

No. 17-1582

**In The
Supreme Court of the United States**

CARL JOSEPH BENOIT and
PATRICIA FAYE BENOIT,

Petitioners,

v.

ST. CHARLES GAMING COMPANY, INC.,

Respondent.

**On Petition For A Writ Of Certiorari
To The Third Circuit Court Of Appeal
State Of Louisiana**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should exercise its discretion to grant certiorari in a matter decided by an intermediate appellate state court, applying this Court's precedent to determine that a floating casino which has been moored for more than sixteen years is no longer a "vessel" for purposes of general maritime law, and when that decision maintains consistency on the issue between the state and federal courts.

**PARTIES TO THE PROCEEDING &
CORPORATE DISCLOSURE**

Petitioners are Carl Joseph Benoit and Patricia Faye Benoit.

Respondent is St. Charles Gaming Company, LLC, a wholly owned subsidiary of IOC Holdings, L.L.C., which is a wholly owned subsidiary of Isle of Capri Casinos, LLC, which is a wholly owned subsidiary of Eldorado Resorts, Inc., a publicly traded company.

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The opinion of the 14th Judicial District Court, State of Louisiana is reproduced in Petitioners' Appendix, pp. 15-27. The opinion of the Third Circuit Court of Appeal, State of Louisiana, is available at *Benoit v. St. Charles Gaming Co.*, 2017-101 (La. App. 3 Cir. 11/8/17), 230 So. 3d 997, and is included at Petitioners' Appendix, pp. 1-14. The Louisiana Supreme Court writ application denial is available at *Benoit v. St. Charles Gaming Co.*, 233 So. 3d 615 (La. 2018), and is included at Petitioners' Appendix, pp. 28-29.



LIST OF CONSTITUTIONAL AND STATUTORY PROVISIONS

1 U.S.C. § 3

The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. (July 30, 1947, c. 38861 Stat. 633).

La. R.S. 27:65(B)(1)(c)

For all licensees other than those licensed pursuant to La. R.S. 27:65(B)(1)(a) or (b), gaming may only be conducted on a riverboat while it is docked and the licensee shall not conduct cruises or excursions. A riverboat gaming licensee authorized to conduct gaming on a riverboat while it is docked pursuant to this Subparagraph shall pay the franchise fee in the amount provided in La. R.S. 27:91(C)(1) and the

additional franchise fee in the amount provided in La. R.S. 27:91(C)(2).

◆

STATEMENT OF THE CASE

This case arises out of an incident that occurred on August 28, 2013, involving a former employee of St. Charles Gaming, Mr. Benoit, who alleges that he sustained injuries while replacing ceiling tiles on the gaming floor of the Grand Palais in Westlake, Louisiana.

As a result of his alleged injuries, Mr. Benoit received and continues to receive compensation and medical benefits under the Louisiana Workers' Compensation Act.

La. R.S. 23:1032 provides that "the rights and remedies granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation" are "exclusive of all other rights, remedies, and claims for damages." Despite this, on February 10, 2014, Mr. Benoit and his wife filed suit against St. Charles Gaming in the 14th Judicial District Court for the Parish of Calcasieu. They asserted claims under general maritime law and the Jones Act, 46 U.S.C. § 30104, *et seq.*, based on Mr. Benoit's employment at St. Charles Gaming's Grand Palais on August 28, 2013.

Prior to March 24, 2001, the Grand Palais cruised periodically, as the gaming laws of Louisiana then required. On March 24, 2001, the Louisiana Legislature

amended La. R.S. 27:65 to mandate that casinos remain moored in order to continue operating as gaming establishments. After the amendment to La. R.S. 27:65, the Grand Palais ceased all cruising operations, and it has remained moored at its location in Westlake, Louisiana.

The Grand Palais is moored by nylon mooring lines and steel wire cables. Additionally, the Grand Palais is connected to land via shoreside utility lines, with supply shoreside electricity, water, telephones, sewerage, cable television, and computer systems, regarding gaming and food, beverage, and sales. The Grand Palais is also connected to the shore by means of the guest entrance—a large steel structure incorporated into the interior of the land-side Isle of Capri Pavilion building via a 40 foot by 40 foot hole cut into the side of the Grand Palais.

After the end of discovery, on February 19, 2016, St. Charles Gaming filed in the district court a motion for summary judgment, asking the trial court to rule that the Benoits had no cause of action against St. Charles Gaming because their claims were covered by La. R.S. 23:1032 of the Louisiana Workers' Compensation Act and because the Grand Palais is not a vessel for purposes of general maritime law, certainly not a vessel in navigation with which Mr. Benoit had a substantial connection as Mr. Benoit never sailed with the Grand Palais after March 2001 and was not sailing at the time of his alleged injury.

On May 2, 2016, the Benoits filed a cross-motion for summary judgment, requesting the district court to conclude that, on August 28, 2013, the Grand Palais was a vessel in navigation, and that Mr. Benoit was entitled to the benefits of seaman status under the Jones Act and general maritime law. On August 25, 2016, St. Charles Gaming filed its reply to the Benoits' cross-motion for summary judgment.

On September 9, 2016, both motions came before the district court. Thereafter, the district court, through Judge David Ritchie, issued a ruling in which it denied St. Charles Gaming's motion for summary judgment and granted the Benoits' cross-motion. On October 27, 2016, in conformity with article 1915 of the Louisiana Code of Civil Procedure, the district court entered a partial final judgment declaring that "the Grand Palais was a 'vessel in navigation' at the time of Mr. Benoit's injury; therefore, Mr. Benoit was a 'seaman' under the general maritime law and the Jones Act at 46 U.S.C. 30104." St. Charles Gaming timely moved the district court to issue an order granting it a devolutive appeal. The district court entered that order on November 23, 2016.

The matter was submitted initially to a panel of three judges of the Louisiana Third Circuit Court of Appeal. Pursuant to Rule 1-5 of the Uniform Rules of the Courts of Appeal, however, the matter was decided by a panel of five judges.

On November 8, 2017, the five-judge panel of the appellate court issued its judgment and written

opinion, reversing the summary judgment that the district court granted in favor of the Benoits and rendering judgment in favor of St. Charles Gaming. The Benoits requested the Louisiana Supreme Court to grant a writ to review and reverse the decision of the Louisiana Third Circuit Court of Appeal. The Louisiana Supreme Court, on February 2, 2018, denied the Benoits' application. Thereafter, the Benoits filed their Petition with this Court.



REASONS FOR DENYING THE PETITION

- 1. There is no practical conflict between the decision below and any other court warranting this Court exercising its discretion and granting certiorari review under Rule 10(b) of the Rules of the Supreme Court of the United States.**

The Petition does not identify a conflict worthy of certiorari review because the lower appellate court's decision, regarding the "vessel status" of a riverboat casino under general maritime law, is consistent with the decisions reached by other state and federal courts concerning another almost identical casino St. Charles Gaming owned, and because these decisions (and that of the lower appellate court) align with this Court's interpretation of "vessel status" in *Lozman v. City of Riviera Beach, Florida*, 568 U.S. 115 (2013).

In other words, when the Louisiana Third Circuit Court of Appeal ruled, the question presented was not

an issue of first impression. “Whether a riverboat casino is a vessel under general maritime law, 1 U.S.C. § 3, ha[d] been addressed” not only by the state appellate court, in *Breaux v. St. Charles Gaming Co.*, 2010-1349 (La. App. 3 Cir. 6/22/11), 68 So. 3d 684,¹ but also by the United States Fifth Circuit Court of Appeals, in *De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185 (5th Cir. 2006).²

In each case, “the courts considered the physical characteristics and behavior of the casinos, including being moored to the land by mooring lines and steel wire cables with services necessary for the casinos’ operations being provided by land-based sources, not having sailed since 2001, and not engaging in any maritime activity since 2001 to conclude that the [St. Charles Gaming casino in question was] not a vessel.” Petitioners’ Appendix, p. 6.

There is no dispute that “under essentially identical facts” these other courts held that “riverboat casinos like the Grand Palais are not vessels” and that, in particular, St. Charles Gaming’s casinos are not vessels, Petitioners’ Appendix, p. 6. Nevertheless, Petitioners argue that this Court should grant certiorari because a similar finding by the lower appellate court here will “re-ignite[] a conflict” on an issue “this Court

¹ See *Lemelle v. St. Charles Gaming Co.*, 2011-255 (La. App. 3 Cir. 1/4/12), 118 So. 3d 1.

² See *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995); *Martin v. Boyd Gaming Corp.*, 374 F.3d 375, 377 (5th Cir. 2004).

previously attempted to resolve” in *Lozman v. City of Riviera Beach, Florida*. Petition, p. 6.

That simply is not accurate. This Court’s interpretation of “vessel status” in *Lozman* did not alter the precedential value of the cases the lower appellate court considered and cited. Indeed, a principal reason this Court granted certiorari in *Lozman* was to compare the Fifth Circuit’s holding in *De La Rosa* with a conflicting decision out of the Eleventh Circuit, *Board of Commissioners of Orleans Levee Dist. v. M/V Belle of Orleans*, 535 F.3d 1299 (11th Cir. 2008). The Court squarely rejected the Eleventh Circuit’s view and left the Fifth Circuit’s decision in *De La Rosa* untouched. As a result, the lower appellate court’s decision in this matter prevents (rather than “re-ignites”) a conflict between the state and federal courts that would otherwise improperly allow plaintiffs to choose the law applicable to their cases. This Court’s review of the lower appellate court’s decision is unnecessary. The Court should deny the Petition.

2. The lower appellate court’s application of law is consistent with this Court’s decision in *Lozman v. City of Riviera Beach, Florida* and there is no compelling reason for this Court to grant certiorari review under Rule 10(c) of the Rules of the Supreme Court of the United States.

The lower appellate court’s decision promotes judicial consistency. Additionally, its decision is not

based solely on state and federal decisions holding that indefinitely moored casinos (and in particular St. Charles Gaming’s casinos) are not vessels. The lower appellate court conducted its own analysis and followed the mandates of this Court in *Lozman* to determine that a floating casino moored for more than sixteen years is not a vessel for purposes of general maritime law.

1 U.S.C. § 3 “defines a ‘vessel’ to include ‘every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.’” In *Lozman*, this Court explained that this “‘statutory definition *may* (or may not) apply—not that it *automatically must* apply—where a structure has some other *primary* purpose, where it is stationary at relevant times, and where it is attached—but not permanently attached—to land.’” Petitioners’ Appendix, p. 8 (quoting *Lozman*, 568 U.S. at 124).

Stressing this point, in *Lozman* this Court directed that “all criteria on ‘purpose’ should be considered” because “it is difficult, if not impossible, to determine the use of a human ‘contrivance’ without some consideration of human purposes.” Petitioners’ Appendix, p. 8 (quoting *Lozman*, 568 U.S. at 128). The lower appellate court followed this Court’s direction. Applying *Lozman*’s precedent to Petitioners’ case, the court considered the attributes of the casino and ultimately determined that even in light of these attributes, on August 28, 2013, the Grand Palais was not a vessel:

The Grand Palais' primary purpose is dockside gambling. For more than sixteen years, it has not engaged in any maritime activity and has been moored at the same location with all operations required for its gaming activities operated via landbased services. It is possible the Grand Palais could be returned to service as a vessel; however, the evidence establishes that for more than sixteen years, it has been indefinitely moored to provide for and maintain its primary purpose of riverboat gaming. Thus, although the Grand Palais was originally designed to transport people over water, we find that as a result of the changes to its physical characteristics, its purpose, and its actual function over the past sixteen years, it is no longer a vessel.

Petitioners' Appendix, p. 10.

In reaching its conclusion, the lower appellate court correctly followed this Court's reasoning that the "vessel status" test should be applied in "a 'practical,' not 'theoretical,' way," and that structures should "not remain vessels merely because of the remote possibility that they may one day sail again." *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 494-96.

There is no reason for this Court to review a decision that considered all the facts and circumstances of a case and then properly applied those to this Court's decision. There is no compelling reason for this Court

to grant certiorari, and the Court should deny Petitioners' application.

CONCLUSION

The lower appellate court applied the precedent from this Court to determine that a floating casino indefinitely moored for more than sixteen years is not a "vessel" for purposes of general maritime law. That decision is correct and it maintains consistency on the issue in the state and federal courts. In sum, the Petition fails to identify an issue that warrants this Court's review under Rule 10 of the Rules of the Supreme Court of United States. The Court should deny the Petition.

Respectfully submitted,

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