

Centre for Maritime Law Case Commentary 2/2026

*Xcoal Energy & Resources v Acciaierie D'Italia SpA*¹

Wrongful attachment – Wrongful arrest – Bad faith – Malice

1 Facts

Xcoal Energy & Resources (Xcoal) had claims against Acciaierie D'Italia (ADI) for alleged breach of sale of coal contracts that were subject to Swiss arbitration. Seeking security for foreign arbitration, Xcoal attached coal cargo onboard the *Bulk Destiny* under Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure (Supplemental Rules). Xcoal asserted that ADI owned the coal. The attachment order was issued by the US District Court for the Southern District of Alabama on 22 September 2023, when the coal was owned not by ADI but by Javelin Global Commodities (UK) Ltd (Javelin). Javelin subsequently informed Xcoal that Javelin owned the coal. Javelin provided Xcoal with redacted sale documentation, intervened, and sought damages for wrongful attachment.

On 10 October 2023, Magistrate Judge William E Cassady heard the parties and recommended² the attachment be set aside because the contractual relationship between Xcoal and ADI was not based on maritime contracts. The attachment was thereafter set aside by consent.³ Javelin also commenced a separate action against Xcoal for damages. Apart from a repeated claim of wrongful attachment, Javelin alleged 'intentional interference with a

¹ 2026 WL 1631625 (SD Ala 2026) (*Xcoal*). This was a Report and Recommendation by Magistrate Judge William Cassady issued on 29 April 2026 and adopted in 2026 WL 1716166. All citations without case names refer to *Xcoal*'s procedural history.

² See 2023 WL 7458845.

³ 2024 WL 2378942 at 1.

contractual relationship, and tortious interference with a contractual relationship'.⁴ This was subsequently consolidated with Xcoal's attachment.⁵

Both Xcoal and Javelin applied for summary judgment. Xcoal sought dismissal of Javelin's common law claims and Javelin's claim for wrongful attachment. Javelin sought summary judgment on its claims for wrongful attachment and recovery of the costs for the storage of the attached coal (storage costs⁶) during the arrest. The Court granted Xcoal's application and denied Javelin's application.⁷

2 Common law claims

Xcoal argued that the 'bad faith'⁸ standard applied exclusively to any claims arising out of a wrongful attachment and that Javelin's common law claims were contrary to Eleventh Circuit case law, which required evidence of bad faith. Xcoal argued that Javelin could not escape the requirement of bad faith by reframing its claims.⁹ Remarkably, Javelin did not oppose Xcoal's arguments.¹⁰

The court agreed that the Alabama state law claim of tortious interference, which did not require proof of bad faith, was unavailable. The elements of that claim were: (1) the existence of a protectable business relationship; (2) of which the defendant knew; (3) to which the defendant was a stranger; (4) with which the defendant intentionally interfered; and (5) damage.¹¹ Eleventh Circuit precedent did not consider this claim to be separate from the wrongful attachment claim.¹² Such a claim is 'properly subsumed under the wrongful

⁴ Xcoal (n 1) 2.

⁵ 2024 WL 3637791.

⁶ For background, see 2025 WL 4666285.

⁷ Xcoal (n 1), adopted in 2026 WL 1716166.

⁸ Ibid, 3.

⁹ Citing *Industrial Maritime Carriers LLC v Dantzler Inc* 611 Fed Appx 600 (11th Cir 2015); *Furness Withy (Chartering) Inc Panama v World Energy Sys Assoc Inc* 854 F 2d 410 (11th Cir 1988), which *Industrial Maritime Carriers* referred to as *Furness II* to distinguish it from an earlier 1985 decision; *Frontera Fruit Co v Dowling* 91 F 2d 293 (5th Cir 1937) 297. The Eleventh Circuit has adopted as binding precedent all Fifth Circuit decisions issued before 1 October 1981: Xcoal (n 1) n 5.

¹⁰ Javelin did so previously: 2025 WL 945604.

¹¹ The Court cited *Ex parte BTC Wholesale Distributors Inc* 400 So 3d 561 (Ala 2023) 569, which cited *White Sands Group LLC v PRS II LLC* 32 So 3d 5 (Ala 2009) 14.

¹² *Industrial Maritime Carriers* (n 9), 604.

attachment claim’ because the latter is the ‘proper cause of action’.¹³ In any event, maritime law requires bad faith to be proved for such a claim.¹⁴

3 Wrongful attachment

The cross-applications raised the same issue of whether Xcoal was sufficiently blameworthy to be liable in damages for wrongful attachment.

To justify a Rule B attachment, the plaintiff must show that: (1) it has a valid prima facie maritime claim against the defendant; (2) the defendant cannot be found within the district; (3) the defendant’s property may be found within the district; and (4) there is no bar to the attachment.¹⁵ The attached ‘property must belong to the defendant’;¹⁶ ‘the question of ownership is critical’.¹⁷ The claim for wrongful attachment arose out of the elements (1) and (3). As to the former, the relationship between Xcoal and ADI was not a maritime contract. As to the latter, Javelin owned the attached coal, not ADI. When property not belonging to the defendant has been wrongfully attached, the aggrieved party may recover damages upon proving that the attaching party acted in bad faith.¹⁸ Mere negligence is insufficient; the aggrieved party must show malice, bad faith, or reckless disregard of the aggrieved party’s legal rights.¹⁹

4 Evidence

Xcoal’s evidence was that ADI owed Xcoal monies for previous sales, and those amounts included substantial maritime elements, including vessel charter and demurrage.

Xcoal understood that suppliers were insisting on full payment from ADI prior to loading the vessel, but Xcoal did not ask any ADI supplier whether they were insisting on full prepayment

¹³ Ibid.

¹⁴ *Furness II* (n 9), 412; *Frontera* (n 9), 297.

¹⁵ *Austral Asia Pte Ltd v SE Shipping Lines Pte Ltd* 2012 WL 2567149 (ED La 2012) 1–2.

¹⁶ *Arctic Ocean International Ltd v High Seas Shipping Ltd* 622 F Supp 2d 46 (SD NY 2009) 51.

¹⁷ *Malin International Ship Repair & Drydock Inc v Oceanografia SA de CV* 817 F 3d 241 (5th Cir 2016), 246.

¹⁸ *Furness II* (n 9), 411; *Frontera* (n 9), 294.

¹⁹ *Coastal Barge Corp v M/V Maritime Prosperity* 901 F Supp 325 (MD Fla 1994) 328.

for cargo. Xcoal did not think Javelin would charter a ship and load the cargo without having made full prepayment. Xcoal's evidence was that ADI was purchasing the coal and had paid at least 25 per cent of the purchase price; ADI had argued in Italian litigation against Xcoal that part payment allowed ADI to claim ownership over the coal. Following the attachment, Xcoal's witness testified that Javelin's disclosed documentation was incomplete and that there was a delay in getting information.²⁰

As to legal advice, Xcoal was advised that proving Xcoal's claims against ADI were maritime in nature would be difficult. There was no evidence that counsel advised Xcoal not to file or maintain the attachment. Xcoal was also advised that there was a good argument that the coal was ADI's and that jurisdiction could potentially be established under a mixed contract doctrine, but that it would be difficult to prove the ADI sales contracts were maritime contracts.

5 Argument

Xcoal claimed good faith reliance upon the legal advice received by Xcoal, enabling it to raise the defence of advice of counsel.²¹ Xcoal argued that asserting good faith legal and factual arguments, which a court rejects, does not give rise to damages for wrongful attachment.

As to whether Xcoal had a maritime claim, Xcoal argued that the contracts between Xcoal and ADI were maritime contracts under the mixed contract doctrine²² establishing jurisdiction to support the attachment. Xcoal contended this argument was in good faith.

As to the ownership requirement, Xcoal claimed that it believed in good faith that ADI owned or had an attachable property interest in the coal. It initially believed that ADI owned the coal and subsequently believed ADI had an attachable property interest in the coal based on

²⁰ Xcoal (n 1), 9.

²¹ In other common law jurisdictions, such as Singapore, legal advice is not 'invariably' a defence but merely a 'factor' to be considered: *The Rainbow Spring* [2002] SGHC 255, [2003] 2 SLR(R) 117 [38].

²² Unlike purely maritime contracts, a mixed contract containing maritime and non-maritime elements cannot support admiralty jurisdiction, save for two exceptions: *Brocsonic Co v M/V Mathilde Maersk* 120 F Supp 2d 372 (SD NY 2000) 377–378.

conditional title. Xcoal argued that Rule B was construed broadly and did not require a defendant to have a particular type of interest in the property or hold title to the property subject to an attachment, citing *World Fuel Services*,²³ *Kingston*,²⁴ and *Malin*.²⁵ Xcoal argued its investigation revealed that Javelin was receiving payment from ADI before Javelin would load the cargo. Xcoal further contended that the only way it could identify the exact ownership interest of ADI in the coal was to seek an attachment.

Meanwhile, Javelin argued that Xcoal acted in bad faith with malice. Javelin claimed that there was no evidence of ownership of the cargo, no due diligence with respect to the ownership of the cargo, no written legal advice that Xcoal had a maritime claim against ADI, and that maritime jurisdiction was unlikely to exist.

As to the advice of counsel defence, Javelin argued that Xcoal ignored advice and proceeded with attachment despite knowing it had to prove ownership and a maritime claim against ADI. Javelin emphasised Xcoal's lack of legal advice supporting Xcoal's argument about ownership.

As to whether Xcoal had a maritime claim, Javelin argued that Xcoal proceeded with reckless disregard for Javelin's rights by initiating the attachment despite legal advice that proving the contracts were maritime would be difficult, and made incorrect arguments about the contracts being maritime in nature.

As to ownership, Javelin argued that Xcoal misrepresented to the Court that ADI owned the coal. Javelin argued that Xcoal attached the coal on a 'hunch'²⁶ that ADI made a full prepayment. The continued attachment, after Xcoal received proof of the payment structure between Javelin and ADI, established Xcoal's malice and bad faith. Javelin argued Xcoal's conditional title argument does not explain Xcoal's pre-arrest conduct but relates to Xcoal's

²³ *World Fuel Services Inc v SE Shipping Lines Pte Ltd* 2011 WL 446653 (ED La 2011).

²⁴ *Kingston Dry Dock Co v Lake Champlain Transportation Co* 31 F2d 265 (2d Cir 1929).

²⁵ *Malin* (n 17), 245.

²⁶ *Xcoal* (n 1), 5.

post-arrest conduct. Citing *Wave Maker*,²⁷ Javelin argued Xcoal's post-arrest conditional title argument is not based on a good faith extension of the law.

6 Judgment

The Court granted Xcoal's application and denied Javelin's application. But two matters were left undetermined: Javelin's claim on storage costs and Xcoal's advice of counsel defence.²⁸ Nevertheless, the evidence did not show that Xcoal ignored advice in filing and maintaining the attachment.²⁹

Javelin cited no authority to show that asserting incorrect legal arguments amounts to bad faith, malice, or gross negligence, or that proceeding with attachment despite a difficult case (but without being advised of there being no legal basis to proceed) satisfies the requisite threshold.

Xcoal's failure to further investigate ownership prior to attachment amounts to nothing more than negligence.³⁰ As for post-attachment information, the Eleventh Circuit in *Industrial Maritime Carriers* cited *Furness I*³¹ and stated: '[...] there is no duty to do anything beyond diligently investigating the new information. The arresting party need not immediately seek the release of a vessel just because the arrest is contested'.³²

Although Xcoal's arguments were rejected, admiralty law accepts mistakes made in good faith 'as a necessary evil to be suffered in the interest of preventing parties from fleeing a court's jurisdiction before the dispute can be adjudicated'.³³ The cases cited by Xcoal contradicted Xcoal's argument on construing Rule B broadly. When seeking to attach property to be sold to a buyer, only when personal property had been delivered and the right of title had passed to

²⁷ *Wave Maker Shipping Co Ltd v Hawksphere Shipping Co Ltd* 56 Fed Appx 594 (4th Cir 2003).

²⁸ *Xcoal* (n 1), 11.

²⁹ *Ibid*, 9.

³⁰ *Industrial Maritime Carriers* (n 9).

³¹ *Furness Withy (Chartering) Inc v World Energy Systems Associates Inc* 772 F 2d 802 (11th Cir 1985) (*Furness I*) 808, n 9.

³² *Industrial Maritime Carriers* (n 9), 604–605.

³³ *Ibid*, 607.

the buyer, did an attachable property right under Rule B arise.³⁴ Here, the ADI-Javelin sale contract did not permit attachment based on a partial ownership theory. That contract indicated that title would not pass to ADI until ADI had paid in full. Besides, Xcoal's claim that it had a good faith basis to attach the coal because ADI made a 25 per cent prepayment of coal (and thus arguably had an attachable property interest) was not the basis upon which Xcoal sought the attachment, but the basis upon which Xcoal sought to sustain the attachment. Thus, Xcoal's conditional title argument would only apply to Xcoal's post-attachment actions.

Nevertheless, Javelin failed to provide evidence to support a finding that Xcoal's attachment was done in bad faith, with malice, or reckless disregard for Javelin's rights.

7 Comment

Xcoal highlights three difficulties. First, the difficulty faced by the shipowner seeking compensation for a wrongful arrest because it cannot bypass the requirement to prove that the arresting party was highly blameworthy. Second, the shipowner's difficulty in establishing that the arresting party was highly blameworthy. Third, the arresting party's difficulty in obtaining certainty before arrest as to the ownership of the property to be arrested.

Xcoal shows the difficulty in bypassing the threshold set by *The Evangelismos*:³⁵ to make the arresting party liable to pay damages for wrongful arrest, the shipowner must prove malice, bad faith, or gross negligence implying malice on the part of the arresting party. This has been applied in actions for wrongful attachment under Rule B and wrongful arrest under Rule C of the Supplemental Rules.³⁶ *Frontera*,³⁷ an oft-cited decision for wrongful attachments and wrongful arrests in the USA, can be traced back to *The Evangelismos*.³⁸ As *Xcoal* illustrates,

³⁴ *Malin* (n 17), 249.

³⁵ *The Evangelismos* (1858) 12 Moo PC 352.

³⁶ See, generally, Thomas J Schoenbaum, *Admiralty and Maritime Law* (6th edn, Thomson Reuters 2018) ch 21.

³⁷ *Frontera* (n 9).

³⁸ *Frontera* (n 9) cited *Artinano v WR Grace & Co* 286 F 702 (ED Va 1923), *The Alcalde* 132 F 576 (D Wash 1904), and *The Amiral Cecille* 134 F 673 (D Wash 1905). *The Alcalde* and *The Amiral Cecille* cited *Portland Shipping Co v The Alex Gibson* 44 F 371 (D Wash 1890), which in turn cited *The Adolph* 5 F 114 (SD NY 1880), which itself cited *The Evangelismos* (n 35). *Artinano* also cited *The Evangelismos* (n 35).

the shipowner is unlikely to bypass the threshold by framing its claim as a common law tort claim.

This is also likely to be the case under English law. The recent and related decisions of *The Pola Devora*³⁹ and *The Divinegate*⁴⁰ reveal that an attempt to apply tort law to claim damages for the wrongful arrest of the *Pola Devora* in Gibraltar was abandoned.⁴¹ Like *Xcoal*, these decisions are silent as to why the common law tort claims were abandoned.

Xcoal also illustrates the second difficulty, proving that the arresting party had acted with malice or bad faith in arresting the wrong ship. In its arrest application, the arresting party would have expressly or implicitly stated that the ship to be arrested was owned or demise chartered to a person who would be liable to the arresting party (the statement).⁴² To satisfy the *Evangelismos* threshold, the owner must prove that the arresting party knew that its statement was false. Alternatively, the shipowner might show that the arresting party did not care whether its statement was true: gross negligence implying malice. The difficulty is that most arresting parties do care, at least somewhat, and can adduce evidence to justify their statement or belief. The attaching party in *Xcoal* did so.⁴³

Shipowners can provide contradicting evidence to persuade arresting parties to believe that the ship was owned by an innocent third party. But not all shipowners are aware of a forthcoming arrest: in *Xcoal*, the third party had no warning. Not being able to inform the would-be arresting party of contradicting evidence before arrest, Javelin did so only after arrest. Shipowners should swiftly explain that their disclosed internal ‘private documents’⁴⁴ show that the arrested ship is owned by an innocent third party. This might lead good faith arresting parties to promptly release the arrested ship.⁴⁵ Nevertheless, *Xcoal* shows that

³⁹ *Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Pola Devora)* [2021] EWHC 1707 (Comm), [2021] 1 WLR 5475.

⁴⁰ *Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Divinegate)* [2022] EWHC 2095 (Comm), [2023] 1 Lloyd’s Rep 442.

⁴¹ Compare *The Pola Devora* (n 39), [13]; [15] with *The Divinegate*, *ibid*, [156]; [163].

⁴² See, eg, O 33 r 4(7) of Singapore’s Rules of Court 2021.

⁴³ *Xcoal* (n 1), 6; 9.

⁴⁴ *The Divinegate* (n 40), [47].

⁴⁵ *Ibid*, [161].

shipowners must allow arresting parties some time to investigate. The arresting party is obliged to diligently investigate the new information.⁴⁶ Due to information asymmetry, the arresting party has no idea if the owner is pretending. Sometimes, the documents might be 'incomplete'.⁴⁷ The arresting party might await a neutral opinion: the attaching party in *Xcoal* decided to release the coal only after the issuance of a judge's Report and Recommendation.⁴⁸ This was not found to be malicious or in bad faith. It is difficult for the aggrieved party to establish malice or bad faith even when the arresting party appears to be dilatory and unconvinced by the shipowner's evidence, because the arresting party is not required to release the arrested ship immediately.⁴⁹ But when the arresting party is indifferent to the shipowner's evidence, that seems to be a breach of the obligation to investigate diligently. Can damages be awarded for such breach?

The third difficulty is the arresting party's hurdle: establishing ownership. Attaching cargo, as seen in *Xcoal*, is complex because there is no general ownership registry for cargo. Arresting ships appears easier because searches can be conducted against the ship register, a shipping company's website for its fleet list, and other maritime resources.⁵⁰ But such searches can provide 'competent, albeit faulty evidence'.⁵¹ Thus, an arresting party is not necessarily highly blameworthy when it is mistaken as to ownership.

[LL]

⁴⁶ *Xcoal* (n 1), 10.

⁴⁷ *Ibid*, 8–10.

⁴⁸ *Ibid*, 2.

⁴⁹ *Ibid*, 10, citing *Industrial Maritime Carriers* (n 9) 604–605; 607.

⁵⁰ Such as 'Lloyd's Register, Equasis Ship Folder and Thomson Reuters Accelus': *Industrial Maritime Carriers LLC v Dantzler Inc* 62 F Supp 3d 1355 (SD FL 2014) 1357.

⁵¹ *Industrial Maritime Carriers*, *ibid*, 1359. See, eg, *The Divinegate* (n 40), [46]–[48]; [158]–[159].