No. _____

In The
Supreme Court of the United States

BULK JULIANA LTD. and M/V BULK JULIANA, her engines, tackle, apparel, etc., *in rem*,

Petitioners,

versus

WORLD FUEL SERVICES (SINGAPORE) PTE LTD.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

PETER B. SLOSS
Counsel of Record
psloss@mrsnola.com
ROBERT H. MURPHY
rmurphy@mrsnola.com
DONALD R. WING
dwing@mrsnola.com
MURPHY, ROGERS, SLOSS, GAMBEL & TOMPKINS, APLC
701 Poydras Street, Suite 400
New Orleans, Louisiana 70139
Telephone: (504) 523-0400

Attorneys for Claimant-Petitioner, Bulk Juliana Ltd., appearing solely as the Owner and Claimant of the M/V BULK JULIANA

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

This petition presents the following unsettled questions of federal maritime law, which are of widespread commercial importance to the global shipping community and should be resolved by this Court:

1. Under U.S. law, a maritime necessaries lien arises solely by operation of law and cannot be created by contract. Here, a Singapore fuel supplier claims a maritime lien for fuel supplied to a Panamanian vessel in Singapore based on a contractual choice of law provision stipulating application of U.S. maritime law to this entirely foreign transaction. No lien would arise under Singapore law. Can foreign parties, who have no actual or apparent authority to bind a vessel, contractually bestow presumptive authority on the time charterer, without the vessel owner's knowledge or involvement, and thereby create a maritime lien that would not otherwise arise without the contract?

2. It is axiomatic that subject matter jurisdiction cannot be conferred by the parties' consent. Here, the courts exercised maritime *in rem* jurisdiction, which is premised on the existence of a maritime lien. But if the lien only exists by virtue of a contractual choice of U.S. law clause entered into by parties without authority to bind the vessel, and would not exist in the absence of the contract, does the exercise of jurisdiction violate the axiom that jurisdiction that would not otherwise exist cannot be conferred by the parties' consent?

QUESTIONS PRESENTED – Continued

3. Two parties cannot, by their contract, encumber a third party's property. Here, a Singapore fuel supplier and a German time charterer purportedly encumbered the M/V BULK JULIANA with a maritime lien for fuel supplied in Singapore by stipulating that U.S. general maritime law governed their contract, without the vessel's or its owner's knowledge or consent. Does a contract between a marine fuel supplier and a time charterer selecting U.S. law as the law governing an entirely foreign transaction, for the purpose of creating a maritime lien that would not arise but for the contract, violate the prescription that two contracting parties cannot encumber the property of a third party?

4. The contractual choice of law provision called for application of the "General Maritime Law of the United States." This Court has recognized that general maritime law is judge-made common law, which is distinct from statutory maritime law. Maritime liens for necessaries under U.S. law are solely creatures of statute, specifically 46 U.S.C. §§ 31341-42. Does the plain and ordinary meaning of the "General Maritime Law of the United States" include the statutory remedies afforded by the U.S. maritime lien statutes?

PARTIES TO THE PROCEEDING

Petitioner, Bulk Juliana Ltd., is the registered owner of the M/V BULK JULIANA, a dry bulk ocean-going cargo vessel engaged in international commerce. The BULK JULIANA flies the flag of Panama. Bulk Juliana appears in this matter as the claimant of the M/V BULK JULIANA, *in rem*, with a full reservation of all rights and defenses pursuant to Rule E(8) of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure.

Respondent, World Fuel Services (Singapore) PTE Ltd., is a Singapore corporation with its principal place of business in Singapore. It is a subsidiary of the World Fuel Services group of companies.

RULE 29.6 DISCLOSURE

Petitioner, Bulk Juliana Ltd., is a Bermuda corporation and is a wholly owned subsidiary of Bulk Fleet Bermuda Holding Company Ltd. Bulk Fleet Bermuda Holding Company Ltd. is a subsidiary of Bulk Partners (Bermuda) Ltd., a Bermuda corporation. Pangea Logistics Solutions Ltd., a publicly held corporation, owns 10% or more of the shares of Bulk Partners (Bermuda) Ltd.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Bulk Juliana Ltd. as claimant of the M/V BULK JULIANA, *in rem*, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

INTRODUCTION

This case presents significant legal issues of widespread commercial importance to the global shipping industry. The question is whether a foreign necessaries supplier can encumber a foreign vessel with a U.S. law maritime lien, a powerful and secret property right, in circumstances in which no lien would arise by operation of law, through a choice of U.S. law clause in a contract with the vessel's foreign time charterer. The resolution of this issue addresses the continuing viability of this Court's entrenched rule, in force for more than 150 years, that maritime liens arise solely by operation of law, and cannot be created by contract. And since the courts' *in rem* subject matter jurisdiction is based on the existence of a maritime lien, the present case also raises the issue whether contracting parties can, by their agreement, confer federal subject matter *in rem* jurisdiction that would not otherwise exist.

Plaintiff-Respondent, World Fuel Services (Singapore) PTE Ltd. (hereafter "WFS Singapore" or "Plaintiff"), a Singapore company, seeks to enforce a maritime necessaries lien on the M/V BULK JULIANA, a Panamanian vessel, for marine fuel (known in the industry as

"bunkers") supplied to the vessel in Singapore in November 2012 at the request of Denmar Chartering & Trading GmbH ("Denmar"). Denmar was the vessel's German time charterer. Plaintiff claims that U.S. law controls and bestows presumptive authority on Denmar to bind the vessel to a lien, thereby affording Plaintiff a maritime necessaries lien on the M/V BULK JULIANA, based solely on a U.S. choice of law clause in its contract with Denmar for the supply of the bunkers.

Petitioner, Bulk Juliana Ltd. ("Bulk Juliana"), the owner of the M/V BULK JULIANA, maintains that WFS Singapore does not have a maritime lien, because Singapore law governs this Singapore-centric transaction, and Singapore law does not recognize a maritime lien for supplying necessaries, including bunkers, to a vessel. See *Sembawang Shipyard, Ltd. v. Charger, Inc. and M/V CHARGER*, 955 F.2d 983, 988 (5th Cir. 1992). Bulk Juliana further asserts that the U.S. choice of law clause cannot bind the M/V BULK JULIANA, *in rem*, and that the chosen law – U.S. general maritime law – does not provide Plaintiff a necessaries lien in any event.

The lower courts held that the U.S. choice of law provision in the agreement between WFS Singapore and Denmar was binding on the M/V BULK JULIANA, *in rem*; that U.S. general maritime law therefore governed Plaintiff's maritime lien claim; that general maritime law included the Commercial Instruments and Maritime Liens Act (formerly known as the Federal Maritime Lien Act, and referred to hereafter as

"FMLA"), 46 U.S.C. §§ 31341-42; and that Plaintiff therefore has a maritime lien on the M/V BULK JULIANA for the bunkers supplied in Singapore.

This Court should grant certiorari to review this case, as the Court of Appeals' holding violates the rule, entrenched for more than 150 years, that parties cannot create a maritime lien by contract, and the equally established rule that federal jurisdiction cannot be conferred by consent of the parties. Moreover, this Court should clarify whether the plain and ordinary meaning of the general maritime law includes maritime statutory remedies, specifically the right to a maritime necessaries lien under the FMLA. There is a considerable lack of clarity in the lower court decisions on these issues. And the issues presented in this case are of tremendous commercial importance to the global shipping industry. This Court should, therefore, grant a writ of certiorari and review this case.

OPINIONS BELOW

The Court of Appeals' 1 April 2016 decision (App. 1) is currently unreported, but can be found at 2016 WL 1295041. The district court's Order and Reasons of 11 February 2015 granting Plaintiff's motion for summary judgment and holding that Plaintiff has an enforceable maritime lien on the M/V BULK JULIANA under U.S. law (App. 22) is unreported, but can be found at 2015 WL 575201.

JURISDICTION

The Court of Appeals entered its decision on 1 April 2016. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

Three relevant provisions of the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301, 31341 and 31342, are reprinted at App. 37-40.

STATEMENT OF THE CASE

1. Relevant Facts

On 18 April 2012, Bulk Juliana chartered the M/V BULK JULIANA, a dry bulk cargo vessel flying the Panamanian flag, to Americas Bulk Transport (BVI) Ltd. ("ABT"). Clause 18 of the time charter party included a prohibition of liens clause, which expressly prohibited ABT from incurring maritime liens on the vessel. Such prohibition of liens clauses are customary in almost every known time charter party form and, especially, charter parties used for chartering dry bulk cargo vessels such as the M/V BULK JULIANA.

On 13 August 2012, ABT sub-time chartered the M/V BULK JULIANA to Denmar pursuant to a New York Produce Exchange Time Charter Form. Consistent with ABT's charter of the vessel from Bulk Juliana, Clause 23 of ABT's charter party with Denmar

expressly prohibited Denmar from incurring liens on the vessel. Accordingly, Denmar contractually agreed that it would not incur any liens on the M/V BULK JULIANA for bunkers or other necessaries. The M/V BULK JULIANA was delivered under this time charter to Denmar on 4 September 2012 and was redelivered by Denmar on 3 April 2013.

WFS Singapore, a Singapore corporation with its principal place of business in Singapore, claimed that on or about 7 November 2012, Denmar ordered bunkers consisting of approximately 1100 metric tons of marine fuel oil, plus 10 metric tons of marine diesel oil, to be supplied to the M/V BULK JULIANA in Singapore. Plaintiff asserted that on 13 November 2012, it supplied 1070.456 metric tons of fuel oil and 9.27 metric tons of diesel oil to the M/V BULK JULIANA in Singapore, at a total cost of US$677,085.64. Plaintiff further claimed that Denmar had failed to pay for the bunkers and, in fact, Denmar filed for bankruptcy protection in Germany.

Plaintiff also maintained that its bunker supply agreement with Denmar was subject to its General Terms and Conditions. Article 17 of Plaintiff's General Terms and Conditions is a "Law and Jurisdiction" provision, which states:

> The General Terms and each Transaction shall be governed by the General Maritime Law of the United States and, in the event that the General Maritime Law of the United States is silent on the disputed issue, the law of the State of Florida, without reference to

> any conflict of laws rules which may result in the application of the laws of another jurisdiction. The General Maritime Law of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action.

Thus, Plaintiff's General Terms and Conditions do not incorporate United States law as a whole; they incorporate only U.S. general maritime law.

Plaintiff did not actually supply the bunkers at issue to the M/V BULK JULIANA. Plaintiff subcontracted a third party, Transocean Oil of Singapore ("Transocean"), to supply the bunkers to the vessel. The Transocean Bunker Delivery Notes made absolutely no mention of WFS Singapore. Nor did the Bunker Delivery Notes refer to any terms and conditions controlling this bunker delivery, or suggest that United States law would apply and would entitle the supplier to a maritime lien for this transaction in Singapore. In fact, there was no indication to the M/V BULK JULIANA's owners, officers or crew that WFS Singapore was involved in the transaction, or that the vessel was purportedly submitting itself to U.S. law when it accepted the bunkers in Singapore.

2. Proceedings Below

WFS Singapore commenced this action on 13 August 2013 and arrested the M/V BULK JULIANA in New Orleans pursuant to Rule C of the Supplemental Rules for Admiralty and Maritime Claims and Asset

Forfeiture Actions of the Federal Rules of Civil Procedure, seeking to recover more than US$800,000 for the bunkers, contractual interest, and attorneys' fees from the vessel, *in rem*. Federal subject matter jurisdiction was based on the federal admiralty and maritime jurisdiction under Art. III, § 2 of the United States Constitution and 28 U.S.C. § 1333. Bulk Juliana, the owner of the M/V BULK JULIANA, posted security to obtain the vessel's release. On 13 September 2013, Bulk Juliana filed its Verified Claim of Owner and Answer to assert its rights, title and interest in the M/V BULK JULIANA.

On 27 January 2015, WFS Singapore and Bulk Juliana each filed motions for summary judgment addressing whether U.S. law applied and entitled WFS Singapore to a maritime lien for the bunkers supplied to the M/V BULK JULIANA in Singapore. On 11 February 2015, the district court issued its Order and Reasons, holding that United States law governed the existence of a maritime lien and entitled WFS Singapore to a maritime lien on the M/V BULK JULIANA. The court therefore granted WFS Singapore's motion for summary judgment and denied Bulk Juliana's motion for summary judgment.

On 16 March 2015, Bulk Juliana timely filed its Notice of Appeal to the United States Fifth Circuit Court of Appeals. On 1 April 2016, the Fifth Circuit issued its decision affirming the district court's ruling that the U.S. choice of law provision in the WFS Singapore Terms and Conditions was binding on the M/V BULK JULIANA, *in rem*; that U.S. general maritime

law therefore applied to Plaintiff's maritime lien claim; and that general maritime law included the maritime lien statutes in the FMLA, entitling Plaintiff to a maritime necessaries lien on the M/V BULK JULIANA.

REASONS FOR GRANTING THE WRIT

I. The choice of law clause is an improper attempt to create a maritime lien by contract where none arises by operation of law.

The FMLA, 46 U.S.C. § 31301 *et seq*., grants a lien to "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner." 46 U.S.C. § 31342(a), reprinted App. 40. Fuel qualifies as a necessary under § 31301(4), reprinted App. 37.

In *Vandewater v. Mills*, 60 U.S. (19 How.) 82 (1856), this Court recognized the unique nature of the maritime lien:

> The maritime "privilege" or lien is adopted from the civil law, and imports a tacit hypothecation of the subject of it. It is "*jus in re*," without actual possession or any right of possession. It accompanies the property into the hands of a bona fide purchaser. It can be executed and divested only by a proceeding *in rem*. This sort of proceeding against personal property is unknown to the common law, and is peculiar to the process of courts of admiralty. . . . But this privilege or lien, though

> adhering to the vessel, is a secret one; it may operate to the prejudice of general creditors and purchasers without notice; it is therefore "*stricti juris*," and cannot be extended by construction, analogy, or inference.

Id. at 89.

It is now hornbook law that a maritime lien cannot be created by agreement between the parties; liens can only arise by operation of law. As observed more than 150 years ago in *Newell v. Norton*, 70 U.S. (3 Wall) 257 (1865):

> Maritime liens are not established by the agreement of the parties, except in hypothecations of vessels, but they result from the nature and object of the contract. They are consequences attached by law to certain contracts, and are independent of any agreement between the parties that such liens shall exist. They, too, are *stricti juris*.

Id. at 262. See also, *The Bird of Paradise*, 72 U.S. 545, 555 (1866); *Piedmont & Georges Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 12 (1920); *Comar Marine Corp. v. Raider Marine Logistics LLC*, 792 F.3d 564, 571 (5th Cir. 2015). Numerous lower courts have applied that entrenched rule. See *Effjohn Int'l Cruise Holdings, Inc. v. A & L Sales, Inc.*, 346 F.3d 552, 556 (5th Cir. 2003); *Gulf Trading & Transport Co. v. The Vessel HOEGH SHIELD*, 658 F.2d 363, 366 (5th Cir. 1981)*; Rainbow Line, Inc. v. M/V TEQUILA*, 480 F.2d 1024, 1026 (2d Cir. 1973); *Bominflot, Inc. v. M/V HENRICH S*, 465 F.3d 144, 148 (4th Cir. 2006);

Radcliff Americas Ltd. v. M/V TYSON LYKES, 996 F.2d 47, 50 (4th Cir. 1993).

The lower court rulings in the present case violated this established rule of federal maritime law. Here, but for the contract – WFS Singapore's General Terms and Conditions – U.S. law would have no application to the supply of bunkers to a Panamanian vessel in Singapore by a Singapore subcontractor of a Singapore company on the order of a German time charterer. Rather, that transaction would almost certainly be governed by Singapore law, which would not grant WFS Singapore a maritime lien. *Sembawang*, *supra*. WFS Singapore is thus attempting to create by contract what was not available by operation of law, using a choice of law provision designating the general maritime law of the United States as the applicable law for determining the existence of a maritime lien. This is prohibited.

As one noted commentator has explained, using a contractual choice of law clause to designate U.S. law, when it would not otherwise apply, to create a maritime necessaries lien that would not otherwise exist, violates the rule that maritime liens cannot be created by contract:

> It has long been held that maritime liens arise by operation of law and cannot be created or extended by agreement because of the possible impact on the rights of third parties. To give automatic recognition to a choice-of-U.S.-lien-law clause . . . is to allow the parties to do indirectly (by choosing the law of a nation that

> recognizes maritime liens for necessaries) that which they are prohibited from doing directly.

Martin Davies, *Choice of Law and U.S. Maritime Liens*, 83 Tul. L. Rev. 1435, 1454-55 & 1457 (2009).

Professor Davies' concern about "the possible impact on the rights of third parties" is fully evident in the present case, in which two parties with no proprietary interest in the M/V BULK JULIANA and no authority to bind the vessel, WFS Singapore and Denmar, seek to use their private agreement to encumber the property of a third party, Bulk Juliana, without that third party's knowledge or consent. Indeed, absent the choice of U.S. law, Denmar had no authority to bind the vessel. Yet, the lower courts' rulings permit WFS Singapore to take advantage of the presumptive authority set forth in the FMLA and to exercise a lien merely because Denmar purportedly agreed to application of U.S. law, even though Denmar had expressly agreed in its charter party that it would not incur liens on the vessel. The result is grossly unfair, violates the settled rule against creating maritime liens by contract, and goes far beyond the intent of the FMLA.

As a result, this Court should grant this petition and reaffirm the continuing viability of the rule that maritime liens cannot be created by contract. As Professor Davies explained, the use of the U.S. choice of law clause is an improper attempt to indirectly create by contract what cannot be directly created by contract.

II. The enforcement of a maritime lien based on the contractual choice of law provision violates the longstanding rule that jurisdiction cannot be conferred by consent.

It is axiomatic that federal subject matter jurisdiction cannot be conferred by the consent of the parties. *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986); *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17-18 (1951). But that is exactly what granting Plaintiff a maritime lien based on its contractual choice of law provision does. The exercise of maritime *in rem* jurisdiction under Supplemental Rule C is premised on the existence of a maritime lien. Rule C(1)(a), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions; *The Rock Island Bridge*, 73 U.S. 213, 215 (1867). If the claimed maritime lien would not exist but for the contract between Plaintiff and Denmar, as is the case here, then the only basis for the exercise of *in rem* jurisdiction under Rule C is that contract. Thus, the only basis for federal subject matter jurisdiction in the present case is the parties' supposed consent.

This Court should therefore grant the present petition to reaffirm the entrenched rule that jurisdiction cannot be conferred by the consent of the parties.

III. The federal circuit courts are split on whether a maritime lien can arise based on a contract to which the vessel's owner is not a party.

With the decision below, the Fifth Circuit joins the Fourth Circuit and the Ninth Circuit in enforcing a foreign necessaries supplier's maritime lien claim based on a contractual choice of law provision without the vessel owner's involvement.[1] But the Second Circuit has previously held that the law applicable to the parties' contract does not determine whether a foreign necessaries supplier is entitled to a maritime lien.

In *Rainbow Line, Inc. v. M/V TEQUILA*, 480 F.2d 1024 (2d Cir. 1973), the Second Circuit held that the intent of the parties to a contract cannot affect the rights of a third person, such as a vessel owner:

> The first issue is what law to apply. Empire [vessel mortgage holder] contends that British law, which grants no lien for the breach of a charter party, must govern as it was the law of the flag at the time of the breach. Rainbow [the vessel's time charterer] argues that the court below was correct in applying United States law because it was so intended by the parties to the charter. But maritime liens arise separately and independently from the agreement of the parties, and rights of third persons cannot be affected by the intent of the parties to the contract.

---

[1] See *Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA*, 575 F.3d 409 (4th Cir. 2009), and *Trans-Tec Asia v. M/V HARMONY CONTAINER*, 518 F.3d 1120 (9th Cir. 2008).

Rainbow Line, 480 F.2d at 1026 (citing *The Bird of Paradise*, 72 U.S. 545, 555 (1866), and *Piedmont & Georges*, 254 U.S. at 10). The court in *Rainbow Line* enforced a maritime lien for breach of charter party, but only because virtually all points of contact in the transactions at issue were with the United States. *Id.*

In contrast, where the transaction lacks significant contacts with the U.S., the First Circuit and the Eleventh Circuit have refused to enforce maritime liens under the FMLA. In *Tramp Oil & Marine, Ltd. v. M/V MERMAID I*, 805 F.2d 42 (1st Cir. 1986), a Danish charterer ordered bunker fuel from an English fuel broker, which, in turn, arranged with a U.S. company to supply the fuel in the port of Savannah, Georgia. The court rejected the English broker's claim to a maritime lien on the ground that Congress had not intended the FMLA to protect foreign suppliers:

> The primary concern of the Federal Maritime Lien Act is the protection of American suppliers of goods and services. See H. Rep. No. 92-340, 92nd Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News 1363-65; . . . [additional citation omitted]. With this purpose in mind, and in light of the principle that maritime liens are to be strictly construed, [citation omitted] we decline to extend the law for [the English fuel broker's] benefit in the circumstances of this case. [The English fuel broker] is a foreign broker, not an American

> supplier, and thus not the intended beneficiary of the Maritime Lien Act.

805 F.2d at 46.

Similarly, in *Trinidad Foundry and Fabricating, Ltd. v. M/V K.A.S. Camilla*, 966 F.2d 613 (11th Cir. 1992), the parties to a repair contract chose English law. A foreign repairman, which had furnished necessaries to a foreign vessel in Trinidad, arrested the vessel in Florida and asserted two independent claims: (1) an *in rem* claim under English law and (2) a maritime lien under the FMLA. The Eleventh Circuit analyzed each ground separately. The first claim failed because English law does not recognize a maritime lien for necessaries. 966 F.2d at 616-17. The court held that the second claim failed because the FMLA does not recognize a U.S. maritime lien for goods and services supplied by a foreign plaintiff to a foreign vessel in a foreign port. Despite the U.S. lien statute's broad language, its purpose, as revealed by Congress, was the protection of American, not foreign, suppliers. 966 F.2d at 617 (following *Tramp Oil*). See also, *Gulf Trading & Transport Co. v. The Vessel HOEGH SHIELD*, 658 F.2d 363, 367 (5th Cir. 1981) (noting that the Congressional intent of the FMLA was to protect American suppliers of necessaries).

The need for this Court to consider the present issue is further apparent from the fact that there is some amount of conflict even within the circuits who have ruled on this issue. For instance, the Fifth Circuit's ruling in the present case is seemingly in tension with two

of its earlier decisions. The court in *Arochem Corp. v. Vilomi, Inc.*, 962 F.2d 496 (5th Cir. 1992), specifically rejected applying a contractual choice of law:

> We recognize, of course, that the charter agreement was negotiated, drafted and executed in London and that the agreement itself provides in terms for English law to govern its construction and performance. This factor is rendered nugatory, however, because Arochem here claiming injury was not a party to the charter agreement.

Arochem, 962 F.2d at 499.

Likewise, the court recognized in *Gulf Trading v. HOEGH SHIELD*, *supra*, that parties to a bunker supply contract could not impose a maritime lien, by terms of a contract, on a vessel owned by a non-party to the contract. Rather, in a case such as this, the lien for the bunkers can arise only by operation of law:

> A distinction must be drawn at the outset between the express contract to provide bunkers involving only Gulf [bunker supplier] and Multinational [vessel's time charterer] and the application of a maritime lien in favor of Gulf against the vessel. Gulf's claim to a maritime lien in the Vessel arises by operation of law rather than by contract because the Vessel's owner was not a party to the contract between Gulf and Multinational.

658 F.2d at 366. The court in *HOEGH SHIELD* applied U.S. law to the supplier's maritime lien claim because the bunkers were supplied by a U.S. company in a U.S. territory, notwithstanding that English law governed the supply contract.

The Court of Appeals in the present case distinguished *HOEGH SHIELD* and *Arochem* on the grounds that in neither of those cases did the supply contract designate U.S. law as the governing law. Instead, the court relied on its more recent decision in *Liverpool & London Steamship Protection and Indemnity Ass'n Ltd. v. QUEEN OF LEMAN MV*, 296 F.3d 350 (5th Cir. 2002), in which the court recognized a necessaries lien based on a choice of law clause in an insurance contract entered into by the vessel's then owner. But when the vessel owner is not a party to the contract, what difference does a choice of law clause really make? If the law governing the contract cannot determine the supplier's right to a maritime lien when, as here, the vessel's owner is not a party to the supply contract, what difference does it make if the law governing the contract is determined by application of the legal test for determining choice of law in contract disputes, or by the stipulation of two contracting parties with no proprietary interest in the vessel, and no authority to contractually bind the vessel? As the *Rainbow Line* and *HOEGH SHIELD* courts correctly observed, in either instance, the law of the contract, however determined, cannot impair the property rights of nonparties to the contract. See also, *O.W. Bunker Malta Ltd. v. MV TROGIR*, 602 Fed. Appx. 673, 677 (9th Cir. 2015) (Watford, J., concurring).

There is, in sum, a significant lack of clarity in the lower courts' resolution of the important commercial issues presented here, both between the federal circuit courts and within the circuits. This Court needs to clarify these issues. One of the reasons admiralty and maritime jurisdiction was vested in the federal courts was to ensure uniform application of the maritime law throughout the country. *Sisson v. Ruby*, 497 U.S. 358, 367 (1990); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674-75 & 677 n.6 (1982). The rights of maritime suitors and vessel owners should not vary depending on what coastal jurisdiction they or their vessel happens to be in. This Court should grant the petition to resolve this uncertainty among the different circuits and ensure the uniform application of federal maritime law on this important commercial maritime issue.

IV. The issues presented in this case implicate Petitioner's fundamental property rights.

As noted above, several lower courts have held that a third party vessel owner cannot be subjected to a maritime lien based on the intent of the parties to a contract. *Rainbow Line*, 480 F.2d at 1026; *HOEGH SHIELD*, 658 F.2d at 366. This logically flows from the established rule that contracting parties cannot encumber the property of another. See, *e.g.*, *Crocker Nat.*

Bank v. Ideco Div. of Dresser Indus., Inc., 839 F.2d 1104, 1109 (5th Cir. 1988).[2]

Yet, that is precisely what the Court of Appeals' decision in the present case allows. Through their private agreement, WFS Singapore and Denmar, neither of whom had any proprietary interest in the M/V BULK JULIANA, or any authority to bind the vessel, contractually encumbered the vessel by agreeing to the application of U.S. law in circumstances in which U.S. law would not otherwise apply, thereby giving WFS Singapore a maritime lien that would not have existed without the contract. And Bulk Juliana, the vessel owner, had no way of knowing that the choice of law clause in the Plaintiff's General Terms and Conditions had any application to the bunkers supplied to the M/V BULK JULIANA in Singapore, since the bunkers were actually delivered to the vessel by Transocean, and the Transocean documents contained no reference to WFS Singapore, its General Terms and Conditions, or U.S. law.

This is precisely what prompted Judge Watford to write his concurrence in *O.W. Bunker v. MV TROGIR*, *supra*. In that case, the Ninth Circuit enforced a choice of law clause in a marine fuel supply contract and

---

[2] While maritime law treats the vessel as a separate person liable, *in rem*, for its debts, "the *in rem* liability of a ship is a fiction; the reality is that the owner, not the vessel, pays the judgment." *UPT Pool Ltd. v. Dynamic Oil Trading (Singapore) PTE. Ltd., et al.*, 2015 WL 4005527, 2015 A.M.C. 2070, 2079 (S.D.N.Y. July 1, 2015) (quoting *Ins. Co. of N. America v. S/S American Argosy*, 732 F.2d 299, 301 (2d Cir. 1984)).

recognized a maritime lien under U.S. law when the vessel was arrested in Los Angeles. In his concurring opinion, Judge Watford lamented the court's ongoing misapplication of the Fifth Circuit's decision in *Liverpool & London*, *supra*, in cases like the present case:

> While the Fifth Circuit did indeed give effect to a choice-of-law clause when deciding whether a maritime lien arose, the contract in that case was between the party claiming the lien (an insurer) and the vessel owner itself. The Fifth Circuit's reasoning has no application in a case . . . which involved a non-party that neither knew about nor consented to the contractual provision at issue. [Such] holding is in conflict with what our court had earlier described as an obvious truism – nonparties cannot be bound by an agreement.
>
> [H]ere, we should have applied the factors specified in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953), to decide the choice-of-law question, rather than relying on a contractual choice-of-law clause that did not (and indeed could not) bind either the vessel or the vessel owner. If we applied the *Lauritzen* factors in this case, we would not uphold a lien in [the bunker provider's] favor.

602 Fed. Appx. at 677 (internal citations and quotation marks omitted).

Judge Watford's logic is particularly compelling in the present case, since Denmar was strictly prohibited from encumbering the M/V BULK JULIANA by the prohibition of liens clause in its charter party. This is a

different issue than WFS Singapore's lack of actual knowledge of the prohibition of liens clause, which goes to its right to rely on a maritime lien arising by operation of law.[3] Instead, the issue is that Denmar lacked the authority to bind the M/V BULK JULIANA, *in rem*, to any contractual provision that conferred a maritime lien where no lien would arise by operation of law in the absence of the contract.

The ability, *vel non*, of contracting parties to encumber a third party's property implicates fundamental property rights. This Court should grant the petition to clarify these fundamental property rights issues in this important maritime context.

V. This Court should determine whether the plain and ordinary meaning of "General Maritime Law of the United States" in WFS Singapore's General Terms and Conditions includes a statutory lien under the U.S. maritime lien statutes.

It is hornbook law that contracts must be construed according to the terms which the parties have used in their plain, ordinary, and obvious sense. *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 32 (2004); *Bergholm v. Peoria Life Ins. Co. of Peoria, Ill.*, 284 U.S. 489, 492 (1932). In the present case, WFS Singapore's General Terms and Conditions called for the application of

[3] See, *e.g.*, *Stevens Shipping and Terminal Co. v. JAPAN RAINBOW II MV*, 334 F.3d 439, 443 (5th Cir. 2003) (supplier with actual knowledge of prohibition of liens clause cannot claim a maritime lien).

"the General Maritime Law of the United States." But maritime liens in the U.S. are solely creatures of statute, while the general maritime law is judge-made common law and is distinct from maritime statutory law. Therefore, the present case presents the issue whether the "plain, ordinary, and obvious" meaning of "the General Maritime Law of the United States" includes remedies conferred exclusively by statute, including a maritime necessaries lien under the FMLA.

This Court has recognized a distinction between general maritime law, which is judge-made common law, and statutory law, describing the "General Maritime Law of the United States" as follows:

> With admiralty jurisdiction comes the application of substantive admiralty law. Absent a relevant statute, the general maritime law, as developed by the judiciary, applies. Drawn from state and federal sources, the general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules. This Court has developed a body of maritime tort principles, and is now asked to incorporate products-liability concepts, long a part of the common law of torts, into the general maritime law.

East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864-65 (1986) (internal citations omitted). Maritime commentators have likewise acknowledged that general maritime law and statutory maritime law are separate and distinct:

> Like admiralty jurisdiction, maritime law deals with various kinds of contracts and facts. To the extent these matters are not covered by statutory law, the general maritime law applies. The general maritime law today stems from the maritime jurisprudence of the federal courts.

Schoenbaum, *Admiralty and Maritime Law*, § 5-1 (5th ed. 2011).

Thus, U.S. general maritime law is separate and distinct from U.S. statutory maritime law. This established legal dichotomy is significant here, because maritime necessaries liens in the United States are purely creatures of statute and do not arise under general maritime law. Congress enacted the FMLA in 1910 to provide clarity and uniformity to the law governing maritime liens. Congress recodified the FMLA in 1988 as part of the Commercial Instruments and Maritime Liens Act, but it did not make any substantive changes to the law. *Racal Survey USA, Inc. v. M/V COUNT FLEET*, 231 F.3d 183, 187 (5th Cir. 2000); *Maritrend, Inc. v. Serac & Co. (Shipping) Ltd.*, 348 F.3d 469, 470-71 (5th Cir. 2003).

Under 46 U.S.C. § 31342(a) of the FMLA:

> A person providing necessaries to a vessel on the order of the owner or a person authorized by the owner:
>
> (1) Has a maritime lien on the vessel;
>
> (2) May bring a civil action *in rem* to enforce the lien;

(3) Is not required to allege or prove in the action that credit was given to the vessel.

"Necessaries" include supplies, repairs, stevedoring services and bunkers provided to a vessel. 46 U.S.C. § 31301(4).

While the Court of Appeals in the present case held that the general maritime law includes the statutory necessaries lien under the FMLA, other lower courts have held that there is no right to a maritime lien for necessaries under the general maritime law; that the FMLA is the sole legal source under U.S. law for a maritime lien for necessaries:

> Thus, we conclude that common law maritime lien law has been superseded by statute and is not a basis, by itself, for a secured claim. Since the enactment of the 1910 and 1920 Acts, and the subsequent amendments in 1988, all maritime lien law which existed prior to 1910 has been codified.

In re Eagle Geophysical, Inc., 256 B.R. 852, 857 (Bankr. D. Del. 2001). The court in *In re Eagle Geophysical* continued:

> It would undermine the FMLA to conclude that, even in the absence of satisfying the requirements of the FMLA, any party who provides a "necessity" to a vessel is entitled to a maritime lien under general maritime principles.

Id. at n.14. See also, *Bradford Marine, Inc. v. M/V SEA FALCON*, 64 F.3d 585, 588 (11th Cir. 1985) ("The creation of a maritime lien for necessaries furnished to a vessel is governed by 46 U.S.C. §§ 31341-31342."); *Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA*, 671 F.Supp.2d 753, 765-66 and n.11 (D.Md. 2009) (rejecting bunker supplier's argument that a general maritime law lien, separate and apart from the FMLA, exists for necessaries, noting that supplier "cites no cases that hold such a lien still exists").

Moreover, there are significant differences between general maritime law necessaries liens and the statutory liens conferred by the FMLA. Prior to passage of the FMLA, when U.S. general maritime law did provide a maritime necessaries lien, the supplier had a duty of reasonable inquiry to ascertain the terms of the vessel's charter party. *The Kate*, 164 U.S. 458 (1896); *The Valencia v. Ziegler*, 165 U.S. 264 (1897). If the charter party required the charterer to "provide and pay for" necessary goods or services, the supplier could not claim a lien under the general maritime law. Gilmore & Black, *The Law of Admiralty*, § 9-40, at 670-72 (2d ed. 1975). And if the charter party prohibited the charterer from incurring liens on the vessel, the supplier could not claim a lien under general maritime law. *Id.*

Thus, before it could claim a necessaries lien under the general maritime law, WFS Singapore had a duty to inquire about Denmar's charter party terms. Because Denmar's charter party with ABT required Denmar to purchase and pay for bunkers and explicitly

prohibited Denmar from incurring liens on the M/V BULK JULIANA, Plaintiff could not claim a general maritime law necessaries lien in this case.

Moreover, whether the general maritime law includes the FMLA under the circumstances presented here is a matter of substantial commercial interest not only to these parties, but to other global bunker suppliers and their customers. Significantly, ING Bank, N.V., a European bank, sought to intervene as *amicus curiae* in the Court of Appeals below, claiming to be the assignee of another global bunker supplier, O.W. Bunkering & Trading A/S and its numerous subsidiaries, which filed for bankruptcy in 2014, wreaking widespread havoc on the global shipping industry. See, *e.g.*, *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146 (2d Cir. 2016); *UPT Pool Ltd. v. Dynamic Oil Trading (Sing.) PTE. Ltd.*, 2015 WL 4005527 (S.D.N.Y. July 1, 2015).[4] In its motion for leave to file its *amicus* brief, ING Bank represented that its interest in this matter stemmed from the fact that the O.W. Bunker supply contracts at issue in cases brought by ING Bank to enforce maritime liens for bunkers supplied by O.W. Bunker entities worldwide also called for application of U.S. general maritime law. Thus, whether the "plain, ordinary, and obvious" meaning of "General Maritime Law of the United States" includes

[4] A recent Pacer search revealed numerous cases throughout the U.S. in which ING Bank, as assignee, or an O.W. Bunker entity seeks to enforce maritime liens for bunkers supplied by an O.W. Bunker entity. Additional claims for bunkers supplied by an O.W. Bunker entity have been filed in the United Kingdom and other countries around the world.

statutory lien rights under the FMLA is of significance throughout the shipping industry.

Therefore, this Court should grant the present petition and clarify that the general maritime law is distinct from maritime statutory law, and that remedies conferred exclusively by a maritime statute, here the FMLA, are not encompassed within the "plain, ordinary, and obvious" meaning of the term "General Maritime Law of the United States."

VI. The resolution of the issues presented here is of widespread commercial importance to the global shipping community, an extremely important industry worldwide.

It is no exaggeration to say that the U.S. and world economies largely depend on the ocean shipping industry. The overwhelming majority of imports and exports – both for this country and for the world at large – are carried by sea. Thus, the nation and the world depend heavily on the shipping industry. That industry, in turn, depends on ships operating on time and in sufficient numbers. For the industry to operate at all, ships must be built, which means that they must be financed, and once they are built they must be supplied, insured, fueled, serviced and repaired. For these transactions to work efficiently, the legal system must provide clear and predictable rules so that parties will understand the risks that they take and can make their commercial decisions accordingly.

The global maritime lien system is a central part of the equation. Predictability concerning when and in what circumstances maritime liens can arise is important because maritime liens affect not only the parties to the specific transaction, but also the vessels' owners, mortgagees, and all others who previously supplied necessaries to the vessel since, unlike liens on land, maritime liens are generally subject to an inverse-order-of-priority rule. See, *e.g.*, Gilmore & Black, *The Law of Admiralty*, § 9-2, at 588 (2d ed. 1975). Even a preferred ship mortgage will lose priority to a subsequent preferred maritime lien. 46 U.S.C. § 31326(b)(1).

It is particularly important for this Court to clarify the circumstances in which a maritime necessaries lien can arise under U.S. law, because the U.S. is one of only a handful of countries that recognize maritime liens for necessaries. Most maritime nations, including the U.K., Germany and Singapore, do not recognize or permit maritime liens against a vessel to secure payment for necessaries. See, *e.g.*, William Tetley, *Maritime Liens and Claims*, 555 (2d ed. 1998) (U.K.); *id.* at 1309 (Germany); *id.* at 1365 (Singapore). Singapore, and other nations that follow the English House of Lords' decision in *Halcyon Isle Bankers Trust Int'l, Ltd. v. Todd Shipyards Corp.*, [1981] A.C. 221, would not even enforce a U.S. lien for necessaries in their courts.[5]

---

[5] *The Andres Bonifacio*, (1993) 3 S.L.R. 521 (Singapore C.A.). The Singapore High Court, in a non-conflicts case, also cited *The*

For that reason, and because so much of the world's fleet trades with U.S. ports, this Court should decide whether foreign necessaries providers can extend the reach of the U.S.'s generous maritime lien laws by inserting choice of U.S. law clauses into contracts for supplies and/or services having no significant contacts with the U.S. The Fourth, Fifth and Ninth Circuits' expansive rule, applying the FMLA to transactions having no connection to the United States – simply because two parties who have no proprietary interest in the vessel and no authority to bind the vessel agreed to be bound by a body of law that would not otherwise apply, for the purpose of creating a maritime lien that would not otherwise exist – is an open invitation to forum shopping. Under the ruling of the Court of Appeals in the present case, all necessaries providers all over the world can now obtain a maritime necessaries lien simply by stating in their contractual terms that U.S. maritime lien law applies to the goods or services they supply, even when the transaction or the parties involved have absolutely no connection whatsoever to the U.S. And if foreign necessary providers whose own national laws would not confer a maritime lien can nevertheless claim a lien based on a U.S. choice of law clause in a contract to which the vessel's owner is not a party, without the vessel owner's knowledge or consent, then owners and others with an

---

Halcyon Isle in declaring the categories of maritime liens in that country to be the same as those recognized in England. See *The Ohn Mariana ex Peony*, (1992) 2 S.L.R. 623 (Singapore High Ct.).

interest in the vessel will have no way of predicting when necessaries liens will arise.

For these reasons, this Court should grant this petition and review this case to clarify these issues of widespread importance to the global shipping community.

CONCLUSION

This Court has established that maritime liens are "*stricti juris* and will not be extended by construction, analogy or inference." *Piedmont & Georges*, 254 U.S. at 12. Yet, the courts below significantly extended the right to a maritime lien by recognizing a maritime necessaries lien that would not exist in the absence of the Plaintiff's bunker supply contract with Denmar, contrary to established law, and by holding that the general maritime law, a body of judge-made common law, also included maritime lien remedies conferred exclusively by statute under the FMLA. The effect was to improperly confer federal subject matter *in rem* jurisdiction that would not otherwise exist, based solely on the purported agreement between WFS Singapore and Denmar.

There is a substantial lack of clarity among the lower court decisions on these issues, and clarity on these issues is of widespread commercial importance to the global shipping community. This Court should,

therefore, grant this petition and issue a writ of certiorari to review and resolve this case.

Respectfully submitted,

PETER B. SLOSS
Counsel of Record
psloss@mrsnola.com
ROBERT H. MURPHY
rmurphy@mrsnola.com
DONALD R. WING
dwing@mrsnola.com
MURPHY, ROGERS, SLOSS, GAMBEL & TOMPKINS, APLC
701 Poydras Street, Suite 400
New Orleans, Louisiana 70139
Telephone: (504) 523-0400

Attorneys for Claimant-Petitioner, Bulk Juliana Ltd., appearing solely as the Owner and Claimant of the M/V BULK JULIANA

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-30239

WORLD FUEL SERVICES
SINGAPORE PTE, LIMITED,

Plaintiff-Appellee

v.

BULK JULIANA M/V,
her engines, tackle, apparel, etc., in rem,

Defendant

BULK JULIANA, LIMITED,

Claimant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana

(Filed Apr. 1, 2016)

Before: JONES and JOLLY, Circuit Judges, and MILLS, District Judge.*

EDITH H. JONES, Circuit Judge.

"This admiralty and maritime case concerns a Singapore-based marine fuel supplier's attempt to

---

* District Judge of the Northern District of Mississippi, sitting by designation.

recover a debt arising from the supply of fuel oil bunkers in Singapore to a Panamanian-flag vessel, the M/V BULK JULIANA, which is beneficially owned by a United States company, operated and managed by a United States company, and which was chartered by a German company." *World Fuel Servs. Singapore Pte, Ltd. v. Bulk Juliana M/V*, No. 13-5421, 2015 WL 575201, at *1 (E.D. La. Feb. 11, 2015). On summary judgment, the district court applied Singapore law to the formation of the fuel sales contract, enforced the parties' choice of law as the "General Maritime law of the United States," and concluded that the vessel lien under the Federal Maritime Lien Act ("FMLA"), 42 U.S.C. §§ 31341 and 31342, was enforceable. Agreeing with the district court's conclusion and substantially with its reasoning, we **AFFIRM AND REMAND**.

BACKGROUND

World Fuel Services Corp., a Florida corporation, is the parent corporation of the World Fuel Services group of companies. This group of companies, which includes Plaintiff-Appellee WFS Singapore ("WFS Singapore") and WFS Europe, provides fuel to ocean-faring vessels around the world. Bulk Juliana Ltd. is the owner of the vessel M/V BULK JULIANA. On November 7, 2012, Peter Turner ("Turner"), Manager of Commercial Sales at WFS Europe, negotiated on behalf of WFS Singapore with Denmar for the delivery of the bunkers (fuel) to the vessel, which Denmar had recently time-chartered. On November 7, Turner, on

behalf of WFS Singapore, confirmed the bunker order via email to Denmar.

The confirmation email outlined the terms of Denmar's bunker order. First, the email described the relative bargaining authorities of WFS Singapore and Denmar:

> ALL SALES ARE ON THE CREDIT OF THE VSL [vessel]. BUYER IS PRESUMED TO HAVE AUTHORITY TO BIND THE VSL WITH A MARITIME LIEN. DISCLAIMER STAMPS PLACED BY VSL ON THE BUNKER RECEIPT WILL HAVE NO EFFECT AND DO NOT WAIVE THE SELLER'S LIEN.

Next, the email incorporated by reference the "General Terms and Conditions" (the "General Terms") of all such contracts entered into by WFS Singapore:

> THIS CONFIRMATION IS GOVERNED BY AND INCORPORATES BY REFERENCE SELLER'S GENERAL TERMS AND CONDITIONS IN EFFECT AS OF THE DATE THAT THIS CONFIRMATION IS ISSUED. THESE INCORPORATED AND REFERENCED TERMS CAN BE FOUND AT WWW.WFSCORP.COM. ALTERNATIVELY, YOU MAY INFORM US IF YOU REQUIRE A COPY AND SAME WILL BE PROVIDED TO YOU.

The "General Terms and Conditions" include three sections relevant to this appeal:

1. *INCORPORATION AND MERGER:* Each sale of Products shall be confirmed by email, fax or other writing from the Seller to the Buyer ("Confirmation"). The Confirmation shall incorporate the General Terms by reference so that the General Terms thereby supplement and are made part of the particular terms set forth in the Confirmation. The Confirmation and the General Terms shall together constitute the complete and exclusive agreement governing the transaction in question (the "Transaction"). . . .

8. *CREDIT AND SECURITY:*

(a) Products supplied in each Transaction are sold and effected on the credit of the Receiving Vessel, as well as on the promise of the Buyer to pay, and it is agreed and the Buyer warrants that the Seller will have and may assert a maritime lien against the Receiving Vessel for the amount due for the Products delivered. . . .

(d) All sales made under these terms and conditions are made to the registered owner of the vessel, in addition to any other parties that may be listed as Buyer in the confirmation. Any bunkers ordered by an agent, management company, charterer, broker or any other party are ordered on behalf of the registered owner and the registered owner is liable as a principal for payment of the bunker invoice. . . .

> 17. *LAW AND JURISDICTION:* The General Terms and each Transaction shall be governed by the General Maritime Law of the United States . . . The General Maritime Law of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. Any disputes concerning quality or quantity shall only be resolved in a court of competent jurisdiction in Florida. Disputes over payment and collection may be resolved, at Seller's option, in the Florida courts or in the courts of any jurisdiction where either the Receiving Vessel or an asset of the Buyer may be found. Each of the parties hereby irrevocably submits to the jurisdiction of any such court, and irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum or its foreign equivalent to the maintenance of any action in any such court. Seller shall be entitled to assert its right of lien or attachment or other rights, whether in law, in equity or otherwise, in any country where it finds the vessel. **BUYER AND SELLER WAIVE ANY RIGHT EITHER OF THEM MIGHT HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING FROM OR RELATED TO THE GENERAL TERMS OR ANY TRANSACTION.**

There is no indication in the record that Denmar ever objected to, or inquired about, the contractual terms expressed in the bunker confirmation email.

On November 13, Transocean Oil, a Singapore fuel supplier subcontracted by WFS Singapore, delivered the bunkers to the vessel at the Port of Singapore. R. L. Vicente, Master/Chief Engineer of the vessel, signed the Bunker Delivery Notes and affixed the vessel's stamp to each confirming receipt of the bunkers. On November 15, 2012, WFS Singapore issued an invoice to "MV BULK JULIANA AND/OR HER OWNERS/ OPERATORS AND DENMAR. . . ." for the sale.

Because payment was never remitted, WFS Singapore filed a complaint in the Eastern District of Louisiana in August 2013, which sought the arrest of the vessel then docked in the Port of New Orleans and recovery of the sales price. (The complaint also named Denmar as a defendant, but Denmar had become insolvent and was dismissed.) The next day, an arrest warrant was issued by the district court. On September 13, 2013, Bulk Juliana claimed ownership of the vessel, posted security to release it, and answered WFS Singapore's complaint. In its answer, Bulk Juliana asserted that: (1) WFS Singapore had no maritime lien under the law of Singapore (where the bunkers were delivered to the vessel); (2) WFS Singapore had no legal basis to assert a maritime lien under 46 U.S.C. § 31342 against the vessel; and (3) the WFS Singapore's arrest of the vessel was wrongful and improper and should be vacated by the district court.

Faced with conflicting motions on the validity and enforceability of the maritime lien, the district court ordered each party to file additional briefing concerning the choice-of-law issue before the court.

WFS Singapore argued that the maritime lien was valid because the contract contained a General Maritime Law of the United States choice-of-law provision that allowed Denmar to bind the vessel through the purchase of necessaries (the bunkers). Alternatively, WFS Singapore argued that even if Singapore law governed the formation of the contract, the parties' United States choice-of-law provision would still be valid, and therefore, the maritime lien would be enforceable. In support, WFS Singapore relied on the uncontroverted affidavit and testimony of Mr. Tan Chaun Bing Kendall ("Mr. Tan"), a Singapore law expert with bunker transaction experience. Mr. Tan opined that the contract's General Terms were valid under Singapore law, that the terms were validly incorporated into the sales agreement, and that the General Maritime Law of the United States choice-of-law provision was enforceable.

Conversely, Bulk Juliana contended that Singapore law controlled the dispute but did not afford WFS Singapore a maritime lien. Further, Bulk Juliana asserted that even if U.S. law controlled, the General Maritime Law of the United States choice-of-law provision in WFS Singapore's General Terms only invoked U.S. maritime common law. U.S. general maritime common law, however, is a term of art that, according to Bulk Juliana, is distinct from and does not encompass the federal maritime lien statute. *See* 46 U.S.C. §31342(a).

The district court held that while Singapore law governed formation of the contract, WFS Singapore's

bunker confirmation email validly incorporated by reference the General Terms, which included the General Maritime Law of the United States choice-of-law provision. Because the General Maritime Law of the United States choice-of-law provision was valid under Singapore law, U.S. law controlled the dispute. Finally, the parties' choice of law provision included by its terms the FMLA, rendering the maritime lien enforceable against the vessel.

Bulk Juliana appeals the district court's denial of its motion for summary judgment and grant of WFS's cross-motion. This court has jurisdiction of the district court's interlocutory ruling based on admiralty law. 28 U.S.C. §1292(a)(3).

STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment *de novo*, applying the same standards as the district court. *Newman v. Guedry*, 703 F.3d 757, 761 (5th Cir. 2012). Summary judgment is only appropriate if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "On a motion for summary judgment, [this Court] must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." *Deville v. Marcantel*, 567 F.3d 156, 163-64 (5th Cir. 2009). Additionally, this Court reviews questions of law, "including choice of law and contract interpretation, *de novo.*" *Waterfowl*

Liab. Co. v. United States, 473 F.3d 135, 141 (5th Cir. 2006).

DISCUSSION

This appeal presents the following issues: (1) whether, under Singapore law, the contract's General Terms that include a choice of U.S. maritime law were validly incorporated into the agreement and enforceable; (2) whether Denmar, the charterer, had authority to bind the vessel *in rem* even though Bulk Juliana, the owner, was not a party to the contract between WFS Singapore and Denmar; (3) whether the maritime lien was solely created by a contractual term; and (4) whether the choice of law clause using the term "General Maritime Law of the United States" includes the statutory FMLA. We discuss each issue below.

I. Whether the contract's General Terms, which include a U.S. choice of law provision, are valid under Singaporean law and were validly incorporated into the agreement.

In this court, the parties no longer dispute the applicability of Singapore law to the contract's formation; thus, we need not consider whether a preliminary choice of law, based on maritime law principles, must be made as to the contract's formation. *See Lauritzen v. Larsen*, 345 U.S. 571, 582, 73 S. Ct. 921 (1953). Their continued disagreement centers instead on whether the General Terms were validly incorporated into the

contract. *See Trans-Tec Asia v. M/V HARMONY CONTAINER*, 518 F.3d 1120, 1124 (9th Cir.), *cert. denied*, 555 U.S. 1062 (2008) (hereafter, "*Trans-Tec*"). The only record evidence on this point consists of undisputed testimony from WFS Singapore's expert witness, Mr. Tan. Mr. Tan testified that "the key guiding principle is that a Singapore court will seek to discern the contractual intention of both parties, which is to be ascertained by reference" to the following factors:

1. Is the incorporating language used sufficiently clear?

2. Does the document to be incorporated expressly state that its contents are to be applicable to the other party sought to be bound?

3. Is the document to be incorporated a common source of terms that are implied into such agreements of the same genre as the contract?

4. Did the party sought to be bound by the incorporated terms have access to, and/or was he in fact aware of the document at all material times?

5. Did the party sought to be bound by the incorporated document challenge or object to the applicability of the terms of that document to the contract?

Applying these factors, Mr. Tan opined that due to the "easy availability" of WFS Singapore's General Terms on the internet, as well as the "customary" nature of including such terms in "bunker supply contracts," the

General Terms were validly incorporated into the contract, and are enforceable under Singapore law. Mr. Tan also concluded that "[u]nder Singapore law, a contractual provision for governing law where stipulated by parties in their agreement will generally be upheld as valid and enforceable."[1] *See also Trans-Tec*, 518 F.3d at 1126-27 ("That a maritime lien might exist on the vessel under United States law, but would not exist under Malaysian law, was a consequence obviously contemplated by the contracting parties, and . . . results in no fundamental unfairness.").

Bulk Juliana contends that the district court erred in accepting Mr. Tan's conclusions. Under Bulk Juliana's interpretation of the contract, neither the General Terms nor the U.S. choice-of-law provision was incorporated into the contract. Specifically, Bulk Juliana argues that that [sic] the fourth factor recited by Mr. Tan – "Did the party sought to be bound by the incorporated terms [the vessel] have access to, and/or was he in fact aware of the document at all material times?" – weighs clearly against WFS Singapore because the bunker delivery notes received by the vessel made absolutely no mention of WFS Singapore, the General Terms, or U.S. law. Therefore, the district court

---

[1] Mr. Tan also cited *Halsbury's Laws of Singapore*, para. 75.344, which states:

> Where an express choice has been made of the law of a country, even if the transaction has no connection with the country whose law is chosen, the choice will be given effect unless the choice was illegal or not made bona fide, or if the application of the foreign law will be contrary to the fundamental public policy of the forum.

misapplied Singapore law in holding that the U.S. choice of law clause was binding on Bulk Juliana and the vessel *in rem*. Absent this clause, Singapore law does not recognize maritime liens. *See Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 988 (5th Cir. 1992) (holding that, unlike U.S. law, maritime liens are not authorized by Singapore law).

Bulk Juliana has failed to controvert Mr. Tan's testimony. The record is clear that Mr. Tan considered and applied the fourth factor, as well as the other factors, before concluding that the contract was "sufficiently specific to its reference" to the General Terms. Moreover, Mr. Tan opined that in his experience, "it is customary for bunker supply contracts to be concluded on the basis of the supplier's standard terms and conditions that are incorporated by reference in the bunker confirmation." Even assuming *arguendo* that WFS Singapore failed to satisfy the fourth factor described by Mr. Tan, Bulk Juliana offered no authority for the proposition that the failure to establish one out of five factors is fatal to the incorporation of the General Terms under Singaporean law.

Although Mr. Tan's testimony did not address the bunker delivery notes, he affirmed the incorporation of the General Terms by reference to the bunker confirmation email, which provided all the relevant terms and conditions of the contract. We recognize that neither Bulk Juliana nor the vessel was a party to the bunker confirmation email, and therefore did not have access to and/or awareness of the specific document at all material times. Mr. Tan, however, testified about

the ready availability of the contractual terms via the internet, as well as the prevalence of the practices employed here with respect to sales of necessaries in the shipping industry. Importantly, Mr. Tan pointed out that WFS Singapore's incorporation of the General Terms was "commonplace in the bunkering industry worldwide, and ought to be in the contemplation of ship operators and ship-owners such as [Bulk Juliana]."

Accordingly, the district court did not err in holding that the General Terms, including the U.S. choice-of-law provision, were valid and enforceable under Singapore law and were validly incorporated into the contract.[2] The remainder of our analysis, contrary to Bulk Juliana's arguments, relies on United States law.

---

[2] Bulk Juliana contends for the first time on appeal that this case presents a recognized exception to the enforcement of a choice-of-law-provision – when such a provision is used for the sole purpose of avoiding other applicable law. *See Peh Teck Quee v. Bayerische Landesbank Girozentrale* [1999] 3 SLR (R) 842, 848. On this basis, Bulk Juliana argues that the provision is unenforceable. Bulk Juliana has waived this argument by not raising it in the district court. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976).

II. Whether Denmar, the charterer, could bind the vessel through a maritime lien even though Bulk Juliana, the owner, was not a party to the contract between WFS Singapore and Denmar

The district court determined that Denmar had presumptive authority to bind the vessel by procuring necessaries even though Bulk Juliana was not a party to the contract with WFS Singapore. Therefore, the maritime lien *in rem* pursuant to the FMLA was valid. *See Triton Marine Fuels, Ltd v. M/V PACIFIC CHUKOTKA*, 575 F.3d 409, 414 (4th Cir. 2009) (quoting *Trans-Tec*, 518 F.3d at 1127-28 (9th Cir.2008)) ("It is a fundamental tenet of maritime law that '[c]harterers and their agents are presumed to have authority to bind the vessel by the ordering of necessaries.' "). This result flows from the application of U.S. maritime law, as interpreted by this court and others. Nevertheless, Bulk Juliana challenges the principle that the vessel, a "third party" stranger to the sale, could be bound by the Denmar-WFS Singapore contract for bunkers.

Like the district court, we must follow this court's decision in *QUEEN OF LEMAN*, which unabashedly enforced, against a non-party to the contract, a maritime lien for vessel insurance, which was created under the auspices of a choice of law clause. *Liverpool & London S.S. Protection & Indemnity Ass'n. v. QUEEN OF LEMAN M/V*, 296 F.3d 350, 354-55 (5th Cir. 2002). Bulk Juliana attempts to distinguish this decision on the basis that the underlying maritime lien in *QUEEN OF LEMAN* was imposed by a contract with one owner

of a vessel but enforced against the vessel after its acquisition by another owner. From the standpoint of the third party's lack of knowledge and failure to acquiesce in the creation of the debt, however, we see no principled distinction from this case. Nor have other circuits, which have cited *QUEEN OF LEMAN* with approval in the course of enforcing maritime necessaries liens authorized pursuant to enforcement of choice of law clauses calling for U.S. law. *See Triton Marine Fuels*, 575 F.3d at 414-15; *Trans-Tec*, 518 F.3d at 1126-27.

In fact, each of those cases arises from facts quite similar to those before us. *Triton* upheld a U.S. maritime lien claimed against a vessel and its owner by a foreign company that supplied bunkers in a foreign port. *Trans-Tec* validated a choice of U.S. law, and thus the FMLA lien, where the choice of law was adopted in a contract concerning the sale of fuel to a foreign-flagged vessel in a foreign port. The *Trans-Tec* court quoted *QUEEN OF LEMAN*'s proposition that "there is nothing absurd about applying the law of the jurisdiction into which the ship sails, as the ship's presence in the jurisdiction represents a substantial contact." *Trans-Tec*, 518 F.3d at 1126 (quoting *QUEEN OF LEMAN*, 296 F.3d at 354.). The court went on to explain, "*QUEEN OF LEMAN* thus counsels that where foreign parties have specified that they want United States law to determine the existence of a maritime lien in a transaction involving multiple foreign points of contact, and the ship has sailed into the United States, it is reasonable to uphold the choice of American law." *Id.*

It is hard to understand why, but Bulk Juliana acknowledged the holdings of *Triton* and *Trans-Tec* adverse to its position only in a footnote in its brief. Instead, it relies heavily on the Second Circuit's decision in *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024 (2d Cir. 1973). The Second Circuit alone is arguably contrary to *QUEEN OF LEMAN*. Unlike Bulk Juliana, we do not believe the majority of circuit courts have erred legally or practically when they have found it appropriate to enforce maritime choice of U.S. law clauses, and the resultant FMLA liens, in these cases. Owners of ocean-going vessels are by their nature internationally oriented, sophisticated, and fully able to protect themselves contractually in their dealings with time charterers from any perceived unfairness by the possible enforcement of maritime necessaries liens in U.S. ports. Further, "recognition of freely negotiated contract terms encourages predictability and certainty in the realm of international maritime transactions." *Trans-Tec*, 518 F.3d at 1131.

As a matter of black-letter law under the FMLA, based on the parties' valid choice of U.S. law and the holdings of this circuit and others, Denmar as time charterer had authority to bind the vessel *in rem* for its purchase of bunkers, and the lien is enforceable in U.S. courts.

III. Whether the maritime lien was created by a contractual term, rather than by an operation of law

Bulk Juliana contends that the U.S. choice-of-law provision in the contract between Denmar and WFS Singapore was an improper attempt to create a maritime lien by contract where none can arise except by operation of law. *Rainbow Line*, 480 F.2d at 1026. Citing *QUEEN OF LEMAN*, however, the district court determined that the maritime lien did not arise simply as a matter of contract, but as a matter of law under the FMLA. *World Fuel Servs. Singapore*, 2015 WL 575201, at *6. We agree. The maritime lien on the vessel was not created merely by the terms of the Denmar-WFS Singapore contract. As stated above, the U.S. choice-of-law provision in the contract includes the FMLA. Because the FMLA creates the authority for a charterer to bind the vessel through the procurement of necessaries, a valid maritime lien was created by operation of U.S. law.[3]

[3] Bulk Juliana's reliance on *Gulf Trading & Transp. Co. v. The Vessel Hoegh Shield*, 658 F.2d 363 (5th Cir. 1981), is misplaced. In *Hoegh Shield*, as the court noted in *QUEEN OF* LEMAN, the contract at issue did not have a choice-of-law provision governing the existence of a maritime lien. *Hoegh Shield*, 658 F.2d at 368. The same distinction pertains to *Arochem Corp. v. Wilomi, Inc.*, 962 F.2d 496 (4th Cir. 1992).

IV. Whether the term "General Maritime Law of the United States" includes the maritime lien statute, 42 U.S.C. §§ 31341 and 31342.

Bulk Juliana asserts that the contract provision choosing the "General Maritime Law of the United States" incorporates not *all* U.S. maritime law but only judicially crafted maritime common law. *See McBride v. Estis Well Serv., L.L.C.*, 731 F.3d 505, 507-08 (5th Cir. 2013). Bulk Juliana essentially contends that the contract relies on "general maritime law," a term of art limited to maritime common law. As such, the term excludes statutory maritime liens, which exist only under the FMLA. Without the express inclusion of the FMLA in the General Terms, WFS Singapore's contract did not recognize Denmar's authority to bind the vessel for purposes of a U.S. maritime lien.

Paragraph seventeen of the General Terms provides:

> The General Terms and each Transaction shall be governed by the General Maritime Law of the United States . . . [t]he General Maritime Law of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. . . .

Once the validity and enforceability of the choice of law clause were upheld pursuant to Singapore law, the contract's interpretation is controlled by U.S. law. The district court noted that a conclusion that the "General Maritime Law of the United States" term

includes the FMLA is supported by the general principles of contract interpretation. *World Fuel Servs. Singapore*, 2015 WL 575201, at *6. The district court stated:

> Clearly WFS chose for its bunker supply contracts the General Maritime Law of the United States because it wanted to secure payments in the form of maritime liens. To read the language so narrowly as to conclude that it includes only maritime common law and not maritime statutory law divorces the language from the intended meaning behind it. . . . Only where other tools of contract interpretation do not resolve the dispute does a court deem a term ambiguous and interpret it against its drafter.

Id.; *see also Chembulk Trading LLC v. Chemex Ltd.*, 393 F.3d 550, 555 (5th Cir. 2004) ("A basic principle of contract interpretation in admiralty law is to interpret, to the extent possible, all the terms in a contract without rendering any of them meaningless or superfluous.").

We agree with the district court. Numerous references in the contract refer to maritime liens. The bunker confirmation email specified that the buyer is "presumed" to have authority to bind the vessel with a maritime lien. The contractual language within WFS Singapore's U.S. choice-of-law provision amplifies that: "The General Maritime Law of the United States shall apply with respect to the existence of a maritime lien." This language would make no sense if "General

Maritime Law" were construed as a term of art that distinguishes between U.S. maritime common law and the FMLA. Paragraph 8(d) of the General Terms provides that: "Any bunkers ordered by an agent, management company, *charterer*, broker or any other party are ordered on behalf of the registered owner and the registered owner is liable as a principal for payment of the bunker invoice." (emphasis added). Because the FMLA provides the exclusive method for a charterer (like Denmar) to bind a vessel through the procurement of necessaries – the maritime lien – without the knowledge of the vessel owner, it is a natural inference that the term "General Maritime Law of the United States" includes the FMLA. Paragraph 8(a) also warrants that the seller will have and may enforce a maritime lien. Bulk Juliana's effort to isolate and artificially constrict the meaning of the choice of law clause in this contract fails in the face of the contract's numerous references to maritime liens.

In addition to using the tools of contract interpretation, the district court relied on another district court decision, *World Fuel Servs. Trading*, 12 F. Supp. 3d at 792, that interpreted an identical U.S. choice-of-law provision. Tracing the history of American maritime lien law in detail, the *World Fuel Servs. Trading* court concluded that the "General Maritime Law of the United States" necessarily included the FMLA because "the 1971 deletion of the duty-of-inquiry 'statutory text' from the Federal Maritime Lien Act clearly evidences Congress's intent to 'speak directly to [the] question,' of whether a supplier of necessaries has a

duty to inquire as to the presence and terms of a charter party." *Id.* at 807 (citations omitted). Consequently, "because 'the general maritime law must comply with [Congress's] resolution' of this 'particular issue,'" the *World Fuel Servs. Trading* court held that "'the General Maritime Law of the United States,' includes the Federal Maritime Lien Act."[4] *Id.* (citations omitted). The Fourth Circuit affirmed the district court on the more limited basis that Florida law, alternatively applicable to this contract under the General Terms, must apply federal statutes pursuant to the Constitution's Supremacy Clause. Either way, our decision is consistent with the result in the Fourth Circuit's case.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the order of the district court enforcing the maritime lien and **REMAND** for further proceedings consistent herewith.

---

[4] On appeal, the Fourth Circuit "assum[ed], without deciding that . . . the FMLA is not part of the "General Maritime Law of the United States." *World Fuel Servs. Trading*, 783 F.3d at 521. The Fourth Circuit then proceeded under Florida law – as authorized by the residual language of paragraph 17 of the General Terms – and held that the "Supreme Court has long stated that 'a fundamental principle in our system of complex national policy mandates that the Constitution, laws, and treaties of the United States are as much a part of the law of every state as its own local laws and Constitution.'" *Id.* (citations omitted). Therefore, a "choice-of-law provision directing us to the laws of Florida thus encompasses federal statutory law, including the FMLA." *Id.*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

WORLD FUEL SERVICES SINGAPORE PTE, LTD.	CIVIL ACTION
V.	NO. 13-5421
BULK JULIANA M/V ET AL.	SECTION "F"

ORDER AND REASONS

(Filed Feb. 11, 2015)

Before the Court are cross-motions for partial summary judgment by World Fuel Services (Singapore) and Bulk Juliana Ltd. as to what body of law governs the existence of a maritime lien in this case. For the reasons that follow, the Court finds that United States law governs the transaction, and thus WFS Singapore has a maritime lien against M/V BULK JULIANA. WFS Singapore's motion for partial summary judgment is GRANTED, and Bulk Juliana's is DENIED.

Background

This admiralty and maritime case concerns a Singapore-based marine fuel supplier's attempt to recover a debt arising from the supply of fuel oil bunkers in Singapore to a Panamanian-flag vessel, the M/V BULK JULIANA, which is beneficially owned by a United States company, operated and managed by a United States company, and which was chartered by a German company.

The M/V BULK JULIANA is a dry bulk cargo vessel flying under the flag of Panama. Its registered owner is Bulk Juliana Ltd. of Bermuda; however, the vessel is beneficially owned by Bulk Partners Ltd., and operated and managed by Phoenix Bulk Carriers US LLC. During the relevant time, the vessel was time chartered to Denmar Chartering and Trading, GmbH, a German company, pursuant to a charter party dated August 13, 2012.

On or about November 12, 2012, World Fuel Services (Singapore) Pte., Ltd. (WFS Singapore) contends that it supplied bunker fuel to the M/V BULK JULIANA at the Port of Singapore. The agreement between WFS Singapore and Denmar for the sale and delivery of the bunkers was subject to the World Fuel Services Corporation Marine Group of Companies (WFS) General Terms and Conditions. The General Terms and Conditions contains the following choice of law provision:

> 17. LAW AND JURISDICTION: The General Terms and each Transaction shall be governed by the General Maritime Law of the United States and, in the event that the General Maritime Law of the United States is silent on the disputed issue, the law of the State of Florida, without reference to any conflict of laws rules which may result in the application of the laws of another jurisdiction. The General Maritime Law of the United States shall apply with respect to the existence of a maritime lien, regardless of the country in which Seller takes legal action. . . .

The Bunker Confirmation issued by WFS Singapore to Denmar provides that the total fuel cost must be paid by within thirty days from the date of delivery. WFS Singapore maintains that it has never been paid.

Upon learning that the M/V BULK JULIANA was in the Port of New Orleans, on August 13, 2013, WFS Singapore sued the vessel, *in rem*, and Denmar, *in personam*, in this Court. WFS Singapore requested that the Court issue an arrest warrant for the M/V BULK JULIANA and a writ of attachment against Denmar. Based on the allegations of the verified complaint, and pursuant to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, the Court issued an arrest warrant and a writ of foreign attachment. The U.S. Marshals then arrested the M/V BULK JULIANA, and this Court granted permission for movement of the arrested vessel within the district. Bulk Juliana Ltd. then posted security to obtain release of the vessel. On February 8, 2014, WFS Singapore voluntarily dismissed Denmar without prejudice after learning that it had become insolvent.

Bulk Juliana Ltd., making a restricted appearance under Supplemental Rule E(8) as owner and claimant of the M/V BULK JULIANA and with full reservation of rights and defenses, sought to vacate the warrant of arrest issued against the M/V BULK JULIANA on the ground that WFS Singapore does not possess a maritime lien against the vessel and therefore was not entitled to proceed *in rem.* This Court, finding that WFS Singapore had shown probable cause for the arrest of

the M/V BULK JULIANA, denied the motion to vacate the arrest. In that Order and Reasons, dated June 16, 2014, the Court was persuaded that there was probable cause to find that U.S. law governed the availability of a maritime lien.

WFS Singapore then moved for summary judgment, stating in its briefing that this Court had definitively ruled in its June 16 Order and Reasons that U.S. law governed the transaction. Bulk Juliana responded that the standard to prevail on summary judgment is more demanding than that applicable to a motion to vacate an arrest, and that therefore WFS Singapore could not base its argument for the application of U.S. law solely on statements made in this Court's Order and Reasons denying the motion to vacate the arrest. The Court agreed, and now the parties have filed cross-motions for summary judgment as to the choice-of-law question.

I.

Federal Rule of Civil Procedure 56 instructs that summary judgment is proper if the record discloses no genuine dispute as to any material fact such that the moving party is entitled to judgment as a matter of law. No genuine dispute of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio.*, 475 U.S. 574, 586 (1986). A genuine dispute of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the

non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The Court emphasizes that the mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. *See id.* Therefore, "[i]f the evidence is merely colorable, or is not significantly probative," summary judgment is appropriate. *Id.* at 249-50 (citations omitted). Summary judgment is also proper if the party opposing the motion fails to establish an essential element of his case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In this regard, the nonmoving party must do more than simply deny the allegations raised by the moving party. *See Donaghey v. Ocean Drilling & Exploration Co.*, 974 F.2d 646, 649 (5th Cir. 1992). Rather, he must come forward with competent evidence, such as affidavits or depositions, to buttress his claim. *Id.* Hearsay evidence and unsworn documents that cannot be presented in a form that would be admissible in evidence at trial do not qualify as competent opposing evidence. *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 549 (5th Cir. 1987); Fed. R. Civ. P. 56(c)(2). Finally, in evaluating the summary judgment motion, the Court must read the facts in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255. Because the grounds for the claimant's cross-motion are largely the same as its defenses to the plaintiff's motion for summary judgment, and because the Court grants the plaintiff's motion and denies the claimant's cross-motion, the Court will resolve all factual disputes and any competing, rational inferences in the light most favorable to the

claimant. *See Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003); *Wightman v. Springfield Terminal Ry. Co.*, 100 F.3d 228, 230 (1st Cir. 1996).

II.

The heart of the question before the Court is whether WFS Singapore has a maritime lien against the M/V BULK JULIANA for unpaid bunkers. Because there is a choice-of-law provision incorporated into the bunker confirmation, the Court must begin by analyzing whether that provision is validly incorporated. *See Trans-Tec Asia v. M/V Harmony Container*, 518 F.3d 1120, 1124 (9th Cir. 2008); *Oceanconnect.com, Inc. v. M/V FESCO ANGARA*, No. 091694, 2012 U.S. Dist. LEXIS 125241, at **12-13 (W.D. La. Aug. 31, 2012). If so, the question is whether the choice-of-law provision is enforceable and whether the particular body of law chosen here supports the existence of a maritime lien.

A. The Incorporation of the General Terms

To determine whether the choice-of-law provision is validly incorporated, the Court must first decide which country's law governs the contract formation at issue. Bulk Juliana contends that Singapore law governs the contract (and the existence of a maritime lien). WFS Singapore maintains that U.S. law governs the contract, but that the application of Singapore law produces the same result. To determine which country's law applies, "federal courts sitting in admiralty

[should] apply maritime choice-of-law principles derived from the Supreme Court's decision in *Lauritzen*." *Trans-Tec Asia*, 518 F.3d at 1124. The Court, however, does not find it necessary to delve into this "thorny inquiry," because U.S. and Singapore law produce the same result. *Id.* at 1125. Because the Court recognizes that it must resolve all factual disputes and reasonably competing inferences in favor of Bulk Juliana, and because Bulk Juliana makes a compelling argument that Singapore law governs the contract formation here, the Court applies Singapore law to resolve the issues regarding the formation of the contract.

The plaintiff provides a statement by a Singapore attorney, Tan Chuan Bing Kendall, and excerpts from a Singapore treatise and case law concerning Singapore law as to the incorporation of terms into a contract. Singapore law recognizes the ability of contracting parties to formulate their agreement by incorporating the terms of one document or source into another. In the case where the external document, such as the World Fuel General Terms, is unsigned, the efficacy of the incorporation of the additional terms will depend upon the language of incorporation that is used in the main contract (here, the Bunker Confirmation), and whether the provisions in the document to be incorporated are apt to be terms of the contract. In the case where particularly onerous or unusual conditions are sought to be incorporated, they ought to be specifically drawn to the attention of the party sought to be bound. The key guiding principle is that a Singapore court would seek to discern the contractual intention

of the parties, which is to be ascertained by reference to the following factors:

1. Is the incorporating language used sufficiently clear?

2. Does the document to be incorporated expressly state that its contents are to be applicable to the other party sought to be bound?

3. Is the document to be incorporated a common source of terms that are implied into such agreements of the same genre of the contract?

4. Did the party sought to be bound by the incorporated terms have access to, or was he in fact aware of the document at all material times?

5. Did the party sought to be bound by the incorporated document challenge or object to the applicability of the terms of that document to the contract?

The claimant, not disputing the plaintiff's summary of Singapore law, contends that the fourth factor – whether the party to be bound by the incorporated terms had access to them or was aware of them – is not satisfied here, because Bulk Juliana as the owner of the vessel was unaware. "Thus," contends the claimant, "under Singapore law . . . , the rights of Bulk Juliana and the M/V BULK JULIANA, *in rem*, cannot be affected by the intent of the parties to the Denmar-WFS Singapore contract." The claimant, however, provides no support with this claim, and the Court, on the record before it, cannot ground its determinations in unsupported conclusions.

The plaintiff submits that the use of standard terms and conditions, such as the World Fuel General Terms in this case, and their easy availability on the Internet are commonplace in the bunkering industry worldwide, and ought reasonably to be within the contemplation of ship operators and shipowners such as the owner of the M/V BULK JULIANA. In Singapore, Tan explains that it is customary for bunker supply contracts to be concluded on the basis of the supplier's standard terms and conditions that are incorporated by reference in the bunker confirmation. The General Terms are not unusual or onerous in the context of the bunkering trade. Also, Denmar never dissented or objected to the applicability of the General Terms properly incorporated by reference in the Bunker Confirmation.

Applying these principles of Singapore law, the Court finds that the incorporating language contained in the Bunker Confirmation is sufficiently specific and clear in its references to the World Fuel General Terms. The General Terms expressly state that they are to be applicable to the M/V BULK JULIANA, they are undisputably comparable to terms commonly used in the industry, and no objection was raised to their terms until this lawsuit. Thus, Singapore law would recognize a valid incorporation of the World Fuel General Terms. The application of U.S. law to this question produces the same result. *See World Fuel Services Trading v. M/V HEBEI SHIJIAZHUANG*, 12 F.Supp.3d 792 (E.D. Va. 2014) (finding that the same choice-of-law provision was validly incorporated into another WFS

bunker confirmation under Greek law and noting that the terms were validly incorporated under U.S. law as well).

Singapore law, like U.S. law, also recognizes the parties' right to designate the law to be applied to their contractual agreements. Halsbury's Laws of Singapore, para. 75.344, states:

> Where an express choice has been made of the law of a country, even if the transaction has no connection with the country whose law is chosen, the choice will be given effect unless the choice was illegal or not made bona fide, or if the application of the foreign law will be contrary to the fundamental public policy of the forum.

Here, Clause 17 of the General Terms, which was incorporated into the bunker supply agreement, provides that the general maritime law of the United States is the contractual governing law. Singapore law recognizes the prima facie validity of such a contractual choice of U.S. law clause.

B. The Enforceability of the Choice-of-Law Provision

Bulk Juliana contends that the choice-of-law provision is unenforceable for three reasons: (1) Bulk Juliana was not a party to the contract and did not assent to the choice of law; (2) it would be fundamentally unfair to adversely affect Bulk Juliana's property right in its vessel based on a choice-of-law provision to which it did not agree; and (3) the U.S. choice-of-law provision

is an attempt to do indirectly what cannot be done directly: create a maritime lien by contract rather than by operation of law. The Fourth Circuit found these same arguments unpersuasive in *Triton Marine Fuels, Ltd. v. M/V PACIFIC CHUKOTKA*, 575 F.3d 409 (4th Cir 2009), and this Court reaches the same conclusion here.

Bulk Juliana's first argument ignores the distinction between an *in rem* action against the vessel and *in personam* action against its owner. *See Pierside terminal Operators, Inc. v. M/V Floridian*, 389 F.Supp. 25, 26 (E.D. Va. 1974) ("A maritime lien can arise even when the owner of the ship is not a party to the contract. . . . The lien is not against the owner of the vessel, and only affects an owner indirectly."). The question is not whether Denmar had the authority to bind Bulk Juliana Ltd., but, rather, whether it had the (presumptive) authority to bind M/V BULK JULIANA. As the time charterer, Denmar had the presumptive authority to bind the vessel, and WFS Singapore had no duty to investigate this authority. *Triton*, 575 F.3d at 414 (quoting *Trans-Tec Asia v. M/V Harmony Container*, 518 F.3d 1120, 1127-28 (9th Cir. 2008)) ("It is a fundamental tenet of maritime law that '[c]harterers and their agents are presumed to have authority to bind the vessel by the ordering of necessaries.' "). Therefore, Bulk Juliana's first argument fails.

Bulk Juliana's second argument also fails. Although Bulk Juliana was not a party to the contract, it is not fundamentally unfair to enforce a choice-of-law provision in a contract between the ship and its time

charterer, and a fuel supply company. Where the parties chose for U.S. law to apply, and the ship sailed into U.S. waters, the application of U.S. law does not result in fundamental unfairness to the ship's owner. *See Triton*, 575 F.3d at 414-15; *Trans-Tec*, 518 F.3d at 1126-27; *Liverpool & London S.S. Protection & Indemnity Ass'n v. QUEEN OF LEMAN MV*, 296 F.3d 350, 354 (5th Cir. 2002).

In its third argument that the choice-of-law provision is unenforceable, Bulk Juliana contends that WFS Singapore is trying to create indirectly a maritime lien by contract. The Court recognizes the disagreement by the distinguished Professor Martin Davies[1] and the Second Circuit in *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024 (2d Cir. 1973), but the Fifth Circuit

[1] *See* Martin Davies, *Choice of Law and U.S. Maritime Liens*, 83 TUL. L. REV. 1435, 1455-57 (2009). Professor Davies presents a compelling argument that when confronted with a choice-of-law clause in the contract, courts "should still undertake a separate multifactor choice-of-law inquiry to determine whether there is sufficient connection between the underlying transaction and the United States to justify application of U.S. maritime law to the maritime lien question. To regard the parties' choice as being determinative of the law governing the availability of a maritime lien is simply to ignore or to gloss over the fundamental proposition stated so clearly by the *Rainbow Line* court . . . : " 'Maritime liens arise separately and independently from the agreement of the parties, and rights of third persons cannot be affected by the intent of the parties to the contract.' " *Id.* at 1456 (internal citation omitted). This Court, though not disagreeing with Professor Davies's analysis, is bound by Fifth Circuit precedent calling for the enforcement of such choice-of-law provisions.

readily enforces such provisions.[2] *See QUEEN OF LEMAN*, 296 F.3d at 354.

Thus, this Court sees no reason to refuse to enforce the parties' choice-of-law provision and to apply "the General Maritime Law of the United States" to decide whether WFS Singapore has a maritime lien against M/V BULK JULIANA.

C. The General Maritime Law of the United States

The final question before the Court is the consequence of WFS Singapore's choice to designate in its choice-of-law provision "the General Maritime Law of the United States." The claimant argues that the General Maritime Law is traditionally understood to mean maritime common law, not statutory maritime law, and modern-day maritime liens are creatures of statute, specifically 46 U.S.C. §§ 31341 and 31342. Thus, WFS Singapore's poor choice of words must be construed against it. WFS Singapore responds that to read the contract language hyper-literally would render it meaningless and that its clear intent was to choose United States law because it allows for maritime liens for necessaries.

---

[2] Bulk Juliana contends that *Gulf Trading & Transp. Co. v. VESSEL HOEGH SHIELD*, 658 F.2d 363 (5th Cir. 1981), and *Arochem Corp. v. Wilomi, Inc.*, 962 F.2d 496 (5th Cir. 1992), compel the opposite result. Those cases, however, did not concern a contract with a choice-of-law provision governing the existence of a maritime lien.

The Court is aware of only one other court that has interpreted this particular choice-of-law language. In a detailed and well-reasoned opinion, Judge Davis of the Eastern District of Virginia found that the General Maritime Law of the United States includes the Federal Maritime Lien Act. *See World Fuel Services Trading v. M/V HEBEI SHIJIAZHUANG*, 12 F.Supp.3d 792, 805-08 (E.D. Va. 2014). Judge Davis detailed the history of maritime liens, of maritime common law in the U.S. and subsequent statutory law. He determined that the General Maritime Law must comply with Congress's resolution of a particular issue, and thus its application to the contract at issue supported the existence of a maritime lien.

Judge Davis's persuasive analysis is bolstered by general principles of contract interpretation.[3] First and foremost, in interpreting the meaning of agreements, "[w]ords and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable, it is given great weight." Restatement (2d) of Contracts, § 202 (1981). Clearly WFS chose for its bunker supply contracts the General Maritime Law of the United States because it wanted to secure payments in the form of maritime liens. To read the language so narrowly as to conclude

[3] In its argument that the Court should find the choice-of-law provision ambiguous and construe it against WFS Singapore, Bulk Juliana cites U.S., rather than Singapore, law on contract interpretation, though it repeatedly contends that Singapore law governs the entirety of the transaction. The Court thus chooses to rely on general principles of contract law, absent an indication from the parties that Singapore law is in conflict.

that it includes only maritime common law and not maritime statutory law divorces the language from the intended meaning behind it. "[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." *Id.*, § 203. Only where other tools of contract interpretation do not resolve the dispute does a court deem a term ambiguous and interpret it against its drafter. Therefore, the Court finds Bulk Juliana's argument unpersuasive and finds that it was the clear intent of the parties to the contract to choose the entirety of the maritime law of the United States to govern the transaction.

Accordingly, for the foregoing reasons, the Court finds that United States law governs the existence of a maritime lien. Thus, WFS Singapore's motion for partial summary judgment is hereby GRANTED, and Bulk Juliana's cross-motion is hereby DENIED.

New Orleans, Louisiana,
February 11, 2015

/s/ Martin L. C. Feldman
MARTIN L. C. FELDMAN
UNITED STATES
DISTRICT JUDGE

46 U.S.C. § 31301. Definitions

In this chapter –

(1) "acknowledge" means making –

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961;

(2) "district court" means –

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) "mortgagee" means –

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) "necessaries" includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) "preferred maritime lien" means a maritime lien on a vessel –

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage;

(6) "preferred mortgage" –

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office; and

(7) "Secretary" means the Secretary of the Department of Homeland Security, unless otherwise noted.

---

46 U.S.C. § 31341. Persons presumed to have authority to procure necessaries

(a) The following persons are presumed to have authority to procure necessaries for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) 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.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

---

46 U.S.C. § 31342. Establishing maritime liens

(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner –

(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 was given to the vessel.

(b) This section does not apply to a public vessel.