

IN PRACTICE

ADMIRALTY LAW

Navigable Legal Waters: Contractor Lien Rights Under the Maritime Lien Act

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Whether it is a 20-foot Boston Whaler or a massive ZIM cargo ship, contractors performing work on boats and ships may be unaware that they hold a powerful weapon for collecting unpaid bills: the maritime lien. While for a contractor, a maritime lien against a vessel can be thought of as the equivalent to a construction lien against real property, legally, the two are quite distinct. In order to avail themselves of this powerful weapon, contractors should be aware of the nuances unique to maritime liens.

Who can assert a maritime lien?

The Maritime Commercial Instruments and Liens Act of 1988, 46 U.S.C. §§ 31341-31342, addresses the question of who may assert a maritime lien against a vessel for services rendered to that vessel. The Maritime Lien Act states a person providing necessities to a vessel on the order of the owner or person authorized by the owners (1) has a maritime lien on the vessel; (2) may bring a civil action in rem to enforce the lien; and (3) is not required to allege or prove in the action that credit. 46 U.S.C. § 31342. The term “necessar-

ies” is broadly defined and includes a wide range of contracting work, much of which is not uniquely “maritime.” 46 U.S.C. § 31301(4). For example, an electrical contractor that installs new wiring on a vessel can assert a maritime lien for unpaid invoices. Likewise, a painting contractor that repaints the hull of a vessel can assert a maritime lien for unpaid invoices. Moreover, the Maritime Lien Act makes no distinction between necessities provided to commercial vessels and recreation vessels. Thus, the contractor working on a recreational vessel at the local marina has the same maritime lien rights as the contractor working on a commercial cargo vessel at dry-dock.

However, in order to have standing to assert a maritime lien, a contractor must enter into a contract with someone with authority from the owner of the vessel to procure necessities for the vessel. The Maritime Lien Act states those that have authority to procure necessities includes the owner; the ship master; a person entrusted with the management of the vessel at the port of supply; and an officer or agent appointed by (a) the owner; (b) a charterer; (c) an owner pro hac vice; or (d) an agreed buyer in possession of the vessel. While the list of “persons authorized by the owner” is defined broadly, general contractors do

not typically fall within the definition. Thus, if a contractor who is not contracting directly with the owner of a vessel — or a party having authority to procure necessities — for the work to be performed on the vessel, should be aware that it may be without lien rights if it is not paid.

How does a contractor perfect and enforce a maritime lien?

Assuming a contractor has lien rights, perfecting and enforcing such rights can be swift and drastic. A contractor’s right to assert a maritime lien is perfected as soon as it renders services to the vessel. Unlike a construction lien against real property, the Maritime Lien Act does not require a contractor to file, record, or notify the vessel’s owner in order to perfect a maritime lien. Consequently, maritime liens are often referred to as “secret” liens.

While a contractor can file notice of its lien with the United States Coast Guard, the filing is optional. However, because the process of enforcing a maritime lien in federal court can be costly and complicated, filing the lien with the United States Coast Guard provides the contractor with a cost-effective — albeit slower — method of utilizing a maritime lien for a smaller claim. If a contractor files notice of a maritime lien with the United States Coast Guard, the lien will

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appear on a vessel title search performed in connection with a proposed sale of the vessel. Much like a lien showing up on title to real property, in order to pass clear title to the vessel, the maritime lien will have to be paid or bonded prior to or contemporaneously with the closing for the vessel.

Contractors wanting a speedier resolution to a maritime lien must proceed to federal court. A maritime lien is enforced by filing an in rem action against the vessel itself. A contractor may also simultaneously bring an in personam action against the party who owes payment to the subcontractor. According to the Supplementary Rules of Civil Procedure relating to Admiralty, “[i]f conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.” Because “court” means a federal district judge, the warrant may not issue immediately, as the judge needs time to review the complaint along with other matters pending on his or her docket. However, a party needing an immediate warrant may truncate the

time required for a judge to review the complaint and supporting documentation. The Rules state that upon certification from plaintiff’s counsel that exigent circumstances exist, the clerk, without waiting for direction from a judge, must issue the warrant for arrest promptly. A party may need an immediate arrest warrant if it is concerned that the vessel may leave port prior to a judge reviewing the in rem complaint.

Once the warrant for arrest is issued, the U.S. Marshall Service serves the warrant, and the vessel comes under the control of the U.S. Marshall Service. Afterward, the vessel may not lawfully leave port without permission of the U.S. Marshall Service. From a strategic vantage point, the effect of arresting a vessel is similar to the issuance of a temporary restraining order. Often the effect of a temporary restraining order is swift resolution of the condition necessitating the order. Likewise, an owner of an arrested vessel will be forced to deal with an unpaid contractor if he wishes to use the vessel in any productive manner. In order to secure release of the vessel, the owner will either have to pay the contractor’s

claim or post other security acceptable to the court.

If the owner defends the claim and posts security, then the matter will proceed in federal court. There are various notice requirements that a contractor must follow to prosecute its in rem claim, including publishing notice of the warrant of arrest for the vessel in a newspaper of general circulation located where the district court is located. A claimant must also provide actual notice to maritime lien holders that have recorded a notice of claim. If the unpaid contractor demonstrates its right to payment and a properly enforced maritime lien, a court may order the vessel sold at auction conducted by the Marshall’s Services in order to satisfy the contractor’s claim.

Contractors considering enforcing a maritime lien must know two things: First, this article does not cover all of the complexities and nuances in enforcing a maritime lien by arresting a vessel. Second, for contractors wishing to navigate the complexities and nuances, the maritime lien is an extremely effective tool for getting paid promptly. ■