



ADMIRALTY BRIEF

NOT EVERY BOAT IS A VESSEL: LOZMAN v. CITY OF RIVIERA BEACH

Practically speaking, a houseboat is still a vessel. But the same is not true for every floating house. And just when we thought that the highest tribunal in the land had a fast hold on its commitment to expanding the definition of a vessel, the Supreme Court issues a holding that not only creates confusion by curtailing its existing definition, but also indicates a new method for determining if a floating structure is, in fact, a vessel.¹ Owners of residences afloat throughout the United States admiralty jurisdiction, now wonder, “Is my houseboat a vessel?” Houseboat owners, you are not alone! Maritime attorneys and judges alike try to answer the same question secondary to the Supreme Court’s recent contribution to the ever-developing jurisprudence attempting to define a vessel.

The controversial subject of the Supreme Court’s latest vessel status pronouncement arose in 2006 when Fane Lozman docked his 60’x 12’ floating home in a marina owned by the City of Riviera Beach, Florida. Lozman’s abode — equipped with French doors on 3 sides, a sitting room, bedroom, closet, kitchen, and an office — remained at the Riviera Beach Marina until the City, despite the absence of admiralty jurisdiction, filed an *in rem* suit against the vessel, purchased the home at auction, and destroyed it. The district court and the 11th Circuit Court of Appeals both found admiralty jurisdiction to exist holding that the home was a vessel. The Supreme Court reversed the judgment of the Court of Appeals finding that Fane Lozman owned nothing more than a floating house.

The Supreme Court’s reasonable observer test led to its conclusion that Fane Lozman’s floating residence was not a vessel. But the Court did not hold that a houseboat is not a vessel. The ruling — with the potential to narrow the legal liability for those owning dockside casinos or even floating businesses — does not necessarily spell relief for existing Jones Act employers.

The Rules of Construction Act defines a “vessel” as including “every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”² The quandary that has befuddled jurists for over 150 years is determining which floating structures fall within the definition. And because there is no all-encompassing list of items which are vessels, the debate continues. In fact, even the Supreme Court has reached dissimilar vessel status conclusions for similar structures based on individual characteristics and design.³

Justice Breyer’s opinion — alluding to familiar fictional fables — sets forth obvious examples of artificial contrivances that are not vessels, including Pinocchio’s whale, a plastic dishpan, and a wooden washtub. But here’s the rub-a-dub-dub: a floating structure possessing physical



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¹ *Lozman v. City of Riviera Beach, Fla.*, 133 S.Ct. 735 (2013).

² 1 U.S.C. § 3.

³ See *Evansville & Bowling Green Packet Co. v. Checo Cola Bottling Co.*, 271 U.S. 19, 46 S.Ct. 379, 70 L.Ed. 805 (1926) (Holding that a floating wharf boat used to transfer cargo was not a vessel); See also *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 125 S.Ct. 1118, 160 L.Ed. 2d 932 (2005) (Holding that a floating dredge used to remove silt from the ocean floor was a vessel).

characteristics, which lead a reasonable observer to conclude that it was designed to a practical degree for carrying people or things over water is — in the opinion of the U.S. Supreme Court — a vessel. The Court’s holding, in addition to considering the many non-vessel-like-qualities of Fane Lozman’s floating house, focused on the practical possibilities of the structure’s use as a means of transportation on water.⁴ But for its ability to float, Lozman’s house differed quite significantly from an ordinary houseboat as it had no steering mechanism, no propulsion, a rectangular bottom, and no capacity to generate or store electricity.

And how is the Supreme Court’s unexpected narrowing of that which constitutes a vessel going to preserve or alter the maritime’s industry vessel status quo? Certainly, a reasonable observer, looking at a Single Point Anchor Reservoir would not consider it practically designed for transporting people or things over water.

⁴ *Stewart*, 543 U.S. at 496.