

**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,**
2 **held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of**
3 **New York, on the 20th day of April, two thousand twenty-three.**
4

5 **PRESENT:**

6 **RICHARD C. WESLEY,**
7 **MICHAEL H. PARK,**
8 **BETH ROBINSON,**
9 ***Circuit Judges.***

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12 **Global Energy Trading Pte Ltd.,**

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14 ***Defendant-Cross-Defendant-***
15 ***Cross-Claimant-Appellant,***

16
17 **v.**

22-918

18
19 **Fujian Ocean Shipping Co. Ltd., individually and on**
20 **behalf of M/V ZHENG RUN (IMO No. 9593816) and**
21 **M/V ZHENG RONG (IMO No. 9593828),**

22
23 ***Plaintiff-Counter-Defendant,***

24
25 **v.**

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27 **ING Bank N.V.,**

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29 ***Defendant-Cross-Claimant-Counter-***
30 ***Claimant-Cross-Defendant-Appellee,***
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1 **O. W. Bunker Far East (S) Pte. Ltd., Equatorial Marine Fuel**
2 **Management Services Pte Ltd., Sinanju Marine Services**
3 **Pte Ltd., Global Marine Transportation Pte Ltd.,**
4

5 *Defendant-Cross-Defendant.*
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10 **FOR APPELLANT:**

THOMAS H. BELKNAP, JR., Blank Rome LLP, New
York, NY.

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13 **FOR APPELLEE:**

BRUCE G. PAULSEN, (Brian P. Maloney *on the brief*),
Seward & Kissel LLP, New York, NY.

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16 Appeal from a judgment of the United States District Court for the Southern District of
17 New York (Caproni, *J.*).

18 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
19 **DECREED** that the judgment of the district court is **AFFIRMED**.

20 O.W. Bunker Far East Pte Ltd. (“OWFE”) contracted with Fujian Ocean Shipping Co. Ltd.
21 (“Fujian”) to supply maritime fuel (called “bunkers”) to one of Fujian’s vessels. OWFE then
22 subcontracted with Global Energy Trading Pte Ltd. (“GET”) to fill the order. GET’s contract with
23 OWFE contained a Retention of Title clause, which stated that “[n]otwithstanding delivery and
24 the passing of risk in the [bunkers] having been made, . . . property in the [bunkers] shall not pass
25 from [GET] to [OWFE] until” GET “received . . . payment.” App’x at A-828. The clause also
26 stated that, until title passed, OWFE “shall upon the request of [GET] return” the bunkers. *Id.* The
27 OWFE-GET contract did not, however, require payment upon delivery; OWFE had 30 days upon
28 receipt of GET’s invoice to pay for the bunkers. Accordingly, the parties agree they were aware
29 that, prior to payment, the vessel might consume the bunkers delivered by GET during that
30 payment window.

1 GET delivered the bunkers to Fujian’s vessel on November 4 and 5, 2014. On November
2 7, OWFE’s parent company filed for bankruptcy. On November 10—before OWFE paid GET—
3 GET sent a letter to Fujian and OWFE invoking the Retention of Title clause and claiming that
4 GET retained title to the bunkers, Fujian was not entitled to use the bunkers, and any consumption
5 by Fujian would be deemed conversion. Fujian did not return the bunkers or pay GET or OWFE.

6 OWFE and GET sued Fujian in separate actions, and Fujian initiated this interpleader
7 action. ING Bank N.V. (“ING”), OWFE’s security agent, asserted breach of contract claims
8 against Fujian and *in rem* maritime lien claims against the interpleader fund. GET asserted claims
9 against the interpleader fund for conversion of the bunkers based on Fujian’s consumption of the
10 bunkers after GET invoked the retention of title provision and requested return of the bunkers.¹

11 The district court granted summary judgment in favor of ING on ING’s claims, denied summary
12 judgment on GET’s conversion claim, and entered judgment in favor of ING and against GET.
13 We assume the parties’ familiarity with the underlying facts, the procedural history of the case,
14 and the issues on appeal.

15 “We review *de novo* a district court’s grant of summary judgment.” *Tompkins v. Metro-N.*
16 *Commuter R.R. Co.*, 983 F.3d 74, 78 (2d Cir. 2020) (cleaned up). “When each side has moved for
17 summary judgment,” we “assess each motion on its own merits and [] view the evidence in the
18 light most favorable to the party opposing the motion, drawing all reasonable inferences in favor
19 of that party.” *Wachovia Bank, Nat’l Ass’n v. VCG Special Opportunities Master Fund, Ltd.*, 661
20 F.3d 164, 171 (2d Cir. 2011).

¹ GET also asserted an unjust enrichment claim against Fujian but does not challenge on appeal the district court’s dismissal of it.

1 **I. GET’s Conversion Claim**

2 The district court held that, even assuming GET can bring a conversion claim against
3 Fujian based on GET’s November 10 letter to Fujian, that claim is barred by the doctrine of
4 equitable estoppel. We agree.

5 On appeal, the parties do not dispute that Singapore law governs GET’s conversion claim.
6 Under Singapore law, the doctrine of equitable estoppel has three elements: (1) “a representation
7 or conduct amounting to a representation intended to induce a course of conduct on the part of the
8 person to whom the representation is made;” (2) “an act or omission resulting from the
9 representation, whether actual or by conduct, by the person to whom the representation is made;”
10 and (3) “detriment to such person as a consequence of the act or omission.” App’x at A-572 (citing
11 *Tong Seak Kan v. Jaya Sudhir a/l Jayaram* [2016] 5 SLR 887 at [37]). Here, all three elements
12 are met.

13 First, GET induced a course of conduct because “GET delivered the bunkers to Fujian so
14 that they could be consumed, even before they were paid for.” Special App’x at SPA-16. As the
15 Singapore High Court concluded in *Precious Shipping Co Ltd v. OW Bunker Far East (Singapore)*
16 *Pte Ltd.*, [2015] 4 SLR 1229, a physical supplier who delivers bunkers without requiring payment
17 “must plainly have intended (or at least must be taken to have intended) for the bunkers to be
18 consumed.” App’x at A-951. Indeed, GET admits that it was aware that Fujian might consume

1 the bunkers before paying for them. GET’s delivery constitutes conduct amounting to a
2 representation intended to induce the use of the bunkers.²

3 Second, “Fujian acted and failed to take other actions in obvious reliance on the implied
4 representation that it could consume the fuel prior to payment,” specifically by “commingl[ing]
5 the fuel with existing fuel that was already on board the vessel.” Special App’x at SPA-17. In
6 addition, Fujian failed to make “arrangements for additional refueling,” as it would have needed
7 to do “[i]f Fujian was not relying on GET’s implied representation that it could consume the
8 delivered fuel prior to payment.” *Id.* Such acts are evidence of Fujian’s reliance, even assuming
9 Fujian had not consumed all the fuel GET had delivered at the time of the November 10 letter.

10 Third, any “off-loading of the bunkers and replacement with fuel from another source”
11 would have caused detriment to Fujian, namely “inevitable delays and costs.” *Id.* at SPA-18; *see*
12 *also* App’x at A-791. And “[p]aying GET directly would have had the obvious detriment of
13 exposing Fujian to double liability, as it would still have been on the hook to pay OWFE.” Special
14 App’x at SPA-18. GET argues that Fujian did not suffer a detriment because Fujian was aware
15 that OWFE “did not take title to the bunkers until it had paid for them, and they also knew that
16 OWFE was contracting with a third party who would have its own terms and conditions.”
17 Appellant’s Br. at 37. But even if Fujian was aware that OWFE did not have title to the bunkers
18 until it had received payment for them, *Precious Shipping* makes clear that Fujian was also legally

² GET claims that delivery could not be an inducement given that, under its contract with OWFE, GET had the right to revoke its permission to use the bunkers without payment and in fact tried to revoke that permission by sending the November 10 letter. But GET’s revocation came after Fujian had already been induced into a course of conduct, namely commingling GET’s bunkers with its existing fuel and beginning to consume the commingled fuel.

1 entitled to rely on delivery by commingling and consuming the bunkers before payment. *See*
2 App’x at A-950-51. The Retention of Title clause thus could not have put Fujian on notice to
3 avoid any detrimental reliance.

4 Equitable estoppel is a complete defense against GET’s conversion claim. *See Tong Seak*
5 *Kan* [2016] 5 SLR 887 at [39]. GET’s conversion claim thus fails as a matter of law.

6 **II. ING’s Breach of Contract and Maritime Lien Claims**

7 GET also claims that the district erred in granting ING summary judgment on its breach of
8 contract and maritime lien claims.³ But GET fails to identify any error.

9 First, summary judgment in favor of ING on its breach of contract claim was proper.
10 OWFE contracted with Fujian, OWFE performed under that contract, and Fujian failed to pay
11 OWFE the contractual price. Fujian’s failure to pay OWFE thus constitutes a breach of contract.
12 GET argues—as it did below—that ING’s breach of contract claim nevertheless fails because,
13 based on the Retention of Title clause in OWFE and GET’s contract, “OWFE never had title to
14 the bunkers.” Appellant’s Br. at 44. But as the district court found, “GET cites no authority to
15 explain why the Retention of Title clause in its own contract with OWFE would eliminate OWFE’s
16 separate contract claim against Fujian.” Special App’x at SPA-10.

17 Second, summary judgment in favor of ING on ING’s maritime lien claims was also
18 proper. This Court has already held that a “contractor is entitled to assert a maritime lien under
19 [the Commercial Instrument and Maritime Lien Act] when it contracts with an entity specified in

³ The district court found that ING could bring these claims in place of OWFE because “ING has shown that it was validly assigned OWFE's rights under English law.” Special App’x at SPA-9. GET does not dispute this finding on appeal.

1 the statute for the delivery of necessities and those necessities are delivered pursuant to that
2 arrangement, even if by a subcontractor.” *ING Bank N.V. v. M/V TEMARA, IMO No. 9333929*,
3 892 F.3d 511, 515 (2d Cir. 2018). This standard is met when, as here, “a bunker contractor” such
4 as OWFE “contract[s] with a statutorily-authorized person for the delivery of bunkers” and “the
5 bunkers [are] delivered pursuant to that contractual arrangement.” *Id.* at 520.

6 Accordingly, we find no error in the district court’s entry of judgment in favor of ING and
7 against GET. We have considered all of GET’s remaining arguments and find them to be without
8 merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

9 FOR THE COURT:
10 Catherine O’Hagan Wolfe, Clerk of Court
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