

**Ninth Circuit Holds that Rule B Attachments Must Be Vacated When the Plaintiff Has Failed to Show a Valid Prima Facie Admiralty Claim**

**Breaking Developments In London Market Law**  
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*Equatorial Marine Fuel Management Servs Pte Ltd. v. MISC Berhad*, No. 08-57046 (9th Cir. Jan. 11, 2010)

Under Rule B of the Supplemental Admiralty Rules, a plaintiff can only attach a defendant's property if four conditions are met: (1) plaintiff has a valid prima facie admiralty claim against the defendant; (2) defendant cannot be found within the district; (3) property of the defendant can be found within the district; and (4) there is no statutory or maritime law bar to the attachment. The Supplemental Rules permit the defendant to object to the attachment through a Rule E hearing, at which the defendant argues that one of the four conditions has not been met. The burden is on the plaintiff to demonstrate that the attachment should continue. At issue in this case was whether Equatorial Marine Fuel Management Services ("Equatorial") had carried its burden to show a valid prima facie admiralty claim against MISC Berhad ("MISC").

Equatorial, a supplier of marine fuel, allegedly sold \$22 million worth of bunker fuel to MISC for use in vessels owned and operated by MISC. Equatorial delivered the bunker fuel to MISC through a third-party. Equatorial alleged that MISC never paid for the bunkers. On the contrary, MISC argued that it never contracted or had contact with Equatorial. MISC asserted that it entered into a contract with bunker-trader Market Asia Link ("MA Link") to procure bunkers. At the time, MISC was unaware of the ultimate source of the bunkers. MISC paid MA Link for all the bunkers it received. Shortly after delivery, MA Link became insolvent and failed to pay Equatorial. Equatorial then filed suit against MISC for breach of contract and unjust enrichment. In order to establish jurisdiction, Equatorial successfully filed an application for maritime attachment of MISC's property. MISC moved to vacate the attachment on the grounds that Equatorial had failed to show a valid prima facie admiralty claim given that MISC did not have a contract with Equatorial. The district court agreed and vacated the attachment.

On appeal, the Ninth Circuit first assessed whether the district court had admiralty jurisdiction over the matter. Admiralty jurisdiction is established when "the principal objective of the claimed contract or dealings is maritime commerce." Because the bunkers were supplied to MISC for its ships, the Ninth Circuit concluded that the underlying contract and dealings were "clearly maritime in nature." The next question before the Court was whether the district court properly vacated the attachment based on Equatorial's failure to prove a prima facie case. As to the breach of contract claim, the Court noted that there didn't appear to be evidence of a contract between MISC and Equatorial. The fact that MISC "accepted and used" fuel supplied by

Equatorial was insufficient on its own to prove a contractual relationship between the parties. Moreover, even though MISC had presented the district court with invoices listing MISC as the “buyer” and Equatorial as the “seller,” the evidence established that MISC had not seen these documents. The Ninth Circuit ultimately concluded that “one party’s belief that there was an agreement isn’t enough.” With respect to the unjust enrichment claim, the Ninth Circuit determined that Equatorial also failed to meet its burden in establishing a prima facie case. The evidence was undisputed that MISC had indeed paid for the bunkers – the fact that Equatorial was not paid was irrelevant.

In summation, the Ninth Circuit reiterated that Rule B attachments will not be continued when the plaintiff cannot establish a valid prima facie admiralty claim. Although the plaintiff isn’t required to prove that it will succeed on the merits, it must come forward with sufficient evidence to contradict the defendant’s contentions.

## **Members Of Our London Client Team**

### **Seattle:**

- Gabe Baker - [bakerg@lanepowell.com](mailto:bakerg@lanepowell.com)
- Mark Beard - [beardm@lanepowell.com](mailto:beardm@lanepowell.com)
- Stanton Beck - [becks@lanepowell.com](mailto:becks@lanepowell.com)
- John Devlin - [devlinj@lanepowell.com](mailto:devlinj@lanepowell.com)
- Larry Gangnes - [gangnesl@lanepowell.com](mailto:gangnesl@lanepowell.com)
- Robert Israel - [israelr@lanepowell.com](mailto:israelr@lanepowell.com)
- Steve Jensen - [jensens@lanepowell.com](mailto:jensens@lanepowell.com)
- Mark Johnson - [johnsonm@lanepowell.com](mailto:johnsonm@lanepowell.com)
- Katie Matison - [matisonk@lanepowell.com](mailto:matisonk@lanepowell.com)
- Barry Mesher - [mesherb@lanepowell.com](mailto:mesherb@lanepowell.com)
- Laura Morse - [morsel@lanepowell.com](mailto:morsel@lanepowell.com)
- Kathleen Nelson - [nelsonk@lanepowell.com](mailto:nelsonk@lanepowell.com)
- Jeffrey Odom - [odomj@lanepowell.com](mailto:odomj@lanepowell.com)
- Benjamin Roesch - [roeschb@lanepowell.com](mailto:roeschb@lanepowell.com)
- Mary Schug - [schugm@lanepowell.com](mailto:schugm@lanepowell.com)
- Cathy Spicer - [spicerc@lanepowell.com](mailto:spicerc@lanepowell.com)
- Andrew Steen - [steena@lanepowell.com](mailto:steena@lanepowell.com)
- James Stoetzer - [stoetzerj@lanepowell.com](mailto:stoetzerj@lanepowell.com)
- Emilia Sweeney - [sweeneye@lanepowell.com](mailto:sweeneye@lanepowell.com)
- David Young - [youngd@lanepowell.com](mailto:youngd@lanepowell.com)

### **Anchorage:**

- Brewster Jamieson - [jamiesonb@lanepowell.com](mailto:jamiesonb@lanepowell.com)

### **Portland:**

- Stephen McCarthy - [mccarthys@lanepowell.com](mailto:mccarthys@lanepowell.com)

- Victoria Blachly - [blachlyv@lanepowell.com](mailto:blachlyv@lanepowell.com)
- Tanya Durkee - [durkeet@lanepowell.com](mailto:durkeet@lanepowell.com)

**London Client Team**

206.223.7000 Seattle

503.778.2100 Portland

[LMNews@lanepowell.com](mailto:LMNews@lanepowell.com)

[www.lanepowell.com](http://www.lanepowell.com)

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