



# Mercante's Sea Trials



## Don't "Lien" On Me

The term *warrant for the arrest* conjures up criminal law, but did you know that the same procedure applies in admiralty law? Did you know that to satisfy a maritime claim, a warrant for the arrest of your vessel can be issued and your vessel can be "arrested"? And, your vessel can be proceeded against *in rem* and sold to satisfy a maritime lien? That when supplies, repairs or other "necessaries" are supplied to a vessel, at the request of the owner or other authorized person, the vessel is *personified* and held responsible for its debt? That a maritime lien against a vessel can also be created by claims involving collision, property damage, cargo damage, salvage, wages, loans, personal injury and wrongful death? Well, read on!

One recent case involved the question of whether a maritime lien was created against a yacht that was undergoing such an extensive overhaul that whether or not it even remained a vessel was questionable. Maritime liens only apply to a "vessel."

### The claim

A shipyard sought to enforce a maritime lien for major repairs it performed on a motor yacht. The yacht owner failed to make full payment for the repairs and the shipyard sued the vessel *in rem* and the owner personally to recover the balance of the debt due. The shipyard sued in admiralty and had asked that a warrant for the vessel's arrest be issued and the vessel sold to satisfy the debt. However, on application by admiralty counsel for the vessel owner, the federal district court dismissed the claims against the vessel and vacated the arrest, finding it was no longer a "vessel" "due to the extensive repairs and thus it was not subject to a maritime lien."

A maritime lien only applies to a "vessel." Thus, one element of the application of maritime lien law is that the services, supplies, work, injury, loss, etc., involve a "vessel."

### Shipyard appeals

The shipyard appealed the lower court's holding that (a) the yacht was not a vessel and therefore not subject to a maritime lien and, (b) as such, the federal court did not have admiralty jurisdiction.

[This article will discuss maritime lien law. Next month, I will report the important decision of the Court of Appeals in this case.]

### Background

The "vessel," which for purposes of this article will be called the *JULIETTA*, was a 132-foot majestic motor yacht. The vessel owner and the shipyard agreed to perform a major overhaul on the *JULIETTA* which included extension of its decks, replacement of its engines, generators, electronics, navigation equipment, plumbing and wiring. The original estimated duration of repair was 15 months. After the parties agreed to the repairs, the *JULIETTA*'s engines, propellers, propeller shafts, generators and most of its furniture and equipment were removed and she was towed to the shipyard. The vessel was then hauled from the water and placed on a cradle in a covered shed where the work and corresponding installment payments continued for a year and a half, after which the vessel owner ceased making payments. The shipyard claimed that unpaid invoices remained in excess of \$1.2 million.

*Admiralty suit filed in federal court*

The vessel owner filed suit in federal court invoking admiralty jurisdiction and seeking to arrest the *JULIETTA in rem* to satisfy the unpaid invoices. However, the vessel owner filed a motion to vacate the arrest and dismiss the *in rem* claims against the vessel for lack of a maritime lien and, thus, no admiralty jurisdiction. The question of whether or not admiralty jurisdiction exists is a question often consistent with whether a valid maritime lien exists.

The federal district court reviewed the case and agreed that a vessel must be "*in navigation*" to be qualified as a "vessel" and found that the major overhaul of the *JULIETTA* had taken the yacht out of navigation, thereby divesting her of her status as a vessel. The shipyard appealed.

### Maritime liens

Maritime liens developed as a necessary component remedy to the operation of vessels and have special features designed to protect persons who own, sail and service ships from the unique risk associated with the maritime industry. The maritime lien originated centuries ago because vessels were often in need of repairs and necessities while away from home port without large sums of money on board. As described by the United States Supreme Court in 1920, the maritime lien enabled persons in charge of the vessel to use the value of the vessel itself as a pledge of credit in order to secure the work and parts needed during the voyage. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.* Thus, the very purpose of maritime liens was to encourage necessary services to be offered to ships whose owners were unable to make contemporaneous payment -- a way to facilitate commerce by encouraging merchants to furnish ships with supplies and repairs.

### Slap a lien on her

We know that boaters refer to their vessel as *she* or *her*. So, it should not come as a surprise that, in admiralty law, the maritime lien concept *personifies* a vessel as an entity with potential liabilities independent and apart from the personal liability of its owner. This is the foundation of the concept of "arresting" a vessel.

One aspect of the maritime lien is to protect repairmen and suppliers from customers who might be tempted to sail their vessels away after services are rendered. Thus, the federal maritime lien is a unique security device serving the dual purpose of keeping vessels moving in commerce while not allowing them to escape their debts by sailing away. In essence, the lien allows an injured party, such as an unpaid repairer or supplier, to obtain redress without seeking compensation abroad (or locally) from the vessel's owner by enabling them instead to proceed directly against the vessel *in rem*. *Amstar Corp. v. SIS ALEXANDROS T.*

The attachment of a maritime lien directly to a vessel has been described as the *adhesive nature* of the lien. In this regard, unlike in a mechanic's lien or material man's lien ashore, a maritime lien does not depend on the injured party's possession of the vessel. Rather, a maritime lien travels with a vessel wherever it goes, regardless of into whose hands it may pass and whether or not the lien is recorded. One court described the lien as *secret right* of the lien holder in the property even when the lien holder is not in actual possession or any right of possession in acknowledging that the lien remains with the vessel even surviving its

purchase by a *bona fide* buyer. Thus, this particular maritime lien benefits those who own, lend to, and repair vessels, such that persons able to provide for a vessel's immediate needs are assured a significant, clear, and predictable security device that is tailored to the unique features of maritime commerce.

### Liens become federal

Maritime liens existed in continental Europe but only first emerged in the United States through state law. However, the development of lien laws in the various states became inconsistent and confusing until the federal government stepped in and decided that "uniformity" and "federalization" of maritime liens was in order. One court recognized that the purpose of establishing a Federal Maritime Lien Act ("Lien Act") was to replace state maritime-lien statutes with a single, national law and develop a uniform national maritime lien system. Congress passed the first version of the Federal Maritime Lien Act in 1910. The current version is codified at 46 U.S.C. § 31342(a). The Lien Act states, in part, as follows:

*Any person furnishing repairs, supplies or necessities, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.*

Thus, the adoption of a federal Lien Act was to simplify and clarify the rules governing maritime liens as there had been much confusion and it was therefore designed to preempt numerous states' statutes. *Signal Oil & Gas Co. (U.S. Sup.Ct. 1940)*. The national maritime lien law laid a solid foundation for creating a comprehensible and user-friendly lien system. It has been amended over time to further simplify and clarify the lien system.

Maritime liens are unique, particularly in the priority system wherein maritime liens have priority over non-maritime liens and priority over other maritime liens in "reverse chronological order." That is, the most recent lien possesses the superior claim to even prior maritime liens on the vessel. In 1824 the United States Supreme Court stated in *The Emily Souder* that the reason for the 'reverse chronological order' is because if liens created by the necessities of vessels could be subordinated to or displaced by lien holders or mortgages to previous creditors, such liens would cease to be regarded as affording any reliable security. More importantly, the reverse-chronology priority system is designed to encourage repairmen to service the ship's of strangers without knowing anything of the ship's prior credit history.

### Conclusion

Maritime liens can be an aggrieved party's best friend and a nightmare for a vessel owner or purchaser of a vessel who takes the vessel subject to all liens! Next month, I will discuss the most interesting resolution of *JULIETTA*!

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