

ADMIRALTY & MARITIME LAW COMMITTEE

THIS! Is Not a Vessel: Re Do

Barbara K. Cook
Chair

In March of 2012, I reported on the 11th Circuit Court of Appeal's decision in *City of Riviera Beach v. That Certain Unnamed Gray, Two Story Vessel*, Case No. 10-10695, which held that a floating house docked at the city marina and with no engines, no inboard utilities, no history of unaided transport capability, and "in less than Bristol condition" (or what most people would call "derelict") **is** a vessel and thereby subject to a maritime lien for necessities under 46 U.S.C. §31342 and for trespass. Both the Appellate and District Court for the Southern District of Florida

cited the well settled law that the determination of whether a craft is a vessel focuses not on its present condition or use but whether its use as a means of transportation on water is a "practical possibility," in accordance with 1 U.S.C. § 3 and *Stewart v. Dutra*, 543 U.S. 481, 484 (2005).

In January of this year, the U.S. Supreme Court Case No. 11-626 reversed the Eleventh Circuit, stating that its interpretation of "transportation" was too broad. Citing its decision in *Stewart*, the Supreme Court stated that the definition of "transportation," the conveyance of persons or things from one place to another, must be applied in a practical way. "Consequently, a structure does not fall within the scope of the statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water. ... But for the fact that it floats, nothing about Lozman's home suggests that it was designed to any practical degree to transport persons or things over water."

The City's arguments, that such a purpose-based test may introduce a subjective element into "vessel" determinations, that such criteria may be too abstract, complex, or open-ended, and that Lozman's floating home was actually used for transportation over water, were unpersuasive....

Justice Sotomayor, joined by Justice Kennedy, dissented with the majority's opinion: "If windows, doors, and other esthetic attributes are what take Lozman's craft out of vessel status, then the majority's test is completely malleable" and concluded that "[christening] Lozman's craft a nonvessel delivers an analysis that will confuse the lower courts and upset our longstanding admiralty precedent."

Email me barbcook@barbcooklaw.com if you would like a copy of the interesting decisions. **Note:** All maritime articles previously published in the *SideBar* are available for viewing and download from my website: www.barbcooklaw.com.

