

# MARITIME LIENS ON EQUIPMENT

By Ben Schupp, McGlinchey Stafford PLLC

**M**aritime liens on equipment fall into two general categories: equipment that is an appurtenance of a vessel, and equipment that is cargo aboard a vessel. While both are maritime liens, the type of person that can exercise such liens differs greatly. Liens on appurtenances must be asserted by “strangers to the vessel,” while liens on cargo are only available to vessel owners or bareboat charterers, i.e. owners *pro hac vice* of the vessel. The “appurtenance” lien is enforced through arrest of the vessel to which it pertains, and the cargo lien is enforced through arrest of the cargo itself. Two different liens, but with the same name and the same powerful priority.

## Appurtenances Are Equipment Essential to the Vessel’s Navigation, Operation or Mission

While originally, appurtenances were often defined as equipment essential to the navigation of the vessel or the specific voyage upon which she is embarked,<sup>1</sup> a more complete modern definition includes all equipment aboard a vessel that is essential to the vessel’s navigation, operation or mission.<sup>2</sup> As one might expect, the nature of equipment covered by a maritime lien or preferred ship mortgage varies greatly depending on the nature of the vessel’s mission. For example, slot machines and

sport book equipment are appurtenances to a casino vessel,<sup>3</sup> pipe-laying equipment is an appurtenance on a pipe-laying vessel,<sup>4</sup> cement loading/unloading equipment is an appurtenance of a cement carrier,<sup>5</sup> and telecommunications/internet services are appurtenant to a cruise ship.<sup>6</sup> The reasoning behind the appurtenance concept is that one extending credit to a vessel has the right to assume that the entire vessel, including all of her equipment essential to her navigation or current mission, stands as security for the debt.<sup>7</sup>

## The Equipment Need Not Always Be Aboard a Vessel for the Lien to Attach

While being “aboard” the vessel helps the argument that the equipment is subject to a maritime lien, removed equipment can be appurtenances subject to a maritime lien.<sup>8</sup> Even equipment never installed on the vessel (like a spare tail shaft)<sup>9</sup> can be an appurtenance. A vessel trailer was found to be an appurtenance because it was part of the vessel’s “usual equipment” and “essential to the operation and mission of the vessel.”<sup>10</sup>

## A Maritime Lien May Attach To Equipment Not Owned by the Shipowner

While a maritime lien generally attaches to vessel appurtenances

even if owned by parties other than the vessel owner,<sup>11</sup> courts sometimes give protection to lessors of equipment against ship mortgage holders where the title to such equipment is distinctly separate from the title to the vessel.<sup>12</sup> In situations where a lender has a UCC security interest in charterer’s equipment aboard a vessel, it is recommended that the lender mark the equipment and document the lender’s rights in the equipment before its installation on the vessel. For example, in *F/V Golden Dawn*,<sup>13</sup> the equipment was marked with the following legend: “Property of Raytheon Company. Not to be sold or moved.” Additionally, the lease contained the following language:

Neither the nameplate nor the property tag on the equipment shall be removed or modified, nor shall the equipment be removed from the place where installed under Company’s supervision without the written consent of Company. \*\*\* Lessee shall not suffer any execution to be levied on said equipment, and shall immediately notify Company of any attempt to make such levy and of any attempt to levy upon or libel the vessel.

By taking such precautions, the

lender was able to protect the leased equipment from being sold as an appurtenance of the vessel.

## Only “Strangers to the Vessel” Can Assert a Maritime Lien on Equipment that is an Appurtenance

Maritime liens, subject to the exception noted below, are intended to safeguard the interests of strangers to the vessel, not vessel owners or those who can control the vessel’s affairs.<sup>14</sup> Thus, owners and bareboat charterers don’t get a lien on their own vessel and its equipment, nor do joint venturers.<sup>15</sup> As the Fifth Circuit has stated, “when the seas get rough, one who looks, thinks, acts, and profits like an owner cannot retreat to the relatively safe harbor of a maritime lienor.”<sup>16</sup> This likely holds true even if the “lien” was acquired through subrogation.<sup>17</sup>

## Only Shipowners and Bareboat Charterers Can Assert a Maritime Lien on Equipment that is Cargo

Courts have long recognized that a vessel owner has a maritime lien on the charterer’s cargo for freight or hire, absent a provision in the charter to the contrary.<sup>18</sup> So, if the cargo is equipment, the vessel owner has a lien on that equipment as long

as the owner maintains actual or constructive possession of the equipment.<sup>19</sup> Even if the cargo is delivered, the shipowner enjoys a strong presumption that, absent a clear indication to the contrary, he has not waived his lien on cargo.<sup>20</sup> A prudent carrier will provide in the applicable charter or bill of lading that the lien remains after delivery of the cargo, or condition delivery on the lien not being extinguished. Another alternative is to substitute security by, for example, a sum of money held in escrow. While maritime liens do not arise from the agreement of the parties,<sup>21</sup> they can sometimes be preserved or extinguished by agreement or implication.

Because the shipowner's maritime lien rights are limited, creative counsel will sometimes try to expand the traditional

concept of cargo to include equipment utilized by charterer in its work aboard the vessel. *In Racal Survey U.S.A., Inc.*,<sup>22</sup> the shipowner tried to expand its maritime lien for a breach of charter to include seismic equipment that was used by the bareboat charterer in its oil and gas operations. The Fifth Circuit rejected the attempt, holding that the seismic equipment was not cargo, and concluding "... that [the vessel owner's] attempt to extend the concept of a maritime lien is unavailing."<sup>23</sup>

### Maritime Liens Have Priority Over UCC Security Interests

While a creditor may take an Article 9 UCC security interest in equipment, the shipowner's maritime lien has priority over such security interest in the same collateral.<sup>24</sup> Similarly, whether a

maritime lien claimant has lien priority over other creditors in bankruptcy depends on admiralty and maritime law, not the law that governs transactions occurring on land.<sup>25</sup>

### Conclusion

While courts will sometimes expand the type of equipment that can be considered an appurtenance and thereby become subject to a maritime lien, they seem less willing to expand the traditional concept of cargo to include equipment not carried for a fee. Further, courts are reluctant to expand the class of persons eligible to claim maritime liens. Whether equipment not owned by the shipowner can be subject to an appurtenance type lien often seems to depend on whether the lien is from a ship mortgage or a maritime lien. Equipment

lessors have often thwarted ship mortgage holders by marking and documenting their ownership of equipment separate from the vessel itself. Conversely, maritime lien claimants have often been successful in asserting their lien over leased equipment. Finally, because maritime liens have priority over UCC security interests and can be rapidly enforced through arrest, we expect parties and their counsel will continue to try to push the limits on both the appurtenance and cargo fronts to have their claims against valuable equipment deemed maritime lien claims.



*Ben Schupp, a maritime attorney at McGlinchey Stafford PLLC in New Orleans, has been engaged in marine finance and the litigation of maritime lien claims for 30 years.*

<sup>1</sup> *Stewart & Stevenson Services, Inc., v. M/V Chris Way MacMillan*, 890 F. Supp. 552, 561-562 (N.D. Miss., 1995) (citing *The Hope*, 191 F. 243, 245 (D. Mass. 1911)).  
<sup>2</sup> *SGulf Copper & Mfg. Corp. v. M/V Lewek Express*, No. 3:19-CV-00034, 2019 WL 2516977, at \*2 (S.D. Tex. June 18, 2019); *Gonzalez v. M/V Destiny Panama*, 102 F. Supp. 2d 1352, 1354 (S.D. Fla. 2000).  
<sup>3</sup> *Canaveral Port Auth. v. M/V Liquid Vegas*, No. 6:09-cv-1447, 2009 WL 3347596 at \*6 (M.D. Fla. October 15, 2009).  
<sup>4</sup> *Gulf Copper & Manuf. Corp.*, *supra*.  
<sup>5</sup> *SS Tropic Breeze v. Tropical Commerce Corporation*, 456 F.2d 137, 141 (1st Cir. 1972).  
<sup>6</sup> *Motor-Services Hugo Stamp Inc. v. M/V REGAL EMPRESS*, 165 F. Appx. 837, 840 (11th Cir. 2006).  
<sup>7</sup> *Stewart & Stevenson Services, Inc.*, *supra*.  
<sup>8</sup> *Nelson v. The Arctic*, 1956 A.M.C. 502 (W.D. Wash. 1956) (electronic equipment that was removed from a fishing vessel and stored in her owner's basement prior to the vessel's arrest and sale was nonetheless appurtenant to the vessel and subject to satisfy the lien claims).  
<sup>9</sup> *Stewart & Stevenson Servs., Inc.*, *supra*, (spare tail shaft was essential to the vessel's navigation); *Gonzales*, *supra* at 1354-1357 (uninstalled engines).  
<sup>10</sup> *Barnes v. Sea Hawaii Rafting LLC*, 358 F.Supp. 3d 1083, 1091 (D. Hawaii. 2018).  
<sup>11</sup> *Kesselring v. F/T Arctic Hero*, 30 F.3d 1123, 1125-26 (9th Cir. 1994) (leased equipment necessary for operation of vessel as fishing vessel held integral part of vessel and subject to wage liens); *Canaveral Port Auth.*, *supra*, 2009 WL 3347596 at \*4 (gaming equipment owned by third parties subject to maritime liens on casino vessel).  
<sup>12</sup> *C.I.T. Corp. v. Oil Screw Peggy*, 424 F.2d 767, 768 (5th Cir. 1977) (in finding in favor of the equipment owner, the Court held that nothing in the ship mortgage suggested that the ship mortgage could extend to property the vessel owner did not own);

*First Nat'l Bank & Trust Co. of Escanaba v. Oil Screw Olive L. Moore and Barge Wilranco I*, 379 F. Supp. 1382, 1386-91 (W.D. Mich. 1973) (leased air compressor found not subject to preferred mortgage).  
<sup>13</sup> *United States v. F/V Golden Dawn*, 222 F. Supp. 186 (E.D.N.Y. 1963).  
<sup>14</sup> 55 C.J.S. *Maritime Liens* § 2, *Source, purpose, and basis of maritime lien*, *Amendola, Francis* (June 1, 2021 Update).  
<sup>15</sup> *Sasportes v. M/V SOL DE COPACABANA*, 581 F.2d 1204, 1208 (5th Cir.1978).  
<sup>16</sup> *Id.* at 1209.  
<sup>17</sup> *Topgallant 154 B.R.* 368, 381 (S.D. Georgia 1993) affirmed *McAllister Towing v. Ambassador*, 20 F.3d 1175 (11th Cir. 1994).  
<sup>18</sup> *Arochem Corp. v. Wilomi, Inc.* 962 F.2d 496, 499 (5th. 1992).  
<sup>19</sup> *Beverly Hills Nat'l Bank & Trust Co. v. Compania De Navegacione Almirante S.A., Panama*, 437 F.2d 301 (9th Cir. 1971).  
<sup>20</sup> *Dampskibsselskabet Norden A/S v. 25,001.078 MT of Fly Ash*, 308 F.Supp 3d 693, 697 (N.D. N.Y. 2018) citing *In re World Imports Ltd.*, 820 F.3d 576, 584 (3d Cir. 2016).  
<sup>21</sup> *Comar Marine Corp. v. Raider Marine Logistics*, Civ. Action No. 09-1438, 2011 WL 2729071 at \*3 (W.D. La. July 12, 2011) citing *Newell v. Norton*, 70 U.S. 257, 262 (1865).  
<sup>22</sup> *Racal Survey U.S.A., Inc. v. M/V COUNT FLEET*, 231 F.3d 183, 192-193 (5th Cir. 2000).  
<sup>23</sup> *Id.*  
<sup>24</sup> *Topgallant*, *supra* at 376.  
<sup>25</sup> *United States v. ZP Chandon*, 889 F.2d 233, 238 (9th Cir.1989)(in context of claim for seaman's wages). *In re Pacific Caribbean Shipping (USA), Inc.*, 789 F.2d 1406, 1408 (9th Cir.1986)(UCC "should not be interpreted to apply to [maritime] liens.")