it appeared that all that had been accomplished was that the car had been fully disassembled and the parts incompletely cleaned. The owner looked for legal help.

The smart strategy was to just go get the car back from the shop. It didn't look like there was any way the shop was ever going to complete the project — no matter how many chances were given.

There was no sense factoring in the money that had already been paid to the shop. That was properly viewed as lost money — and the subject of legal action to recover. The unfortunate owner had no real choice other than to take the pieces somewhere else and start all over from dollar one; otherwise, this car was never going to get finished.

Mechanic's liens

The shop owner was initially compliant — but then lawyered

Disputes involving car restoration work are definitely in the upper echelon of the “Legal Files” Top 10 Hit Parade. That shouldn't be surprising. Restorations have many elements that can easily lead to disputes:

1. It is really hard to know up front what level of work and cost most restorations are going to involve. For example, how deep the “surface rust” really goes can't be discovered until you take things apart. No one has a crystal ball.

2. Given the estimation difficulties, many projects are handled on a time-and-materials basis. Although logical, that can reduce the incentive to work efficiently. Most shops pay their workers on the basis of their billable hours — in effect splitting the billings with them. That adds a second layer of disincentive toward efficiency.

Writing off time means the worker gets paid less and, if the customer later complains about the cost, adjustments require a worker “refund.” The shop owner feels pressure in both directions.

3. Restoration work can be very profitable. In strong markets, such as today's, unqualified “restorers” can be drawn into the industry. Similarly, capable craftsmen become very hard to find, and shops often have little choice but to use less-experienced labor than they would prefer.

4. Strong markets also bring people into the hobby that don't really know very much about collector cars at all, let alone what a restoration can actually entail.

Put that all together, and it may be surprising that we don't see even more lawsuits.

Unlucky first-timer

Our office recently assisted a first-time collector who had grown unhappy with the work of a restoration shop. The shop quoted a fixed fee of \$250,000 and warned that the project could take two years to complete.

up. The expected immediate response was that the car would not be released because it was subject to a lien on the part of the shop.

State laws routinely give repair shops lien rights on cars they work on. If the shop has not been paid, it does not have to release the car to the owner.

If payment is not received within a specified time after demand is made (typically 60 days), the shop can sell the car to get its bill paid, with any excess going to the owner. In addition, the shop is able to add storage charges to the lien, and usually its attorney fees and costs.

Lien laws put the shop in a powerful position, but the owner does have some bullets to shoot.

First, the owner can pay the shop, take the car, and then sue for a refund. This is often unappealing, as the shop may not have the money to give back in the end.

Second, the owner can post a bond for the amount owed (often a multiple such as 150% is required) and file suit to challenge the amount owed. Posting the bond forces the shop to release the car, as the bond becomes the shop's collateral.

Perhaps most importantly, the shop may no longer be able to recover its legal fees unless the restoration contract or some other provision of state law provides for it, which is not always the case.

Third, the owner can recover damages if the lien was invalid due to no liability, violation of state laws in connection with the work or the lien, and so on.

Our first-timer's local counsel was able to get the car released by making clear that a bond would be posted and by stressing the third bullet.

The validity of the lien was questionable given the initial fixed-price estimate, the obvious questions about how much work could really have been done given the lack of progress, the inclusion of a \$5,000 charge to photograph all the parts before releasing them, and the shop's treatment of its legal fees as restoration costs.

Get the car

Once it appears that the shop is just not going to do the job right or at all, the best thing to do is get the car and take it somewhere else. It is often a bad idea to try to get the shop to do the work it has thus far been unable or unwilling to do.

A very experienced SCMer, who is probably now kicking himself for not knowing better, sent two race cars to a shop for engine rebuilds.

Our collector had used this shop before with good results, but a move to another state and resulting personnel losses appeared to have been detrimental to their performance. Things got heated after a surprise visit to the shop disclosed that the engines were in disorganized pieces and mostly nothing was happening.

Payments to date had exceeded \$100,000. Litigation ensued and got serious with the shop's attempt to sell the cars at a lien foreclosure sale that our collector's attorneys had to stop. Ultimately, after over \$100,000 of legal expense, the dispute was settled with the shop paying \$80,000 to the collector and agreeing to complete the engine rebuilds at no additional charge.

You guessed it — the shop made no effort to complete the rebuilds, so the parties are back in court. The shop wants to just pay damages of \$10,000 and let someone else do the work. Our collector is happy to take the work elsewhere, but claims it will cost \$106,000.

What are they thinking?

Why would a shop accept work from a paying customer and then just never do it? It boggles the mind, but it does happen. Based upon a number of experiences, but admittedly without the benefit of a formal degree in psychology, "Legal Files" has concluded that the cause often boils down to two possibilities: The shop isn't capable of doing the work, or it just doesn't want to.

The fear that comes from knowing you agreed to do something you aren't really capable of doing can be debilitating. Mix in some unfounded ego and pride, and denial can easily follow. The shop can't do

the work, and it can't admit it can't, so the work just sits. Add in a trusting out-of-area owner, and bills and photographs can be manufactured that create the appearance of progress.

Loss of interest in the project can come from several sources. It can be a poor relationship with the customer. It can be from having taken an unappealing job just for the money. It can also be a loss of the only employee who was interested in doing that type of work.

Whatever the cause, the result is the same. Your project is never going to get finished properly. Your best bet in such a situation is to cut your losses. Take the car elsewhere, start over with the new shop, and get good legal advice.

To preserve your legal case, you need to preserve the evidence. You have to photograph and catalog everything, so you can prove the condition of the project when stopped and what was done, not done and missing.

The shop must be put on notice — and given the opportunity to periodically inspect the work as the new shop does it. You also need an expert witness, preferably not the new shop owner, who can testify about the condition of the project when it was stopped, what needed to be done to finish it, and the reasonableness of the new shop's charges. That takes some smart coordination.

Stay in close contact

One exacerbating aspect of this problem is distance. If the shop is distant, as is often the case, your ability to push the work is weakened.

Periodic reports and photos are helpful, but they can mislead. If you want prompt service, there is no substitute for actually visiting the shop and inspecting the progress of the work on a regular basis.

Of course, that takes time out of our busy schedules, but not as much as legal battles do. ♦

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