



Legal Alert

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QUESTION: SO, WHATEVER FLOATS IS NOT A BOAT?

ANSWER: THE U.S. SUPREME COURT SAYS THAT "NOT EVERY FLOATING STRUCTURE IS A VESSEL."

The United States Supreme Court plunges into important matters, such as health-care reform, immigration, and voting rights. The highest court in the land also dove into a case involving a maritime lien of \$3,039.88 for dockage fees!

Fane Lozman lived on the water in a 60-foot by 12-foot boat, or "floating home." Even though the home had a second level, the empty bilge space underneath the floor allowed it to float and stay upright in the water. The floating home was towed through bodies of water at least four times over the years a total of about 300 miles.

Mr. Lozman docked his home at a marina owned by the City of Riviera Beach, Florida. Mr. Lozman had various disputes with Riviera Beach and the City tried several times to cast him and his home from the marina. Riviera Beach finally sued under federal admiralty law seeking a maritime lien for dockage fees and trespass damages. The U.S. District Court after a trial awarded Riviera Beach \$3,039.88 for dockage fees along with \$1.00 damages for trespass.

The Eleventh Circuit Court of Appeals agreed with the U.S. District Court. Mr. Lozman wasn't washed up, however. He asked the U.S. Supreme Court to review the case. Of the many cases brought to the U.S. Supreme Court, only a small percentage are actually heard by the Court. Mr. Lozman had one of those very important cases worthy of the attention of our highest court. (The last time the Supreme Court took such an important case from Florida, it had something to do with who had been elected President of the United States.)

As the Supreme Court noted, a "vessel" is defined as "every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The Court said it needed to decide whether the home had the "practical" possibility, rather than "merely theoretical" possibility of being "capable of being used" as transportation.

The Supreme Court sank the definition of "capable" used by the Court of Appeals because it was too broad. The Court of Appeals probably knew it was getting in over its head on the definition when it wrote:

No doubt the three men in a tub would also fit within our definition, and one probably could make a convincing case for Jonah inside the whale.

The Supreme Court wrote:

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 a fair-sized item or two when they do so.

The Supreme Court said that Mr. Lozman's floating home was not a vessel because it couldn't be used "as a means of transportation on water." The Court floated the notion that "transportation" means moving stuff from place to place. Mr. Lozman's home "had no rudder or other steering mechanism." Heck, it didn't even have portholes, but instead had French doors and ordinary windows!

The Court noted that a washtub, a scow, a work punt, and a wharf boat were not vessels. The Court also noted cases involving floating dormitories, derricks anchored in a river to build a bridge, and dredges could be vessels. The Court refused to endorse the "anything that floats" definition of "vessel."

Buoyed by this analysis, the Supreme Court considered admiralty law and its application to Mr. Lozman's home:

Lozman, however, cannot easily escape liability by sailing away in his home. He faces no special sea dangers. He does not significantly engage in port-related commerce.

After examining all of this flotsam and jetsam, the Court never even answered the question of whether the *Queen Mary* would still be a vessel if it is permanently connected to land for use as a hotel. Still, we know that Mr. Lozman's floating home was not a vessel governed by maritime law. Riviera Beach drifted into treacherous waters when it towed it away, bought it at the lien foreclosure auction, and destroyed it. Mr. Lozman says the money he won will buy him a new floating home. I can't imagine what marina would let him tie-up as a tenant, however!

By the way, if you happen to want to build a floating gambling casino somewhere to see if you can escape local jurisdictional rules on gaming because your casino is a vessel governed by federal maritime law, float it by me!

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