No. 11-626

In the Supreme Court of the United States

FANE LOZMAN,
Petitioner,
v.
THE CITY OF RIVIERA BEACH, FLORIDA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF NATIONAL MARINE BANKERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

DENNIS K. EGAN
Counsel of Record
JAMES Y. STEWART
BRANDON J. WILSON
KOTZ SANGSTER WYSOCKI P.C.
400 Renaissance Center, Suite 3400
Detroit, MI 48243
(313) 259-8300
degan@kotzsangster.com

Counsel for Amicus Curiae

July 19, 2012

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

REGULATIONS

OTHER

STATEMENT OF INTERESTS OF *AMICUS CURIAE*[1]

Amicus is the National Marine Bankers Association ("NMBA"), a national trade association consisting primarily of commercial banks, private financing firms, savings and loan companies, credit unions and retail service companies that extend or originate credit to consumers, retailers/dealers and manufacturers of recreational boats and equipment. The NMBA also includes organizations and individuals that provide ancillary services to marine lenders such as documentation servicers, remarketers, insurance agencies and maritime attorneys, among others.

The goal of the NMBA is to educate current and prospective lenders in marine financing procedures, promote credit to consumer and trade borrowers, maintain alliances with industry partners, measure and report on the vitality of the marine lending market, and maintain networking and communication among members and associate members. The NMBA also serves as a liaison between marine lending institutions in the recreational marine loan industry and the boating public.

The issues raised in this case are of significant importance to *Amicus* and its members, and have the

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[1] All parties have consented to the filing of this brief, and their consent letters are on file with the Clerk's office. Pursuant to Supreme Court Rule 37.6, *Amicus* states that no counsel for a party authorized this brief in whole or in part. Boat Owners Association of the United States, through its subsidiary, Seaworthy, has made a monetary contribution to the preparation or submission of this brief.

potential to affect a significant sector of the national economy. In 2011, the recreational boating industry generated $32.3 billion in new sales and services with a total annual economic impact of $72 billion. National Marine Manufacturers Association, *2011 Recreational Boating Statistical Abstract*, iv (2012). There are approximately 12.4 million registered boats in the United States. *Id., at v.* Boating is a family activity and not just for the wealthy – 77% of all boat owners have an average median household income of **less** than $100,000.00, and 63% had a household income of less that $75,000. *Id., at iv*. Thus, whether purchasing small or large boats, used or new, most boat owners require and rely on the availability of financing from marine lenders, including NMBA members.

NMBA members literally and figuratively occupy the front line of the United States boating industry. With new boat sales at lows not seen for decades, the potential negative consequences of the Court's decision on this important industry cannot be understated. If the Court adopts Petitioner's position and reverses the court below, a previously tight, but recovering, credit market may experience further tightening, resulting in a continued decline in sales of new and used boats in the United States. In sum, *Amicus* and its members, as well as their customers, require a clear and objective standard for determining a vessel's status for purposes of invoking federal admiralty jurisdiction at the time of extending credit on watercraft, not years later. *Amicus* believes this Court's decision in *Stewart v. Dutra Construction Co.,* 543 U.S. 481, 496 (2005), effectively met that need. Petitioner is seeking to advance a dangerous test for determining vessel status which would include considerations other than the

practical capability of the boat. *Amicus* have a substantial interest in this case.

SUMMARY OF ARGUMENT

Marine financing has become a complicated and cumbersome process fraught with more than 100 years' worth of conflicting legislation, court decisions and government regulations. *See, e.g.* Robert M. Jarvis, *Secured Transactions in Florida, Chapter 12-F Marine Financing*, Florida Bar, 1982, 1991, 1996, p. 3.

Marine lenders extend credit for the purchase of boats and other floating vessels, in large part because of protections afforded marine lenders under federal maritime law. Those protections include the ability to simultaneously foreclose a preferred ship mortgage via an *in rem* proceeding and pursue a deficiency judgment via an *in personam* claim against the maker, guarantor, or ship mortgagor in federal court. If Petitioner's position is accepted, marine lenders may be denied access to federal courts based upon the subjective intent and whimsical desires of the owners of watercraft. As this Court attempts to clarify the test for determining vessel status, it should not lose sight of the protections historically afforded marine lenders and the damage Petitioner's test for determining vessel status would cause to the boating industry.

Petitioner is advancing a position that will further complicate, and potentially eviscerate, protections historically provided marine lenders under federal maritime law. If Petitioner's position is adopted, marine lenders would have no idea at the time of making a marine loan whether the watercraft they

seek to lend against is a vessel, real estate, personal property or something else, and what, if any, remedies they may rely on to enforce their interest therein. Furthermore, marine lenders would be faced with the possibility that, at a later date, a once-valid marine security interest in a watercraft (their collateral) could be voided or adversely affected because the watercraft is later no longer deemed to be a "vessel," and the paperwork prepared at the time of the loan does not cover the watercraft's new status. The result would be to strip marine lenders of remedies long relied upon when extending credit on vessels and to discourage future marine lending. The resultant uncertainty would devastate the marine lending industry and the availability of credit for vessels. The recreational boating industry would be crippled.

Far from expanding the definition of "vessel", the reasoning employed by the Eleventh Circuit in the decision below, reflects a legally correct and common-sense approach to determining "vessel" status made clear by this Court in *Stewart*. Oppositely, Petitioner seeks to advance a test for determining vessel status that focuses, in large part, on the subjective intent of the owner. Petitioner's proposed test is legally flawed and impractical.

ARGUMENT[2]

I. Marine Lenders Rely Upon Federal *In Rem* And *In Personam* Jurisdiction As Security For Extending Marine Credit.

A. Congress's Passage Of The Ship Mortgage Act of 1920 And Enforcement Of Preferred Ship Mortgages Spurred On Marine Lending.

Prior to 1920, mortgage liens on vessels could not be enforced under admiralty law in federal court. Thus, lenders and creditors were left with little recourse to enforce their rights. *See Dietrich v. Key Bank*, 72 F.3d 1509, 1512 (11th Cir. 1996). To "encourage investment in shipping," in 1920, Congress enacted the Ship Mortgage Act, 41 Stat. 1000 (1920) (replaced in 1989 with the Maritime Commercial Instruments and Liens Act, Pub. L. 100-710, 102 Stat. 4739 (1988)) (the "Act"), which created remedies for lenders under federal maritime law. *Dietrich*, 72 F.3d, at 1513. Specifically, "[t]he Ship Mortgage Act provided a means through which vessel mortgages could be given preferred status and could be enforced in admiralty."[3] *Id*. A mortgage that complies with the

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[2] Mindful that the parties and other *amici* will thoroughly brief the legal issues in this case, and also of the admonition of Rule 37.1, *Amicus* in this brief will present issues, arguments and relevant factual material that may not otherwise be brought to the Court's attention.

[3] The term "vessel" for purposes of admiralty jurisdiction is defined as "includ[ing] every description of watercraft or other artificial contrivance used, or capable of being used, as a means of

Act "ma[kes] it superior to every kind and character thereafter incurred save liens for crews' wages, general average, salvage and tort claims." *Merchants & Marine Bank v. The T.E. Welles*, 289 F.2d 188, 193 (5th Cir. 1961). As two commentators have aptly stated, "the Act provides the only true protection for a lender." Bertram E. Snyder and Steven B. Borris, *Secured Transactions and Admiralty Law: How to Have Smooth Sailing When the Collateral Is a Vessel*, 13 U.C.C.L.J. 317, 319 (1981).[4]

46 U.S.C. § 31322 defines a preferred mortgage as a mortgage that:

> (1) includes the whole of the vessel;
>
> (2) is filed in substantial compliance with section 31321 of this title;
>
> (3)(A) covers a documented vessel; ****

When a lender holds a preferred ship mortgage, Section 31325 provides a remedy to enforce that lien under federal maritime law:

> (a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding indebtedness secured by the vessel.

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transportation on water." 1 U.S.C. § 3. 46 U.S.C. § 115 provides that "the term 'vessel' has the meaning given that term in section 3 of title 1."

[4] In *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), this Court made clear that admiralty jurisdiction applied to pleasure boats as well as commercial ships.

> (b) On default of any term of the preferred mortgage, the mortgagee may:
>
> > (1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel.

46 U.S.C. § 31325(a) and (b).

B. Default Remedies For Holders Of Preferred Ship Mortgages.

In the event a mortgagor defaults on a preferred ship mortgage, the lender has several available remedies.[5] The mortgage holder may elect to (1), pursue the mortgagor, guarantor or maker of the promissory note *in personam* in federal court under federal admiralty law (46 U.S.C. § 31325(b)(2)(A)); (2), file an *in rem* action against the vessel (as Respondent did in the case at bar) (46 U.S.C. § 31325(b)(1)); or (3), file an *in personam* action against the mortgagor,

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[5] It is unclear whether a change in a ship's vessel status would affect jurisdiction to foreclose a preferred ship mortgage. One court has stated "[t]he subsequent removal of the vessel from navigation would not deprive the admiralty court of jurisdiction to foreclose the preferred ship mortgage." *See* e.g. *New England Fish Co. v. Barge or Vessel Sonya*, 332 F. Supp. 463 (D. Alaska 1971). In contrast, another court has stated, "[a]dmiralty is limited to vessels actively in navigation or only temporarily withdrawn, and "[w]here the facts indicate that a vessel has been indefinitely withdrawn from navigation, she is also regarded as withdrawn from admiralty jurisdiction, and services rendered to her in that state do not give rise to maritime liens." *Mammoet Shipping Co., B.V. v. Mark Twain*, 610 F. Supp. 863, 866 (S.D.N.Y. 1985). This issue is of considerable concern to *Amicus*. It appears Petitioner (and the Fifth and Seventh Circuits) would subscribe to the latter position.

guarantor or maker in state court (46 U.S.C. § 31325(c)).

The ability to file an *in rem* action against the vessel and foreclose a preferred ship mortgage is perhaps the most significant remedy available to marine lenders and creditors. During the pendency of a federal *in rem* action, the lender may request the court to order the vessel be operated by a receiver or seized by the United States Marshals Service. *See* 46 U.S.C. §§ 31325(e)(1) and (2). If the lender is successful in an *in rem* action, the court may order the vessel be sold and the proceeds used to satisfy the preferred ship mortgage. 46 U.S.C. § 31326.

In 1996, Congress recognized the need to allow lenders to foreclose a mortgage and receive a deficiency other than by proceeding in federal court. Congress amended the Ship Mortgage Act in Section 1124 of the Coast Guard Authorization Act of 1996, Pub. L. 104-324, 110 Stat. 3901, 3980 (1996), to allow preferred ship mortgage holders to use authorized state remedies if the mortgage provides for such remedies, and if the exercise of the remedy does not violate certain provisions of the Act. *See* 46 U.S.C. § 31325(b)(3)(A) and (B). Since then, many lenders have elected to self-help repossess vessels rather than burden the court system. However, if it is unclear whether a watercraft classified as a "vessel," or if there is a potential for the watercraft to be deemed to be something other than a "vessel" by the court, the lender may be required to seek a judicial remedy to avoid the consequences of self-help. Even then, if the collateral is not determined to be a vessel, the protection afforded by the Act is not available to the lender.

When necessary, lenders elect to foreclose a preferred ship mortgage by filing suit in federal court naming the vessel and mortgagor, maker and guarantor as defendants in a single case, thus streamlining enforcement, reducing costs and ensuring the strongest protection of its interest. However, if this Court determines that a vessel owner's intent can change the status of a vessel, and, thus, thwart admiralty jurisdiction, the uncertainty will directly impact the lending community. If a vessel's owner initially signed a preferred ship mortgage, but later successfully claims that the ship is no longer a vessel, but, for example, real estate, lenders cannot redo the loan documents at that point. Lacking a real estate mortgage if the collateral is deemed to be real estate, the lender ends up with an unsecured loan. At a minimum, consumers may face higher interest rates to offset the lender's increased risk and uncertainty. At worst, lenders will leave the industry for other lending opportunities.

II. Petitioner Seeks To Advance An Arbitrary, Subjective And Impractical Method For Determining Vessel Status And Invoking Federal Admiralty Jurisdiction.

If the Court adopts the position of Petitioner and the Fifth and Seventh Circuits, marine lenders may be denied access to federal courts, their remedies may be eviscerated, and marine lending will be chilled. Both the Fifth and Seventh Circuits have incorrectly advanced a standard for determining vessel status that relies upon the subjective intent of the owner of the vessel, which can change and be manipulated.

A. The Fifth and Seventh Circuits have ignored *Stewart* by adopting a test for determining vessel status which considers the intent of the boat owner.

In *Howard v. Southern Illinois Riverboat Casino Cruises, Inc.*, 364 F.3d 854, 856 (7th Cir. 2004), the Seventh Circuit concluded that a floating casino was not a vessel because it was not used or intended to be used for the purpose of moving or transporting. Likewise in *De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185 (5th Cir. 2006), the Fifth Circuit concluded that a floating casino was not a vessel because "the Defendants d[id] not intend to use it as such. Rather, their intent [wa]s to use it solely as an indefinitely moored floating casino." *Id.* at 187. Finally, in *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006), the court opined that "[y]et maybe by analogy to the difference between domicile and residence a boat also is 'permanently' moored when its owner intends that the boat will never again sail, while if he has not yet decided its ultimate destiny it is only 'indefinitely' moored. These are matters for exploration on remand." *Id*. at 1016.

As the Eleventh Circuit has pointed out, formulating a test for determining federal admiralty jurisdiction based upon the highly subjective, self-serving, arbitrary and capricious intent of the owner of the vessel is unworkable:

> The owner's intentions with regard to a boat are analogous to the boat's "purpose," and *Stewart* clearly rejected any definition of "vessel" that relies on such a purpose. See *id*. [543 U.S.,] at 497, ("Under § 3, a 'vessel' is any watercraft

> practically capable of maritime transportation, regardless of its primary purpose ...."). Further, such a test is incompatible with the Supreme Court's focus on providing uniformity within admiralty jurisdiction. [*Doe v.*]*Celebrity Cruises, Inc.*, 394 F.3d [891 (11th Cir. 2004),] at 902 ("[T]he purpose behind the exercise of this Court's admiralty jurisdiction is to provide for the uniform application of general maritime law.").
>
> Under *Tagliere* and *De La Rosa*, a boat may enter and leave admiralty jurisdiction on the basis of state law and the individual thoughts of the boat owner as to what use of the boat is most desirable. As the Louisiana legislature demonstrated by its actions in 2001, state law can change. Further, if legal navigability is the test for vessel status, any ship with an expired Coast Guard certification becomes a non-vessel, and those working upon it and around it lose their protection under the Jones Act or the LHWCA. Such a result is clearly not what the Supreme Court intended. *See Stewart,* 543 U.S. at 494, 125 S.Ct. 1118 (noting that seamen do not lose their protection under the Jones Act due to minor changes in ship location). Also, an owner's intentions may change in ways never anticipated.

Board of Comm'rs of the Orleans Levee Dist. v. M/V Belle of Orleans, 535 F.3d 1299, 1311-12 (11th Cir. 2008).

This Court has previously demonstrated its desire to provide uniformity within admiralty jurisdiction

and the application of maritime law. *See, e.g., Norfolk S. Ry. Co. v. James N. Kirby, Pty. Ltd.*, 543 U.S. 14 (2004) (collecting cases). The possibility of a boat's entering and exiting vessel status on the whim of an owner would cause havoc in the marine financing industry, leaving lenders to wonder whether an *in rem* or *in personam* claim filed in federal court would be dismissed for lack of jurisdiction because the owner of a watercraft changed his mind and no longer intended that the boat be used for transportation on the water.

The practical absurdity from the lender's prospective of considering an owner's intent for purposes of determining vessel status is demonstrated by the recent unreported decision in *Louisiana International Marine, LLC v. Drilling Rig Atlas Century*, No. C-11-186, 2012 WL 1029934 (S.D. Tex. Mar. 9, 2012).[6] The case involved an oil drilling rig

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[6] For a more high-profile example of an owner changing its intent with respect to a vessel, *see also* http://maritime-executive.com/article/cruise-ship-queen-elizabeth-2-to-become-dubai-floating-hotel ("Dubai purchased the *Queen Elizabeth 2* (QE2) cruise ship from Cunard cruise line for $100 million in 2007. An official decision on what to do with the liner have been decided on with plans to transform it into a floating hotel fitted with many of the vessel's original furnishings. The ship will remain in the downtown Port Rashid facility to serve as a tourist attraction alongside a projected maritime museum and an expanding cruise ship terminal complex. The newly-announced plans are slightly different than initially proposed. Before Dubai's economy took a turn for the worse, developers intended on carrying out an extensive overhaul on the luxury liner and converting it into an exclusive hotel docked by one of the sheikdom's manmade islands. The chairman of Istithmar World – the ship's owner – said he expects the 300-room hotel to open within 18 months, according to the Washington Post.")

known as the *Atlas Century*. The rig was constructed in 1973, and removed from service in 1998. Its hatches were battened down and operations shuttered. In 2003, the *Atlas Century* was purchased by a new owner. Apparently the rig remained idle. In 2010, the rig was again sold, this time to the defendant, KTM. KTM received financing to purchase the rig on the premise that it would dismantle the rig and sell it for scrap. But the *Atlas Century* was never scrapped. Instead, in 2011, KTM entered into several contracts, including an agreement with the plaintiff, to have the rig towed from its location in Texas to Dubai. KTM eventually used a different company than the plaintiff to tow the *Atlas Century*. The plaintiff subsequently filed an *in rem* action against the *Atlas Century* and an *in personam* claim against KTM in federal court for breach of its towing agreement with KTM. In opposition to the claim, several intervening parties, aligned with KTM, argued that the *Atlas Century* was a "dead-ship", not a "vessel," and therefore the court had no jurisdiction.

The district court concluded that at the time the rig was purchased by KTM it was not a vessel, because KTM intended to scrap the rig. "The fact that Bayfront and Basic provided financing on the understanding that the rig would be 'dismantled and sold for scrap value' suggests that no entity even contemplated returning the rig back to active service at that time." *Id*. at 4. However, the court went on to find that at the time the *Atlas Century* was towed it was a vessel, because KTM had assured its towing contractors that the *Atlas Century* was "seaworthy and capable of floating without additional work or equipment." *Id* at 5. While nothing structurally changed between 2010 and 2011 on the *Atlas Century*

to make it more seaworthy (in fact pieces of the rig were actually removed during this time), the owner's intent regarding the rig changed, and, thus, the rig literally floated in and out of federal admiralty jurisdiction. The Court stated that "[t]he Fifth Circuit, however, recognizes that a shipowner's intent may play a significant role in determining whether a structure was 'permanently moored' and therefore not practically capable of use as a means of transportation on the water." *Id*. at 7. The court reached this conclusion despite recognizing that "[t]he Supreme Court's analysis in *Stewart* focused solely on the physical characteristics… and the Court devoted no discussion … to the owner's subjective intent or plans." *Id*.

While the Fifth and Seventh Circuits wrongly consider the subjective intent of the owner, more concerning is the apparent acknowledgement in these circuits that *Stewart* directed the focus (quite clearly) of determining vessel status on the objective physical capability of the craft. The result has been that litigants seeking to invoke federal admiralty jurisdiction over disputes concerning what appear to be vessels are subjected to a proverbial jurisdictional "hokey pokey."

Petitioner's own argument further demonstrates this point. Petitioner now claims that his "floating home" is more akin to real estate.[7] (See Petitioner's

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[7] Petitioner has secured the vessel no more permanently than most watercraft at marinas throughout the United States. A majority of marinas have dock boxes which provide watercraft with electrical and water connections. Marinas offer "power pedestals" which provide electricity, water, and now services such

Brief, p. 16)("regulation of such structures is better left to land-based law."). Under Petitioner's proposed test for determining vessel status, a marine lender faced with the prospect of lending against Petitioner's "floating home" would have no idea how to characterize the collateral. Is the collateral a vessel, real property, personal property, or something else? A lender would also have no ability to know what remedies, if any, it would have to enforce its interest in the collateral.

Moreover, the collateral can subsequently change character with the intent of the owner. If so, this change in character affects the rights and remedies previously provided to the lender. If lenders had no idea whether the collateral was real estate, personal property, or a vessel, how would the lender secure its collateral? Would a real estate mortgage be required, a UCC financing statement, or preferred ship mortgage? Perhaps all three methods of securing collateral would be required. If a real estate mortgage were required, what legal description would be used? Moreover, many national recreational lenders rely on preemption protections afforded to national banks by the decision in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), to operate in many, if not all fifty states. If a marine lender needed to satisfy the individual requirements for each state to operate in

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as cable television, internet service and telephone service. Bill Moses, *The Power Pedestal: Past, Present and Future*, 24 Marina Dock Age, Mar. 2011, at 40. Petitioner's vessel was attached to the dock with ordinary ropes, an extension cord and a common water hose. Thus, counter to Petitioner's claims, his vessel was by no means permanently moored, and a vessel having utility connections at a marina is not unusual.

that state as a recreational lender, as with real estate mortgages, many lenders would cease making recreational boat loans.

Under the circumstances, even if this Court accepts Petitioner's argument, at a minimum, its decision should be clear that once a preferred ship mortgage is granted, admiralty jurisdiction continues until the mortgage is discharged or the mortgagee consents, notwithstanding a subsequent change in the intent of the owner. The security of the lender must remain valid much like the procedure set forth in 46 C.F.R. § 67.161, which provides that a Certificate of Documentation once issued to a vessel which is subject to an outstanding filed and recorded mortgage, remains valid for purposes of the Act, despite the fact that the vessel owner fails to renew the Certificate of Documentation. Similarly, once a vessel is documented and a preferred ship mortgage recorded against it, the vessel should remain subject to the Act, notwithstanding any subsequent action or change of intent by the owner.

The test discussed in *Stewart*, and followed by the Court of Appeals below, correctly considers the practical capability of the watercraft. This test leaves little, if any, uncertainty by lenders and borrowers as to whether a watercraft is a vessel and subject to federal admiralty jurisdiction. More importantly, the test bars the owner of a watercraft from manipulating the character of the watercraft for purposes of frustrating a lender's interest therein. The point is to avoid a subjective, boat-by-boat, day-by-day inquiry as to the character of a watercraft.

Absent a broad and objective standard for determining vessel status, lenders cannot assume the economic risk attendant to lending on what they believe are vessels only to learn later that they have no enforceable security interest after an owner's change of mind. If watercraft can pass in and out of vessel status based upon the subjective intent of an owner, marine lending will drastically decrease.

B. Under Petitioner's proposed test, *Amicus's* members could not rely on documentation executed in connection with marine loan transactions.

If Petitioner succeeds in his objection to federal admiralty jurisdiction, in the face of a written agreement to the contrary, *Amicus's* members would lose federal remedies, even after a borrower contractually acknowledges that his or her watercraft is a vessel subject to a maritime lien and federal jurisdiction. Petitioner acknowledged in his written agreement (the "Agreement), with the Riviera Beach Marina that his watercraft was a "vessel" and was subject to federal admiralty jurisdiction. The Agreement provides in part:

> Owners of *vessels* assigned slips, moorings, or dry-storage spaces as may be specifically designated by the City at Marina facilities agree to relinquish their berth when requested by the City.... [T]he City may at any time, in its absolute discretion, require the Owner to remove the *vessel* from its assigned storage area to another storage area within the Marina, and

> if the Owner fails to comply, the City shall have the right to move the *vessel* itself.

JA13-14. (emphasis added).

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> In addition to any other remedies provided for in this Agreement, the Marina, as a provider of necessities to this vessel, *has a maritime lien on the vessel and may bring a civil action in rem, under 46 United States Code 31342 in Federal Court*, to arrest the vessel and enforce the lien and shall not be required to allege or prove in such action that credit was given to the vessel.

JA15. (emphasis added).

Although Petitioner in this case granted no preferred ship mortgage, had he had done so, his argument would arguably invalidate that mortgage.

To the extent that a ship's change in vessel status can preclude a lender from invoking federal admiralty jurisdiction to foreclose a preferred ship mortgage, and such a change can be precipitated by an owner's intent, *Amicus* and its member lenders stand to lose the substantial federal protections historically provided marine lenders, resulting in decreased access to credit for consumers and the marine lending industry alike. Most alarming is that even when the boat owner, such as Petitioner, agrees and acknowledges that a watercraft is a vessel and subject to federal admiralty jurisdiction, the owner's subsequent intent that the watercraft is not a vessel can effectively trump a prior agreement to the contrary. Confirming such a test

would serve to encourage borrowers to manipulate the lender's collateral and further strain an already fragile recovery in the marine lending industry. Lenders need certainty when lending, and Petitioner's position would open the door to self-serving, after-the-fact manipulations by vessel owners which would gut the marine lien system.

CONCLUSION

For the foregoing reasons, *Amicus* requests that the Judgment of the Court of Appeals be affirmed.

Respectfully submitted,

DENNIS K. EGAN
Counsel of Record
JAMES Y. STEWART
BRANDON J. WILSON
KOTZ SANGSTER WYSOCKI P.C.
400 Renaissance Center, Suite 3400
Detroit, MI 48243
(313) 259-8300
degan@kotzsangster.com

Counsel for Amicus Curiae

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