On January 15, 2013, the Supreme Court, in a majority decision with two justices dissenting, ruled that a so-called “floating home” which did not have self-propulsion and essentially consisted of a house-like plywood structure with French doors floating on an empty bilge space, did not come within the definition of a vessel under 1 U.S.C. § 3 and therefore was not subject to maritime law. Lozman v. City of Riviera Beach, docket 11-626, 568 US ___ (1/15/2013).

The plaintiff purchased the floating home in 2002, and towed it from one marina to another on several prior occasions. At the time of the lawsuit, the home was moored at a marina owned by the city of Riviera Beach (the city) where it was docked. The city attempted to evict the plaintiff due to several disputes over dockage fees and other issues. After the city was unsuccessful in its eviction attempts, it brought a federal admiralty lawsuit in rem against the floating home, contending it was a vessel under 1 U.S.C. § 3 and, therefore, subject to a maritime lien for dockage fees and damages for trespass. 1 U.S.C. § 3 defines a vessel as including “every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.” The city ultimately took possession of the structure and had it destroyed. Both the District Court and the 11th Circuit Court of Appeals sided with the city and upheld the assertion of maritime jurisdiction and the validity of the maritime lien.

In its reversal, the Supreme Court seems to step back from the very expansive view it expressed in an earlier decision, Stewart v. Dutra Construction Co., 543 U.S. 481 (2005), wherein it held that a dredge, which consisted of a massive floating platform from which suspended clam shell buckets removed silt from the ocean floor, constituted a vessel. The Stewart Court essentially based its holding on the fact that it was capable of movement (even though it was not self-propelled), and it served a water borne transportation function, further to the work it performed with regard to the dredging of a channel in Boston Harbor.

The Lozman Court distinguished Stewart based on the physical nature of the floating home; the fact that it was not capable of being used as a means of transportation over water; and that it was actually not being used for transportation, even if it was actually possible to use the home for transportation in a limited way. In so deciding, the Court expressly rejected the “anything that floats” test used by numerous courts in the past. Instead, the Court applied a “practical” rather than theoretical test with regard to whether the structure was transporting or capable of transporting goods or persons from one place to another. Quite amusingly, the Court noted that “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.” The Court pointed to the critical language in 1 U.S.C. § 3 of “capable of being used as a means of transportation on water” to illustrate the distinction between the dredge in Stewart and plaintiff’s floating home.
Justice Sotomayor, joined by Justice Kennedy dissented, not so much as to the standard applied, but with regard to the fact that the Court did not feel it needed to remand the case for further factual determinations. Justice Sotomayor expressed the view that the record was inadequate with regard to the characteristics of the home and whether it actually could conceivably meet the standard set forth in 1 U.S.C. § 3. She also took issue with the fact that the majority held that the design of the doors and windows could have some effect on the issue of whether the structure was or was not a vessel.

The decision is of importance to maritime practitioners because the nature of the structure essentially determined whether or not federal maritime jurisdiction attached and, more significantly, whether a maritime lien could be asserted against the structure as was contended by the city. Because the structure was not deemed a vessel, the Court held the city’s action was without jurisdiction and the maritime lien invalid. Another important aspect of the decision is that the characterization of whether a structure is a vessel has numerous ramifications with regard to regulatory issues, such as (1) whether state authorities or the Coast Guard have jurisdiction over the structure; (2) whether the Jones Act applies to employees working on the structure; and (3) whether general principles of maritime law apply with regard to accidents involving the structure or damages caused by the structure itself.

Cozen member Christopher Kende, an adjunct professor of maritime law at Brooklyn Law School, joined in an amicus brief submitted on behalf of 36 admiralty and maritime law professors, seeking affirmance of the 11th Circuit decision.