Maritime Liens for Necessaries 101

By Marilyn Raia

A maritime lien is a non-possessory property right in a vessel. Maritime liens arise under various circumstances and have been characterized as "one of the most striking peculiarities of admiralty law." A person who supplies certain goods or services to a vessel, otherwise known as "necessaries", has a maritime lien against that vessel. Civil wrongs arising from the operation of vessels such as personal injuries or collisions give rise to a maritime lien against the offending vessel. The breach of certain contractual obligations of the vessel owner in connection with a specific vessel such as payment of wages, contracts of carriage, towage agreements, and charters also can give rise to a maritime lien against a vessel. This article focuses on maritime liens for necessaries.

Necessaries Defined

Federal statutory law at 46 U.S.C. § 31301(4) defines "necessaries" as "includ[ing] repairs, supplies, towage, and the use of a drydock or marine railway". This definition has been interpreted broadly to include any item reasonably needed for the venture in which the vessel in engaged. For example, courts have held "necessaries" include the services of a marine surveyor in connection with vessel repairs, fees for vessel document preparation, taxi fare for crewmembers to get to the vessel, insurance premiums, and gambling equipment furnished to a cruise ship. Held not to be "necessaries" giving rise to a maritime lien have been a credit card contract and naval architecture services related to the reconstruction of two vessels. In Kodiak Fishing Company v. M/V Pacific Pride, 535 F.Supp 915 (W.D.Wa. 1982) the court expressed doubt that the delivery of crab to a crab processing vessel constituted delivery of "necessaries" which gave rise to a maritime lien.

History of Maritime Liens

Like many aspects of maritime law, maritime liens have an interesting history. Before technology allowed rapid communication and financial transactions, suppliers of goods and services were reluctant to do business with vessels whose owners were unknown to them or located far away. After receiving goods or services, the vessel could sail away leaving the provider unpaid. To keep a vessel trading, the master had to pledge the vessel as security for the needed goods or services. The maritime lien arose even if the vessel owner had not directly contracted for the goods or services.

Historically, maritime liens did not arise for goods provided in the vessel's home port because the owners were local and presumably known to the supplier who could decide whether or not to extend credit. However, the Federal Maritime Lien Act, first enacted in 1910, gives a maritime lien to all suppliers of "necessaries" to a vessel on the order of the owner, master or charterer regardless of where they are, 46 U.S. C. § 31342. The United States is one of very few countries that recognize a maritime lien for "necessaries".

Unlike a common law lien, a maritime lien is not simply a security device to be relied upon if the vessel owner defaults. Rather, it converts the vessel itself into the obligor and allows the injured party to litigate directly against the vessel. Also, unlike common law liens, maritime liens do not have to be recorded or filed to be valid.

Subjects of Maritime Liens

In addition to the vessel itself, other types of maritime property can be the subject of a maritime lien. The lien attaches to equipment that is used aboard the vessel as an essential part of the vessel's navigation, operation or mission. Some courts have held the lien even attaches to a vessel's equipment that is not physically aboard the vessel. For example, in Caterpillar
Financial Services v. 1178 Crab Pots, 2001 AMC 1605 (D.Ak 1999), the court held crab pots left at sea were appurtenances of the vessel subject to a maritime lien. Other courts have held a maritime lien applies to equipment used aboard the vessel that is leased and not owned by the vessel owner.

Certain intangible property may also be subject to a maritime lien. Earned freight has been held "part of the vessel as much as the ship's tackle" subject to a maritime lien. And, in Gowan v. F/V Quality One, et al., 2001 AMC 1478 (1st Cir. 2001), the First Circuit affirmed the district court's holding that fishing permits may be subject to a maritime lien along with the vessel to which they are registered.

If the vessel is destroyed, any lien against it is extinguished, as is the lien against its equipment and intangibles such as a fishing permit. The insurance proceeds payable for a lost vessel are not subject to a maritime lien in place of the vessel.

Enforcement of Maritime Liens
A maritime lien can be enforced in only one way. Enforcement requires filing a complaint in federal court, naming the vessel itself as a defendant and arresting the vessel pursuant to a warrant of arrest issued by the court. The US Marshal serves the warrant on the vessel's master, posts the warrant of arrest on the vessel's mast, and takes the vessel into custody, placing a keeper aboard. The US Marshal requires an advance deposit for the costs associated with arresting and keeping a vessel in custody. The amount of the deposit varies depending on the circumstances. In San Francisco, a deposit of $10,000 is usually required. While under arrest, the vessel cannot work.

After the vessel is arrested, its owner must file a claim of ownership. To secure release of the vessel, the vessel owner posts security in an acceptable form. It can be either a bond, cash, or letter of guarantee in an amount set by the court which is usually the amount of the lien plus interest and costs. If the vessel owner does not file a claim to the vessel, the vessel will be sold to satisfy the liens. The sale of a vessel by the vessel owner in the ordinary course does not extinguish the maritime liens against it. The sale of a vessel by the US Marshal pursuant to court order, extinguishes all liens that are not satisfied from the sale proceeds.

Maritime liens, whether incurred by US flag vessels or foreign flag vessels in the United States, may be enforced in US federal courts. However, maritime liens incurred in other countries are not necessarily enforceable in the United States. Before enforcing a lien incurred in a foreign country, a US court will determine whether a lien would exist in the foreign country for the goods and services provided. If a lien is not permitted in the foreign country, it will not be permitted in the United States.

In Vestoil, Ltd. v M/V M Pioneer, 2005 AMC 2404 (11th Cir. 2005), a Cyprus corporation with its principal place of business in Greece, provided fuel in Singapore to a vessel owned by a Maltese company. The Cyprus company arrested the vessel in Florida because the Maltese company did not pay for the fuel. The action was dismissed because Greek law does not recognize a maritime lien for provision of necessaries to a vessel. However, in Trans-Tec Asia v. M/V Harmony, 518 F.3d. 1120 (9th Cir. 2008), the Ninth Circuit recognized a maritime lien for bunkers supplied by a foreign company to a foreign vessel in South Korea because the bunker supply contract expressly provided for the application of United States law with respect to the existence of a maritime lien.

Priority of Maritime Liens
Many different parties can have a maritime lien against the same vessel. If that vessel is sold and, as is often the case, for less than the amount of all the liens, the court must determine how to distribute the sale proceeds among the lienholders.

Maritime law has rules for prioritizing maritime liens by type as well as by time incurred. Although not treated as a lien, the expenses incurred by the US Marshal for arresting and keeping the vessel get top priority. Thereafter, in descending order of priority are: 1) liens for seamen's wages and maintenance and cure; 2) salvage and general average liens; 3) tort liens including personal injury and death, and property damage from collision; 4) pre-mortgage liens for necessaries; 5) preferred ship mortgage liens; 6) liens for necessaries; 7) state-created liens of a maritime nature; 8) liens for penalties and forfeitures under federal law; 9) preferred non-maritime liens including tax liens; 10) attachment liens and 11) maritime liens in bankruptcy. Unlike common law liens such as liens on real estate, a more recent maritime lien has priority over an earlier maritime lien. The theory behind the "last in time, first in right" rule is that a later provider of goods or services keeps the vessel in service for the benefit of earlier-in-time lienholders.

Persons who supply goods and services to vessels in the United States should be aware of their right to enforce a maritime lien against the vessel supplied. It is an important aspect of maritime law not to be overlooked.