

## ***Artisan's Lien: How much protection does it provide?***

When the farm economy starts on a downhill trend, most dealers begin to worry about accounts receivable and how they will get paid when their service department makes major repairs to a customer's equipment. Many dealers hire a third party company, such as Farm Plan or Case Credit, to handle their open accounts. Often, these third party companies allow the dealer to stay in a non-recourse position on these open accounts.

The question, "What if the customer isn't on our third party credit system, or what does a dealer do if he is handling his own accounts receivable?" always seems to haunt us. This is a loaded question that should not be taken lightly. While I don't hold the law degree that it would take to completely answer this question, I will offer my opinion on this subject and narrow the scope to a particular set of events that recently occurred at a Nebraska dealership.

A customer delivered his combine to a Nebraska dealership to have the engine overhauled. The customer received an estimate of what the repair job would cost. As the repair work neared completion, the dealer called the customer to let him know when the combine would be ready for pick-up. The dealer knew the customer had been slow to pay in the past, and because of this, advised the customer that he would have to pay for the repair work before the combine would be released to him.

The customer arrived at the dealership on the appointed day to pick-up his combine. The customer reviewed the repair order and inspected the combine, all to his satisfaction, and wrote a check to the dealer for the repair. The dealer released the combine to the customer, who drove it home.

On the surface, it appears the dealer has done everything right. Nebraska law allows him to demand payment for a repair job on a piece of farm equipment before it is released to the customer. Statute 52-201 states that, "any person who makes, alters, repairs or in any way enhances the value of any vehicle, automobile, machinery, farm implement or tool . . . shall have the right to retain such property until such charges are paid." This law insures that a dealer remains well within their rights to retain possession of a customer's machine until the dealer has received payment.

What happens if the customer's machine is released before the repair charge is paid? The dealer has essentially given up his right to be first in line to receive payment. He may file an artisan's lien, which would formally put him in line to be paid after any other previously filed liens. This process is defined in statute 52-202 which states that, "any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, or farm implement or tool . . . shall have a lien upon such vehicle, automobile, machinery, farm implement or tool, in cases when he or she has parted with the possession thereof." This statute goes on to say that the dealer must file a lien with the Secretary of State within sixty days of performing the work.

Statute 52-203 defines the status of the artisan's lien. "Such lien shall be in force from and after the date it is filed, and shall be prior and paramount to all other liens upon such property except those previously filed." In other words, the artisan's lien is last in line to all other liens that have been filed on that particular piece of machinery. If there is a foreclosure on this equipment, all other lien holders would have to be satisfied before the dealer could receive any payment.

Let's continue with our story about the dealer who repaired the customer's combine. About fifteen minutes after the combine was released to the customer, the dealer received a phone call from the customer. The customer stated that none of the gauges in the cab were working, so he was going to stop payment on the check he had just written. The dealer tried to convince the customer to let him fix the problem immediately, but the customer would not allow it. He told the dealer he could come to his farm to fix the combine when it was convenient for the customer, and not until then. Once again, the dealer is in a catch 22. He thought he had done everything right by getting a check from the customer before releasing the combine. All he ended-up with was a check where payment had been stopped, and his only recourse was to file an artisan's lien.

The moral of the story has previously been, "Don't give up possession until you have a check." The new moral of the story is, "If you really want to make sure you will get paid for a repair job, don't give up possession until you receive a cashiers check." This remains the only way a dealer can be assured that they will receive payment from the questionable customer, and it is completely legal to demand such payment. Remember, these are my interpretations of the law as I see it. If you have further questions on this subject, it might be wise to speak to someone with a law degree.