

Dodged Charges *You'd Better Take It With You*

American humorist Don Marquis (did he have a brother Mercury?) quipped in 1927 that "procrastination is the art of keeping up with yesterday."

No doubt he would have something to say about the conduct of the defendant in *Gulbankian v. Harabedian*, decided on March 25, 2002, by the Massachusetts Appellate Division.

According to the Court, Gregory Harabedian owned "one of nineteen 1967 Dodge Chargers with 426 Chrysler Hemi Engine and standard transmission, that was built for racing." Brothers John and Michael (Jr.) Gulbankian owned J&M Machine Shop, which specialized in rebuilding antique automotive and other engines.

The Charger's engine began burning oil and smoking. Harabedian removed and brought it to J&M. The parties agreed that J&M would tear down, clean, magnaflux (test for stress cracks) and evaluate the engine at \$50 per hour. J&M would then consult with Harabedian on what needed to be done.

On the wall near where the agreement was written up, a sign read "ENGINES LEFT OVER 30 DAYS WILL CHARGED A \$12 STORAGE FEE PER DAY." After J&M disassembled the engine, magnafluxed the crankshaft and evaluated the problem, they met with Harabedian. J&M informed him they spent four hours; Harabedian agreed to the \$200 charge. J&M then spent two hours going over the dismantled engine parts to explain what was needed and why. J&M estimated the repairs would cost between \$5,000 and \$7,000. Harabedian said he did not have the money and wanted to think about it.

Over the next months, J&M and Harabedian had numerous conversations on topics including whether cheaper parts could be used and whether all the work was necessary. Harabedian remained unable to afford the recommended reconditioning; J&M would not do and warranty the job with unacceptable parts or less than all required work.

To solve the problem, J&M had another customer offer to buy the whole car, but Harabedian refused. In calls over the next several months, J&M repeatedly requested Harabedian remove the engine and pay the evaluation charge, or he would be charged for storage. Finally, Harabedian's phone was disconnected.

About eight months after Harabedian brought the engine to J&M, J&M wrote Harabedian that he owed \$1,000 for storage and that the engine might be sold to collect. Harabedian refused to pay the storage. J&M suggested that he pay a total of \$500 instead, but he refused. The next month, Harabedian's counsel wrote J&M alleging that J&M, as a "repair shop," had violated a statute and demanded that the engine be reassembled and returned to Harabedian in exchange for the \$200 evaluation fee. J&M's counsel offered to settle for \$500, warning of litigation unless settlement was reached.

Several months later, J&M's counsel notified Harabedian that


the storage charge, at a reduced rate of \$6 per day, plus the evaluation charge, totaled \$4,026 and that J&M would be suing. Harabedian sued J&M and J&M sued Harabedian in another court two days later. A judge dismissed Harabedian's complaint; he filed an answer and counterclaim in J&M's lawsuit alleging various statutory violations. J&M obtained a lien and an order allowing J&M to sell the engine. Harabedian appealed.

The appellate court affirmed the ruling for J&M.

The Court rejected Harabedian's contention that J&M was a "repair shop," which might have been a problem for J&M given "the undisputed evidence was that it failed to comply with several provisions" requiring such businesses to do certain things. In rejecting the contention, it observed that "a repair shop is expected to 'complete repairs on a motor vehicle on the day the vehicle is delivered to the repair shop by the customer unless the customer is informed of and consents to a further delay or the repair shop can show that the delay was caused by circumstances beyond its control and which could not have been reasonably anticipated ...'"

The Court noted a prior case ruled "that a business that restores antique cars to their original appearance and condition was not a repair shop because 'its work customarily required several months, if not years to complete and routinely cost twenty to thirty thousand dollars' and that 'it did not provide towing or typical engine, transmission, mechanical or maintenance services characteristic of an automobile repair shop or garage.' By analogy, J&M did not perform general automotive repairs, nor autobody work, nor towing, but specialized in rebuilding antique automobile engines. Ninety percent of its work came from referrals, some from trade magazines, and motors come to the shop from all over the country and the world. A typical rebuild costs \$5,000-\$10,000, and therefore, each job would be expected to take much longer than a day.

"[T]here was ample evidence from which the judge could have found that J&M did work in connection with the inspection, reconditioning and repairing of motor vehicles, entitling it to charge for storage, and to a lien ..., but that it was not a 'repair shop.'"

Thus, the Court ruled that the owner of this Dodge Charger could not dodge the charges assessed, and let the rebuilder sell the car's once-awesome engine to pay them. 

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