

Rice Co. v. Express Sea Transport Corp. United States District Court for the Southern District of New York 2008 A.M.C. 164 (Filed November 15, 2007)

William K. Li, Class of 2009

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**SHIPOWNER ATTACHES AGAINST CHARTERER FOR CANCELLING
CONTRACT WHILE CHARTERER ACQUIRES COUNTER-SECURITY
AGAINST SHIPOWNER FOR MISSED PAYMENTS**

The district court held that a shipowner is allowed to attach the charter's assets and denied the charterer's motion to reduce the attachment amount absent proof of frivolous estimation by the shipowner. Second, the court granted a counter-security claim for the charterer to recoup missed payments from the shipowner.

Rice Co. v. Express Sea Transport Corp.
United States District Court for the Southern District of New York
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Plaintiff, the Rice Company ("Rice"), chartered a vessel from defendant Express Sea Transport Corporation ("ESTC") on April 4, 2007, for approximately thirteen months at a rate of \$24,500 per day. The vessel passed through several generations of sub-charterers during Rice's contract period. The final sub-charter was for the transport of aluminum from Australia to Iran. The aluminum was to be unloaded in Iran between July 19, 2007 and August 3, 2007. On July 3, 2007, ESTC canceled the charter contract, claiming that Rice had not rendered timely payment. As a result of the cancellation, Rice was forced to sign an interim contract with ESTC at a higher rate of \$28,500 per day with stricter payment conditions until the delivery of aluminum was completed to Iran. Rice initiated arbitration in London against ESTC for damages due to the withdrawal of the Vessel. Via counterclaim, ESTC held \$697,565.13 in Rice's assets as security because Rice failed to make payments on the new contract while the Iran trip was completed. Rice brought this action seeking to attach \$4,946,170.13 of ESTC's assets, which was granted by the court.¹ ESTC moved in pursuant Fed.R.Civ.P. Supp. Rule E to vacate the attachment or to reduce the amount attached. In the alternative, ESTC sought counter-security for its counterclaim in arbitration against Rice.

ESTC moved to vacate the attachment on equitable grounds. ESTC argued that vacatur was warranted because Rice rejected its prior offers of security and Rice was dealing with unclean hands. The court rejected both arguments. In rejecting ESTC's first argument based on availability of security, the court reasoned that ESTC "merely *offered* to provide security ...[and] the availability of other security does not preclude attachment."² ESTC's second argument was based on the fact that Rice was conducting business with Iran, in violation of United States law. The court rejected ESTC's second argument by reasoning that there was not enough evidence to indicate that Rice was intimately involved with the operation of dealing with Iran after sub-chartering out the Vessel.

ESTC next moved for a reduction in the attachment. In order for a court to reduce an attachment amount, it must prove that the attachment estimate was frivolous.³ The court found that Rice was not frivolous in its estimation because the estimated \$4,946,170.13 being attached was a reasonable market rate to charter another of equal size and utility.

Finally, "ESTC [sought] counter-security [for \$474,020.76] from Rice for ESTC's counterclaim that Rice failed to make payments for the completed voyage to Iran."⁴ Fed R. Civ. P. Supp. Rule E(7)(a), states in pertinent part:

¹ Rice Co. v. Express Sea Transport Corp., 2008 A.M.C. 164 (S.D.N.Y. 2007).

² Id., *citing* Aquali Stoli Shipping v. Gardner Smith, 460 F.3d 434, 444 (2d Cir. 2006).

³ Id., *citing* Dongbu Express v. Novois, 944 F. Supp. 235, 237 (S.D.N.Y. 1996).

⁴ Id.

When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court for cause shown, directs otherwise.

The court granted defendant's motion.

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