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When Customer Gives Oral Authorization for Repairs, Mechanic Is Entitled to Payment Regardless of Written Estimate Requirement

Jonathan D. Schultz

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is not vague if the meaning of the disputed words can be fairly ascertained by reference to judicial determinations, dictionaries, or treatises. In this case, many reliable references were available to instruct individuals about proper compliance with kosher standards. Furthermore, the United States Supreme Court has acknowledged that the word kosher is not vague, but instead, has a fairly definite meaning.

Therefore, the ordinance, which was designed to prevent fraud in the sale of food products, did not in any way infringe on either Barghout or his customers' freedom to practice whatever religion they chose. The court concluded that nothing in Baltimore's kosher food ordinance violated the free exercise of religion guaranteed by the Maryland Constitution.

Although Barghout also challenged the Baltimore City ordinance under the United States Constitution, this claim had to be determined by the federal courts. Therefore the Maryland Court of Appeals did not address this issue.

Kalina Tulley

When Customer Gives Oral Authorization For Repairs, Mechanic Is Entitled To Payment Regardless Of Written Estimate Requirement

In *Clark v. Luepke*, 826 P.2d 147 (Wash. 1992), the Supreme Court of Washington held that a mechanic may collect fees for work performed despite the absence of a written estimate if such repairs were authorized by the customer. The court also found that in the absence of proof of injury, customers may not assert an action against mechanics who violated provisions of the Automotive Repair Act.

Background

Kerry Clark ("Clark") owned a 1978 Jeep with a remanufactured high performance engine. While the engine was still under warranty, it seized up, requiring extensive

repairs. Clark took the Jeep to a garage owned by Rick Luepke ("Luepke") for repairs. Due to the nature of the engine and the damage, the engine had to be completely taken apart before an estimate of the repair costs could be made. Clark gave oral authorization to make the repairs and did not request a written estimate.

Luepke repaired the engine in a timely manner and presented a bill for \$2,764 to the insurance company that held the engine warranty. The insurer refused to pay the bill, and Luepke then sought payment from Clark. When Clark failed to pay, Luepke asserted a mechanic's lien on the vehicle for six weeks until Clark paid the entire amount.

Clark subsequently sued in the Superior Court for Clark County to recover the money paid Luepke. After an arbitrator heard the case, Luepke sought a trial before the superior court.

The trial court found that Luepke had violated several provisions of the Automotive Repair Act ("ARA"), Wash. Rev. Code §46.71 (1991). First, Luepke failed to post a sign in his shop informing customers of their statutory rights. Moreover, Luepke did not give Clark the choice of the type of notice he could request regarding the price of repairs. The ARA dictates that customers be given three options: 1) the right to a written estimate before any repair work took place, with a requirement that the customer be contacted if the price exceeded the estimate by more than 10 percent; 2) the right to allow repairs to begin but be contacted if the price exceeded a certain amount; or 3) the right to a complete waiver of a written estimate. Additionally, Luepke could not legally assert a mechanic's lien since he failed to make a written estimate of the repairs.

Despite finding the violations of the ARA, the trial court denied Clark's recovery. Under current law, mechanics who violate the ARA lose their right to a mechanic's lien but not their claim for the work performed. As a result, the court determined that Clark was not entitled to recovery.

The Washington Court of Ap-

peals affirmed the trial court's decision. It employed a restitution analysis and placed the burden on Luepke to prove that although he had violated the ARA, he was entitled to receive payment. Since the trial court determined that the work was reasonable, necessary, and justified, the appellate court held that Luepke had met this burden.

Failure To Provide Written Estimate Does Not Bar Collection

The Supreme Court of Washington unanimously affirmed the decision of the lower courts. It held that while Luepke violated the ARA, the statute no longer precluded a mechanic who failed to comply with its provisions from receiving payment. As a result, Luepke was entitled to payment since Clark authorized the repairs.

The court noted the significant effect of the 1982 amendment to the ARA. In its original form, the statute required a mechanic to provide the customer with a written estimate for all repair work over \$50. Failure to furnish a written estimate prevented the mechanic from collecting payment, even if the mechanic had given an oral estimate or if the customer had orally authorized the work. However, the 1982 amendment mitigated this potentially harsh result to the mechanic who failed to give a written estimate. Under the revised law, mechanics are able to collect payment for work performed even if they violated the ARA, presuming that no other legal principle denies recovery.

The supreme court stated that the current version of the ARA allowed the mechanic to collect for services performed without providing a written estimate, as long as the customer authorized the work. The statute only requires a written estimate or choice of statutory alternatives when either the bill is estimated to surpass \$75 and the mechanic intends to assert a mechanic's lien, or the customer requested a written estimate. The court explained that the ARA as amended eliminated the need for a written estimate in many circumstances unless the mechanic want-

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The **Indices to Volume 4** were prepared by the Editors. The fourth issue of each volume of the *Loyola Consumer Law Reporter* will contain indices for that volume. At five-year intervals, the indices prepared to date will be compiled and published as a separate volume.

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