

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

1 At a stated Term of the United States Court of Appeals for the Second Circuit, held at the  
2 Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the  
3 10<sup>th</sup> day of July, two thousand eighteen.

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5 Present: BARRINGTON D. PARKER,  
6 RICHARD C. WESLEY  
7 DEBRA ANN LIVINGSTON,  
8 *Circuit Judges.*

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11 Chemoil Adani Pvt. Ltd.,

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13 *Intervenor-Plaintiff-Appellant,*

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15 ING Bank, N.V.,

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17 *Plaintiff-Appellant,*

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19 v.

16-3944

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21 M/V MARITIME KING,

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23 *Defendant-Appellee.*

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26 Appearing for Chemoil Adani Pvt. Ltd.:

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29 Appearing for ING Bank, N.V.:

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32 James D. Bercaw, Robert J. Stefani, King  
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1           **I.       ING’s Maritime Lien Claim**

2           A maritime lien is a “special property right in the vessel, arising in favor of the creditor  
3 by operation of law as security for a debt or claim,” which “arises when the debt arises.” *Itel*  
4 *Containers Int’l Corp. v. Atlantrafik Exp. Serv., Ltd.*, 982 F.2d 765, 766 (2d Cir. 1992) (internal  
5 quotation marks and citation omitted). Under CIMLA, a party asserting a maritime lien must  
6 show that it (1) provided (2) necessities to a vessel (3) upon the order of the owner of a vessel or  
7 a person authorized by the owner. 46 U.S.C. § 31342(a). “Necessaries” include bunkers. *See*  
8 *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146, 151 n.13 (2d Cir. 2016).  
9 As to the third requirement, CIMLA defines persons presumed to have authority to procure  
10 necessities for a vessel as “(1) the owner; (2) the master; (3) a person entrusted with the  
11 management of the vessel at the port of supply; or (4) an officer or agent appointed by—(A) the  
12 owner; (B) a charterer; (C) an owner pro hac vice; or (D) an agreed buyer in possession of the  
13 vessel.” 46 U.S.C. § 31341(a).

14           Whether ING is entitled to assert a maritime lien depends on whether its purported  
15 assignor, O.W. Switzerland, is entitled to assert such a lien. The key to this inquiry is whether  
16 O.W. Switzerland “provided” necessities under CIMLA when it agreed to supply necessities  
17 and then contracted with intermediaries to supply them. We held in *ING Bank N.V. v. M/V*  
18 *TEMARA*, 892 F.3d 511 (2d Cir. 2018), that “the answer, guided by straightforward principles of  
19 contract law, is yes. . . . a supplier may provide necessities to a vessel indirectly through a  
20 subcontractor because when a subcontractor does so pursuant to its contract with a contractor,  
21 the subcontractor’s performance is attributable to the contractor.” *M/V TEMARA*, 892 F.3d at  
22 519. That is what occurred here. O.W. Switzerland agreed to supply bunkers to the Vessel on the  
23 order of CldN Cobelfret S.A. (“Cobelfret”), the charterer of the Vessel. O.W. Switzerland then

1 subcontracted its obligations to O.W. Middle East DMCC (“O.W. Middle East”), which, in turn,  
2 subcontracted with a local supplier, Chemoil, for the actual delivery of the bunkers. The bunkers  
3 were delivered. Accordingly, we hold that O.W. Switzerland provided necessaries under CIMLA  
4 and is therefore entitled to assert a maritime lien, and that the District Court erred in dismissing  
5 ING’s maritime lien claim against the Vessel.

6 **II. Chemoil’s Maritime Lien Claim**

7 In contrast, Chemoil, as subcontractor, is not entitled to assert a maritime lien. There is  
8 no dispute that Chemoil physically provided bunkers to the Vessel; thus, Chemoil’s entitlement  
9 to a maritime lien under CIMLA turns on whether it provided the bunkers “on the order of the  
10 owner or a person authorized by the owner.” *See* 46 U.S.C. § 31342(a). Chemoil provided the  
11 bunkers at the direction of O.W. Middle East, Chemoil’s counterparty, and not the owner or the  
12 charterer of the Vessel, or any other statutorily-authorized person. Consequently, Chemoil was  
13 acting as a subcontractor when it delivered the bunkers to the Vessel and subcontractors  
14 typically cannot assert maritime liens against a vessel. *See M/V TEMARA*, 892 F.3d at 521.  
15 Chemoil does not dispute this contractual chain. It does not adduce any evidence that would tend  
16 to establish that the subcontractor and its contractor were in agency relationships with a  
17 statutorily authorized person such that it could have been construed as being hired directly by  
18 them, *see Marine Fuel Supply & Towing, Inc. v. M/V KEN LUCKY*, 869 F.2d 473, 477-78 (9th  
19 Cir. 1988), nor did it adduce evidence that a statutorily authorized person controlled the selection  
20 of Chemoil as the physical supplier, *see Lake Charles Stevedores, Inc. v. PROFESSOR*  
21 *VLADIMIR POPOV MV*, 199 F.3d 220, 229 (5th Cir. 1999).

22 Instead, Chemoil argues about the effect of clause L.4(a) of the O.W. contractual terms.  
23 That clause purports to make the buyer of the bunkers (here, the Vessel’s agent) bound by the

1 physical supplier's terms when the physical supplier "insists" that the buyer be bound. Chemoil  
2 argues that clause means the Vessel should be deemed to have agreed to Chemoil's own terms of  
3 sale, which state that Chemoil has a lien over the Vessel for the value of the bunkers delivered.  
4 This argument fails because maritime liens are solely creatures of statute, not contract, and are  
5 construed strictly under the principle of *stricti juris*. Chemoil's terms of sale cannot fill the  
6 absence of one of the statutory requirements for a maritime lien under CIMLA, namely that  
7 Chemoil had been hired by a statutorily authorized person to supply the bunkers, which, in this  
8 case, it was not. *See M/V TEMARA*, 892 F.3d at 522.

9 Finally, Chemoil argues that it should prevail on a theory of unjust enrichment. We  
10 disagree because "[a]lthough unjust enrichment claims are available under maritime law as *in*  
11 *personam* claims . . . *in rem* maritime liens 'cannot be conferred on the theory of unjust  
12 enrichment or subrogation.'" *Id.* Claims for unjust enrichment must be brought *in personam* and  
13 Chemoil has asserted only *in rem* claims in this action. *See Gulf Oil Trading Co. v. Creole*  
14 *Supply*, 596 F.2d 515, 519 (2d Cir. 1979). Accordingly, Chemoil's unjust enrichment claim fails.

15 **III. Sua Sponte Judgment in Favor of the Vessel**

16 We also conclude that the District Court erred when it, *sua sponte*, granted summary  
17 judgment to the Vessel. *See Maritime Lien Order*, 2016 WL 6156320, at \*9. Federal Rule of  
18 Civil Procedure 56(f) requires "that a court may grant summary judgment *sua sponte* only  
19 '[a]fter giving notice and a reasonable time to respond' and 'after identifying for the parties  
20 material facts that may not be genuinely in dispute.'" *In re 650 Fifth Ave. and Related Prop.*, 830  
21 F.3d 66, 96 (2d Cir. 2016) (quoting Fed. R. Civ. P. 56(f)). "A district court's failure to provide  
22 adequate notice is almost always reversible error." *M/V TEMARA*, 892 F.3d at 524.

1           The District Court’s notice-free *sua sponte* grant of summary judgment was improper.  
2 It concluded that the record before it did not contain documentation regarding the arrangement  
3 between O.W. Switzerland and the other entities down the contractual chain to Chemoil. It then  
4 concluded that this lack of documentation was fatal to ING’s assertion of a maritime lien by  
5 failing to establish a “traceable and intact” contractual chain that would ultimately place O.W.  
6 Switzerland, ING’s purported assignor, at financial risk for the bunkers. *See Maritime Lien*  
7 *Order*, 2016 WL 6156320, at \*6. The record before the District Court cast doubt on these  
8 conclusions. *See M/V TEMARA*, 892 F.3d at 524. Rather than basing its decision to grant  
9 summary judgment to the Vessel on a record that may have been incomplete, the District Court  
10 should have provided notice and an opportunity for ING to be heard. *See id.* By granting  
11 summary judgment, *sua sponte*, the District Court denied ING the procedures to which it was  
12 entitled under Rule 56.

13           Accordingly, the judgment of the District Court is **VACATED IN PART, AFFIRMED**  
14 **IN PART**, and **REMANDED FOR FURTHER PROCEEDINGS**.

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FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk