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But is it Legal?

A Legal Smorgasbord for Marina Operators

C. Kent Roberts
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Lozman v. City of Riviera Beach, Florida
SCOTUS
January 15, 2013

What is a “vessel” within the meaning of federal maritime law?



Fane Lozman's Houseboat:

- 60 x 12 feet floating home.

French doors on three sides, sitting room, bedroom, closet, bathroom and kitchen.

- No motive of power, no navigation equipment.
- Capable of being towed.



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- Towed 200 miles from Fort Myers to North Bay Village, near Miami.
- Towed 80 miles from North Bay Village to Riviera Beach.



- Riviera Beach claim: \$3,000 in unpaid dockage fees.
- Foreclose maritime lien.
- U.S. Marshall arrested Lozman's houseboat.



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- “Vessel” sold at auction,
Riviera Beach buys,
houseboat is destroyed.





“Vessel” includes “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

1 U.S.C. § 3

Is Lozman’s floating home a “vessel” under federal law?



Trial court:

- Floating home was a “vessel.”
- Court had admiralty jurisdiction for *in rem* maritime lien foreclosure \$3,040 for dockage .

11th Circuit:

- Floating home was a “vessel” because “capable” of movement over water.
- Owner’s subjective intent to moor “indefinitely” does not defeat vessel standing.

Writ of Certiorari to Supreme Court allowed.



Conflicting case precedent:

Literal interpretation – “anything that floats”

(houseboats, floating dormitory, bridge building derrick, floating casinos – ARE Vessels)

VS.

Subjective intent to serve a water borne transportation function

(dry docks, floating platforms, floating docks, floating casinos – NOT Vessels).



Why do we care? - numerous Amicus Curiae filings

- Coast Guard and regulatory overlay (U.S. Solicitor General).
- Conflicting maritime lien, arrest and attachment law versus marine financing under state law (National Marine Bankers Association).
- Land based worker versus seaman personal injury remedies and Jones Act claims (American Gaming Association).
- Treatment of floating homes like ordinary land based homes under state environmental, construction, inspection and financing laws (Seattle Floating Homes Association).



The back story:

Citizen activist Lozman v. Riviera Beach Municipal Marina

- Helped defeat \$2.4 billion plan to convert marina to large commercial complex through eminent domain.
- City council rants.





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- Evicted for failing to muzzle his 10-pound dachshund.



- Jury sets aside eviction as “retaliatory.”



- Changed moorage rules prohibiting boats without hull identification numbers, shut off Lozman's power and ordered him to leave.





Justice Bryer: Not *every* floating structure is a “vessel.” To state the obvious, a wooden washtub, a plastic dishpan, a swimming platform on pontoons, a large fishing net, a door taken off its hinges, or Pinocchio (when inside the whale) are not “vessels,” even if they are “artificial contrivance[s] capable of floating, moving under tow and incidentally carrying even a fair-sized item or two when they do so.



Lozman Vessel Test:

Would a reasonable observer, looking at the floating structure's physical characteristics and activities, consider it to be designed to any practical degree for carrying people or things on water.



No navigation equipment:

- Built and designed as a home.
- No capacity to generate or score electricity or other utilities.
- Not a “houseboat” which is typically motorized.
- No features suggesting a design to transport things over water.



Dissent:

“The majority fails to explain how a craft that apparently did carry people and things over water for long distances was not “practically capable” of maritime transport.

Lessons:



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