

Note: This question was sent to me two weeks ago in response to someone reading the column.

## DO IT YOURSELF LITIGATION

By Attorney Michael H. Wald

Dear Legalizer: I hired a contractor to fix a leak in my roof here in Richardson, and he quoted me a price of \$850.00. I paid him a \$250.00 deposit, and he began to work on it. He said the job was finished, and I was supposed to pay the remainder by the end of the month. Before that time, the roof began to leak again. I checked out the work he did, and it looks like he only did half a job. I now cannot reach him, as no one answers his phone. I can't justify getting a lawyer for this, due to the cost of it. How do I go about suing the contractor myself?

Reply:

This is a good illustration of when you might take someone to small claims court yourself. This court is designed in many ways to let you handle your case yourself. I'll cover the case, and the various pro's and con's involved with it.

Your first step is to familiarize yourself with the system. The phone book will help you find the small claims court in your area. In Richardson, this will be the Justice of the Peace Court, located on the southeast corner of Coit and Beltline.

Verify that you're in the correct jurisdiction for the court you call. In Texas, a case in small claims court cannot concern over \$1,000, so this particular case would be okay to bring to small claims court.

You will then need to fill out a form describing the suit you want to bring. Take your time, and do it neatly, legibly, and completely. You should organize your case, and use as many technically correct legal terms as required. A lawyer can help you complete this form for a minimal fee.

An important fact you need to know for this form is a good name, address and phone number for the person you plan to sue. Make sure you are suing the right party -- a corporation must be sued as a corporation with its correct name, for example. You say he doesn't answer his calls now. I suggest you track him down some other way -- was there an address on an ad you saw for him? You must make it easy for the court to notify the defendant, which is what they will do after receiving your completed form and filing fee.

The court will set up a date to appear in court, generally within a month of filing. If the defendant does not show up in court at the right time, he automatically loses.

Some courts do not require you to attend this hearing. If you don't go, and the defendant does show, the court will set up a new date. I do not recommend this, but many people do not show up after bringing a suit, just to annoy the defendant!

While preparing to appear and argue your case, keep these facts in mind:

- o Testify on what you know personally -- the judge cannot base any decision on hearsay, third-party information or conjecture;
- o In terms of written documents, the originator of the documents must usually be present to vouch for their accuracy;
- o The judge decides the case on the law as he understands it -- these small claims judges are usually not even lawyers, just elected citizens. Show the judge the law if you have it and use common sense with him in your arguments, with emphasis on right and wrong.

At the hearing or trial, if there is one, the plaintiff testifies first, calling witnesses to speak on his behalf and presenting evidence. The defendant goes next, and can call witnesses, too. There are ways to determine in advance who the defendant plans to call as witnesses -- a lawyer can help you do this if you feel it is important enough.

Each party can cross examine the other's witnesses. The judge will then decide the case. Either side can also demand a jury. If you win, the judge will give you a judgment against the defendant, for the amount of money he feels you lost or deserve. If the defendant doesn't pay voluntarily, you must then identify some piece of property to seize from the defendant, and make this known to a constable of the court.

The execution papers must then be filled out, before the property can be seized, sold, and the money paid to you.

Overall, my advice to you would be to track down the contractor, and get a good address and phone number for filing suit. It sounds like you have a good case. Document it with photos and testimony from witnesses. Don't get angry in court, just stay calm and present your case as if you know the judge will see the light if you tell him everything. Again just the facts -- no conjecture about the contractor, his morals, or what you thought he was trying to pull over on you.

Small claims court is a bit like TV's "People's Court." For pointers, notice how the cases are presented there and what seems to turn the judge off and on. Let me know how it goes. Good luck.

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