

Solutions for Common Equipment Rental Contract Problems

By David J. Barnier, Esq.

When a customer rents construction equipment for an indefinite period of time, the equipment rental contract will typically state the method by which a customer is to let the rental company know that he is finished using the equipment. Two types of disputes may arise at the end of the rental period. First, the customer may dispute the last few days of rental charges. Second, the customer may claim that he telephoned the rental company to have equipment picked up while the rental company has no record of any telephone call, and the equipment may remain with the customer for weeks or months after the day on which the customer claims to have “called off” the equipment.

CLEARLY DEFINING THE END OF THE RENTAL PERIOD WITHIN THE RENTAL CONTRACT

Whether equipment is to be picked up and dropped by the customer or the rental company is transporting the equipment, the rental company should take care to ensure its ability to collect its entire charges for the rental period. The agreement with the customer should clearly discuss the procedure by which the rental period will end (i.e., telephone call, pickup/dropoff of the equipment, etc.) and should define how this procedure will determine when rental charges shall cease to be incurred.

Whatever the terms are as far as how the end of a rental period is defined, these terms should be stated clearly within the rental contract. Alternatively, these terms can be stated in a separate document that is provided to the customer along with the rental contract. If the terms are stated in a separate document, the rental company should prepare two copies of the separate document and have the customer initial both copies with the rental company keeping the second copy. Note that if the terms of the main rental contract document state something along the lines of “this contract represents the entire agreement between the parties,” the separate document may not be enforceable against the customer.

AVOIDING A “HE SAID, SHE SAID” AS TO WHETHER EQUIPMENT WAS CALLED OFF

Consider this hypothetical: A customer rents a loader and the rental company begins to invoice the customer on a monthly basis. The first monthly invoice is paid by the customer. So are the second and third monthly invoices. However, invoices for the fourth, fifth, and sixth months are not paid. The rental company then speaks with the customer to demand payment for the three past-due invoices, only to have the customer claim that he “called off” the equipment after the third month and therefore he disputes any charges after this alleged telephone call.

Because it is impossible for a rental company to irrefutably prove that no “call off” phone call was made, the rental company may have some trouble succeeding in court in recovering the balance owed for months four, five and six (and any additional months). The rental company’s best evidence at trial would involve employee testimony and any evidence it has that demonstrates the reliability of its telephone logs.

Also available to the rental company is the argument that the customer should have made additional calls after a few weeks went by and the equipment still had not been picked up. However, the customer may claim that he assumed that the rental company was intentionally neglecting to pick up the equipment, perhaps because it had a surplus of equipment available for other customers, or perhaps due to an oversight on the rental company’s part.

In defense of the customer, he may have intended to call off the equipment but his employees may have never made any telephone call. The customer may not have used the equipment after month three. However, even if the customer is not intentionally attempting to keep the equipment without charge, it is clearly important to a rental company that the onus be placed on the customer to end the rental period, otherwise rental charges will continue to be incurred.

To ensure that the customer is responsible to end the rental period, a rental company should carefully draft its rental agreement so as to clearly define the call off procedure and to ensure that the customer cannot dispute whether this procedure was performed. The ideal rental agreement might include a provision requiring the customer to both telephone the rental company *and fax a written notice* stating that the customer is finished with the equipment. To further prevent any confusion, a rental company might include with each of its invoices a short form letter or statement summarizing what equipment is still listed as “out” and stating that the customer should immediately contact the rental company if any of the information in the statement is inaccurate.

These specific steps may be somewhat burdensome and may not be justified to a rental company that has not experienced significant problems. It remains important for all businesses to ensure clarity, completeness, and enforceability of any terms that they are able to dictate to their customers, otherwise these preferred terms may be useless. Likewise, it remains important to ensure that there can be no dispute as to whether any of the terms of the contract have been performed.

This article is intended as a topical discussion of general legal principals and strategies. While a topical discussion is possible, any person or business will have unique issues. No party should use this article as a substitute for obtaining specific legal advice as to their own particular circumstances from a qualified attorney.

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Mr. Barnier is an attorney practicing general business litigation with an emphasis on construction law and a particular emphasis on litigation involving breach of contract claims, mechanic's liens, stop notices and payment bond claims. He frequently presents seminars to the construction industry by which he explains the complex laws affecting the industry, and how companies can avoid litigation or, as a last resort, be best prepared for litigation.

His articles on construction law topics have been published in numerous trade journals and magazines. In addition to construction law, Mr. Barnier represents businesses of all sizes on both litigation and non-litigation matters. In addition, Mr. Barnier is an active member in construction trade organizations including the Engineering General Contractor's Association (EGCA).