

**IN THE IOWA DISTRICT COURT IN AND FOR RINGGOLD COUNTY**

<b>SUN VALLEY IOWA LAKE ASSOCIATION,</b>	:	
	:	<b>No. CVCV506844</b>
<b>Plaintiff,</b>	:	<b>RULING – MOTIONS FOR SUMMARY JUDGMENT</b>
<b>v.</b>	:	
<b>JOE ROMARE, THE BEST LIFE EVER 2018 TRUST and FOR THE KIDS XII LLC,</b>	:	
<b>Defendants.</b>	<b>— : —</b>	

The above matter came on for hearing on multiple pending motions on September 16, 2024. Plaintiff (SVILA) appeared by its attorneys Sean Moore, Zoe Ginther and John Hunter. Defendants (Romare) appeared with their attorneys Billy Mallory and Trevor Jordison.

Specifically addressed in this Ruling are multiple motions for partial summary judgment, including: 1) a motion for partial summary judgment filed by SVILA on June 11, 2024, asking the Court to rule as a matter of law Sun Valley Lake is a private lake; 2) a motion for partial summary judgment filed by SVILA on July 29, 2024, seeking to resolve multiple issues related to this litigation; 3) Romare’s 7<sup>th</sup> motion for partial summary judgment filed July 30, 2024, urging compelled membership in SVILA is a use restriction subject to Iowa’s Stale Uses and Reversions Act; 4) Romare’s “renewed” motions for summary judgment 1-6 filed July 31, 2024; 5) Romare’s 8<sup>th</sup> motion for partial summary judgment filed July 31, 2024, arguing Romare’s membership in SVILA is optional as a matter of law; and 6) SVILA’s 3<sup>rd</sup> motion for partial summary judgment seeking to clarify the definition for a “vessel” in the context of this case. Multiple other motions argued at the September 16, 2024, hearing are addressed in other Orders to be filed herein.<sup>1</sup>

<sup>1</sup> Following hearing on the motions, SVILA withdrew a renewed motion for temporary injunction filed August 22, 2024.

## I. Summary Judgment Standard

Summary judgment is appropriate when the moving party establishes there are no genuine issues as to relevant material facts and the moving party is entitled to judgment as a matter of law.<sup>2</sup> In making that determination, the facts are viewed in a light most favorable to the party against whom the motion is asserted and the nonmoving party is afforded every legitimate inference the record will bear.<sup>3</sup>

In responding to a motion for summary judgment, the resisting party “must set forth specific facts which constitute competent evidence showing a *prima facie* claim.”<sup>4</sup> If reasonable minds can differ as to a particular material fact, summary judgment should not be granted.<sup>5</sup>

A fact is “material” only when its determination might affect the outcome of the suit.<sup>6</sup> A “genuine” issue of material fact exists if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party.<sup>7</sup>

## II. Procedural Background

This case was initiated in a Petition originally filed on June 12, 2023, by SVILA against Romare (D0003). An Amended Petition was filed on July 3, 2023 (D0012). In its Amended Petition SVILA alleges Romare is in breach of contract by violating certain boating rules and failing to pay annual dues.<sup>8</sup> SVILA also alleges Romare is trespassing on Sun Valley Lake by using the lake without complying with SVILA rules.<sup>9</sup> SVILA seeks money damages for the breach of contract and trespass and requests entry of a

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<sup>2</sup> *Campbell v. Delbridge*, 670 N.W.2d 108, 110 (Iowa 2003).

<sup>3</sup> *Campbell, supra*; *Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005).

<sup>4</sup> *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989).

<sup>5</sup> *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 771 (Iowa 2009).

<sup>6</sup> *Barratta v. Polk County Health Servs.*, 588 N.W.2d 107, 109 (Iowa 1999).

<sup>7</sup> *Whalen v. Connelly*, 593 N.W.2d 147, 152 (Iowa 1999).

<sup>8</sup> Amended Petition, July 3, 2023, ¶ 62 (D0012).

<sup>9</sup> Amended Petition, July 3, 2023, ¶¶ 67-72 (D0012).

permanent injunction barring Romare from continuing to have his watercraft on the lake.<sup>10</sup>

In the Answer, Romare denies the breach of any contractual obligations to SVILA or that a trespass on Sun Valley Lake is occurring.<sup>11</sup> Romare denies he is a member of SVILA or subject to any restrictions on his use of Sun Valley Lake. In a Counterclaim, Romare seeks a determination he is not bound by any use restrictions related to the lake because Sun Valley Lake is a public, not a private, lake.<sup>12</sup>

A series of significant prior Rulings have been filed in this case. On October 2, 2023, a Ruling was filed denying SVILA's request for a temporary injunction banning Romare from the use of the lake.<sup>13</sup> In the Ruling the Court concluded Romare "is a member of SVILA and is subject to their rules and regulations."<sup>14</sup> In the Ruling the Court noted, however, "[t]he burden rests with SILVA to prove that Sun Valley is a private lake because it is a non-navigable body of water that is not open to the general public. Because they cannot carry this burden, at least upon the proof presented so far, the request for the temporary injunction must be denied."<sup>15</sup>

Multiple prior motions for partial summary judgment, filed by each of the parties, have also been considered and ruled upon. In a Ruling filed May 23, 2024, the Court ruled on the applicability of restrictive covenants relative to Romare's use of Sun Valley Lake.<sup>16</sup> In the Ruling, which granted the cross-motion for partial summary judgment filed by SVILA, the Court concluded:

"After affording Romare every legitimate inference to be drawn from the evidence, there is no genuine dispute that: 1) Sun Valley Lake is located in Ringgold County, Iowa; 2) the South Shore Woodlands Subdivision is

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<sup>10</sup> Amended Petition, July 3, 2023, ¶¶ 73-81 (D0012).

<sup>11</sup> Defendants' Answer to Amended Petition, October 23, 2023 (D0124).

<sup>12</sup> Defendants' Answer to Amended Petition, October 23, 2023, p. 33 (D0124).

<sup>13</sup> Ruling on Temporary Injunction, October 2, 2023 (D0118).

<sup>14</sup> *Id.*, p. 5.

<sup>15</sup> *Id.*, p. 10.

<sup>16</sup> Order Denying Defendants' First Motion for Partial Summary Judgment and Granting Plaintiff's Cross-Motion for Partial Summary Judgment, May 23, 2024 (D0216).

an official plat; 3) the Annexation Agreement caused the South Shore Woodlands Subdivision to be incorporated in the Development at Sun Valley Lake; 4) within the South Shore Woodlands Subdivision is the Property locally known as 3121 Big Bend Road; 5) Romare has an ownership interest in the Property; 6) the Annexation Agreement caused the Property to be subject to the terms of the Declaration; and 7) Romare is subject to the Declaration.

These are facts material to the outcome of the case. They are supported by the pleadings and admissions therein as well as the attachments to the pleadings. A reasonable fact finder could not return a decision in favor of Romare regarding these facts.”<sup>17</sup>

The Court concluded, noting “[t]he question of whether Sun Valley Lake is a privately-owned lake restricted to the exclusive use of its owner(s), or whether the Declaration is inapplicable to the Property because Sun Valley Lake is a public lake is reserved for another day.”<sup>18</sup>

In a Ruling filed June 18, 2024, the Court in this case considered Romare’s claims the restrictive covenants at issue are inapplicable because his lot at Sun Valley Lake was improperly annexed and a claim SVILA lacks the authority to enforce the restrictive covenants.<sup>19</sup>

In the Ruling, the Court concluded:

“After affording Sun Valley every legitimate inference that can be reasonably deduced from the evidence, a reasonable fact finder could decide the following. Sun Valley consolidated with an entity, sometimes called the ‘Association,’ which adopted the Declaration. Sun Valley became the Association. According to its Bylaws and pursuant to statute, Sun Valley had the power to contract for the annexation of the Property. Sun Valley contracted with Romare’s predecessor-in-interest to subject the Property to the Declaration. By agreement and statute, Sun Valley took on all the rights, privileges, and every other interest (e.g., authority to enforce the Declaration) belonging to or due each of the merging or consolidating corporations.”<sup>20</sup>

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<sup>17</sup> *Id.*, p. 6.

<sup>18</sup> *Id.*, p. 7.

<sup>19</sup> Order Denying Defendants’ Second and Third Motions for Partial Summary Judgment, June 18, 2024 (D0250).

<sup>20</sup> *Id.*, p. 5 (footnotes omitted).

In a Ruling filed June 24, 2024, the Court considered Romare's contention he was entitled to unrestricted access to Sun Valley Lake pursuant to a purported easement, called the 1978 Covenants.<sup>21</sup> In denying Romare's motion, the Court concluded "the 1978 Covenants only reserved a utility easement to the grantor of what would become the Property. . . The 1978 Covenants' restrictions expired before Romare acquired the Property."<sup>22</sup>

The Court next considered Romare's contention Sun Valley Lake is not a privately owned lake, with its use restricted exclusively to the owners and their guests, but is rather a lake open to the public, used for commercial purposes.<sup>23</sup> In the motion for partial summary judgment Romare contended the rental of lake homes by the owners and Brenna Young's commercial use of the lake disqualify Sun Valley Lake as a "private lake" as that term is defined by the Code:

*"Privately owned lake"* means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests."<sup>24</sup>

As to this contention, the Court concluded "Romare failed to establish the absence of genuine issues as to the private or public status of Sun Valley Lake."<sup>25</sup>

Finally, in ruling on Romare's sixth partial summary judgment motion, the Court was asked to conclude Sun Valley is a public lake because its upstream and downstream tributaries are public "water of the state" pursuant to Iowa Code Chapter 455B and are "navigable" pursuant to Iowa Code § 462A.2(22).<sup>26</sup> The Court denied

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<sup>21</sup> Order Denying Defendants' Fourth Motion for Partial Summary Judgment, June 24, 2024 (D0252).

<sup>22</sup> *Id.*, p. 4.

<sup>23</sup> Order Denying Defendants' Fifth Motion for Partial Summary Judgment, June 26, 2024 (D0254).

<sup>24</sup> Iowa Code § 462A.2(31).

<sup>25</sup> Order Denying Defendants' Fifth Motion for Partial Summary Judgment, June 26, 2024, p. 5 (D0254).

<sup>26</sup> Defendants' Sixth Motion for Partial Summary Judgment, April 30, 2024 (D0194).

Romare's motion, concluding there were genuine factual issues in dispute as to the private or public nature of Sun Valley Lake.<sup>27</sup>

In the motions for partial summary judgment now being considered by this Court, many of the same issues addressed in previous Rulings are again raised by both parties. Romare asks the Court to re-evaluate the prior Rulings, based on new and additional facts now in the record. In fact, one of the motions for partial summary judgment Romare raises is for this Court to reconsider each of the six prior motions for partial summary judgment previously submitted by Romare and denied.

SVILA vehemently resists a reconsideration of those prior Rulings.<sup>28</sup> It argues Romare is making a bad faith attempt to have this Court reconsider the Rulings made by another judge and is "nothing more than a cynical attempt to get yet another bite at the apple on arguments already raised and rejected by this Court."<sup>29</sup> SVILA suggests the motion is simply a late-filed Rule 1.904(2) motion to reconsider. SVILA seeks imposition of sanctions against Romare.

It is uniformly recognized "until trial . . . is completed and a final order or decree rendered, the trial court will have the power to correct any of the rulings, orders, or partial summary judgments it has already entered."<sup>30</sup> The denial of a motion for partial summary judgment is not a "final judgment on the merits."<sup>31</sup> "Iowa adheres to the general rule that a district court judge may review and change a prior interlocutory ruling of another district judge in the same case."<sup>32</sup> Accordingly, the Court will consider all of the motions now pending before it.

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<sup>27</sup> Order Denying Defendants' Sixth Motion for Partial Summary Judgment, July 8, 2024 (D0280).

<sup>28</sup> Plaintiff's Resistance to Romare's Renewed Motions for Partial Summary Judgment Nos. 1 Through 6, August 13, 2024 (D0327).

<sup>29</sup> *Id.*, p. 1.

<sup>30</sup> *Mason City Production Credit Association v. Van Duzer*, 376 N.W.2d 882, 885-86 (Iowa 1985).

<sup>31</sup> *Waddell v. University of Iowa Community Medical Services, Inc.*, 924 N.W.2d 537 (Iowa Ct. App. 2018) (citing *Iowa Electric Light & Power Co. v. Lagle*, 430 N.W.2d 393, 395-96 (Iowa 1988)).

<sup>32</sup> *Hoefler v. Wisconsin Education Association Insurance Trust*, 470 N.W.2d 336, 339 (Iowa 1991).

### III. Factual Background

Background information related to Sun Valley Lake is set forth in prior litigation which was ultimately chronicled by the Iowa Supreme Court:

“In about 1970, Quenton V. Anderson began selling parcels of land he owned near Ellston, Iowa. Ellston is in Ringgold County. Quenton enhanced what was originally farmland by (1) building a dam to create a lake; (2) installing a water and sewer system; (3) constructing roads; (4) building a golf course and marina; and (5) erecting a clubhouse. He called the development Sun Valley Lake in which he planned to develop 2800 lots.

In time the buyers of Quenton’s parcels formed the Sun Valley Lake Property Owners Association (SVLPOA). SVLPOA collected annual assessments for maintenance.

In 1988 Quenton sold a large part of the development to Patten Corporation (Patten). Patten paid \$1.6 million for the project. Quenton, through his corporation Sun Valley Lake, Inc., retained ownership of the marina and the golf course.

Patten spent another \$1.8 million installing and upgrading roads, constructing additional amenities, and remodeling the clubhouse. In addition, Patten hired a full-time staff of sales personnel – many of whom lived in the development – to sell development lots.

Later, Patten established a second landowners association, Iowa Lakes Association (ILA). Patten formed ILA to provide a vehicle through which the association members would own, maintain, and operate the common areas of the development in perpetuity.”<sup>33</sup>

As reflected in the record in this case, ILA was incorporated in February 1988.<sup>34</sup>

Its stated purpose was “to promote and enhance . . . the interest of the owners of real estate in Sun Valley Lake Subdivision.”<sup>35</sup>

The record in this proceeding also reflects on January 18, 1978, well before the sale to Patten, the Board of Directors of Sun Valley Lake, Inc. (SVL) enacted covenants

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<sup>33</sup> Sun Valley Iowa Lake Association v. Anderson, 551 N.W.2d 621, 625 (Iowa 1996).

<sup>34</sup> Exh. G to Plaintiff’s Statement of Undisputed Facts in Support of its Second Motion for Partial Summary Judgment, July 29, 2024 (D0301).

<sup>35</sup> *Id.*

and restrictions to apply to all real estate owned by SVL.<sup>36</sup> Included in the restrictions was the imposition of an easement 50' wide along the shoreline "for the purpose of installing a sewer line," a 15' easement along both sides of all road rights-of-way and a 10' utility easement on the side and rear lot lines.<sup>37</sup> The covenants and restrictions, by their express terms, continued only until January 1, 1991.<sup>38</sup>

While the 1978 covenants and restrictions expired in 1991, prior to their expiration, on April 6, 1988, Patten executed and recorded a Declaratory Statement of Covenants and Restrictions to Run With the Land, identified in the Amended Petition as the "Declaration."<sup>39</sup> The Declaration imposes a variety of covenants and restrictions on the lots contained in the "Development," defined as "Sun Valley Lake." Included in the restrictions are land use definitions<sup>40</sup>, residential parameters and restrictions<sup>41</sup>, limitations on the use of the lake<sup>42</sup>, and environmental restrictions.<sup>43</sup>

In addition, the Declaration requires each Owner to become a member of the Iowa Lakes Association.<sup>44</sup> Association membership included payment of an annual assessment.<sup>45</sup> The Declaration also allows for the annexation of additional property contiguous or adjacent to the Development.<sup>46</sup> As shown by the exhibits in evidence and discussed below, annexation did occur.

In the prior litigation regarding Sun Valley Lake, the Iowa Supreme Court characterized the most significant provisions contained in the Declaration to be:

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<sup>36</sup> Exh. K to Plaintiff's Statement of Facts in Resistance to Defendants' 4<sup>th</sup> Motion for Partial Summary Judgment, May 13, 2024 (D0206).

<sup>37</sup> Exh. K, p. 2, ¶ 8.

<sup>38</sup> Exh. K, p. 2, ¶ 9.

<sup>39</sup> Exh. 9 (D0067); Amended Petition, July 3, 2023, ¶ 42.

<sup>40</sup> Exh. 9, ¶ II

<sup>41</sup> Exh. 9, ¶ III.

<sup>42</sup> Exh. 9, ¶ IV. It is these restrictions SVILA alleges Romare has violated in connection with his boating activities.

<sup>43</sup> Exh. 9, ¶ V.

<sup>44</sup> Exh. 9, ¶ VI.

<sup>45</sup> Exh. 9, ¶ VII.

<sup>46</sup> Exh. 9, ¶ X.

“(1) a covenant that all lots or parcels designated as common areas would be conveyed to ILA subject to the provisions of an agreement dated April 4, 1988; (2) a covenant providing common areas would be subject to reasonable rules promulgated by Patten prior to conveyance and to rules adopted by ILA after conveyance; (3) a right in Patten to continue to use the common areas after conveyance ‘pursuant to said agreement between [Patten] and [ILA]’; (4) an obligation imposed on Patten to maintain the common areas prior to conveyance and on ILA after conveyance; (5) an exclusive reservation to Patten and its assigns to conduct commercial operations within the development and the right to retain lots designated commercial; (6) a covenant that, by reason of ownership, lot owners were to be members of the association; (7) an authorization in favor of ILA to levy annual assessments against all lots in the development except those owned by Patten and any successor developer; and (8) a provision for unpaid assessments to become liens enforceable by mortgage foreclosure against the lots assessed.”<sup>47</sup>

On May 15, 1989, Patten and the two associations – SVLPOA and ILA – entered into an agreement calling for the merger of the two associations, with the resulting association to be called the Sun Valley Iowa Lake Association – SVILA.<sup>48</sup> As noted by the Iowa Supreme Court, the merger included the following agreements:

“First, the agreement was not to be binding unless approved by two-thirds of the members of each association. Second, the two associations would attempt to merge, with the surviving association to be called the Sun Valley Iowa Lake Association (SVILA). Third, SVLPOA would attempt to have the April 6, 1988, covenants made applicable to the lots Quenton sold before Patten entered the picture. Fourth, if the covenants were made applicable to the lots Quenton sold, then all lot owners would be required to be members of the surviving association—SVILA. Fifth, SVILA would be responsible for maintenance of the common areas. The annual maintenance assessment would be \$200 per lot. Sixth, the agreement defined the common areas to include the lake, roads, and green areas. Patten was required to bear the cost of future construction or capital improvements to such areas until Patten conveyed them to SVILA. Last, Patten would ‘have the right, but not the duty, to convey any existing common property to the new SVILA and, any newly constructed common property, at any time after it is certified to be completed by the engineer employed to supervise the construction thereof.’”<sup>49</sup>

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<sup>47</sup> Sun Valley Iowa Lake Association, 551 N.W.2d at 625-26.

<sup>48</sup> Sun Valley Iowa Lake Association, 551 N.W.2d at 626-27. Exh. H.

<sup>49</sup> Sun Valley Iowa Lake Association, 552 N.W.2d at 627.

Articles of Consolidation creating SVILA, dated October 14, 1989, were filed with the Iowa Secretary of State.<sup>50</sup> Pursuant to the Articles of Consolidation,

“Those owners who purchased lots subsequent to April 6, 1988, and all owners who now are, or hereafter may become, subject to the terms and provisions of a certain Declaratory Statement of Covenants and Restriction, dated April 6, 1988, and recorded in Book 234 at page 811 et seq. in the office of the Recorder of Deeds, Ringgold County, Iowa, and their successors in title, *membership shall be mandatory.*”<sup>51</sup> (emphasis added).

Again, as noted by the Iowa Supreme Court, “[t]he merger document provided that those who purchased lots from Quenton had the option to become members of SVILA, the surviving association. Those members who purchased lots after April 6, 1988, had to be members of SVILA. The merger agreement expressly provided that the merger did not affect the covenant agreement dated April 6, 1988.”<sup>52</sup>

Patten ultimately conveyed all his interest in the development to Sky View Financial, Inc. Included in the sale were all the lots, undeveloped areas close to the lake and all the areas considered to be common areas.<sup>53</sup>

The prior Sun Valley Iowa Lake Association litigation resulted in both a district court Ruling, and an affirming Iowa Supreme Court decision, concluding the lake itself was a “common area” available for use and enjoyment by members of SVILA. A conveyance of these common areas was initially recorded on September 14, 1995.<sup>54</sup> A corrected warranty deed was prepared and recorded on November 29, 1995.<sup>55</sup>

In June 2001 SVILA entered into an Annexation Agreement with Victor Vacco, who acquired property adjacent to the lake which he platted as the South Shore

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<sup>50</sup> Exh. H (attached to Plaintiff’s Statement of Undisputed Facts in Resistance to Defendants’ Eighth Motion for Partial Summary Judgment, August 19, 2024 (D0336)).

<sup>51</sup> *Id.*

<sup>52</sup> Sun Valley Iowa Lake Association, 552 N.W.2d at 627.

<sup>53</sup> Sun Valley Iowa Lake Association, 552 N.W.2d at 627-28.

<sup>54</sup> Exh. 11.

<sup>55</sup> Exh. 12.

Woodlands Subdivision of Sun Valley Lake.<sup>56</sup> Pursuant to the Annexation Agreement, Vacco agreed “to subject his property . . . to the Covenants, as though said property were originally described when said Covenants were executed on April 6, 1988.”<sup>57</sup>

Vacco thereafter conveyed his interest in the South Shore Woodlands Subdivision to Sun Valley Lots, LLC, with said conveyance recorded on March 18, 2002.<sup>58</sup> Romare ultimately acquired title to his lake front property, lot 1975 of South Shore Woodlands Subdivision, by Warranty Deed from Sun Valley Lots.<sup>59</sup>

Additional background facts will be discussed below, as needed, in the Court’s analysis of the issues presented by the parties.

#### **IV. Analysis**

A logical starting point for this Court’s analysis of the multiple pending motions is SVILA’s 2<sup>nd</sup> motion for partial summary judgment (D0300) as it addresses multiple issues addressed in prior rulings and issues included in some of the other pending motions. In their 2<sup>nd</sup> motion for summary judgment, SVILA sets forth a variety of different legal propositions it believes are not subject to dispute based on the absence of disputed facts. Each of those propositions is discussed below.

##### **A. Plaintiff’s 2<sup>nd</sup> Motion for Partial Summary Judgment.**

###### **1. Was Annexation by SVILA Proper?**

SVILA seeks summary disposition of the proposition SVILA had the authority to annex property, including the South Shore Woodlands development where Romare’s property is located. As noted above, ILA and SVLPOA consolidated into a new entity, SVILA.<sup>60</sup> The Articles of Consolidation confirm each organization approved the merger

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<sup>56</sup> Exh. E (attached to Plaintiff’s Resistance to Defendants’ First Motion for Partial Summary Judgment, April 29, 2024 (D0190)).

<sup>57</sup> *Id.*

<sup>58</sup> Exh. 6-B.

<sup>59</sup> Exhs. 6-D and 6-E.

<sup>60</sup> Exh. H (D0301).

by a vote of two-thirds of their members. The Plan and Agreement of Consolidation specifically provided SVILA shall “possess all the rights, privileges, immunities and franchises” of each of the merging entities. The Plan also specifically provided “owners who purchased lots subsequent to April 6, 1988” are “subject to the terms and provisions of a certain Declaratory Statement of Covenants and Restrictions, dated April 6, 1988.”<sup>61</sup> Furthermore, the merger complied with the provisions of Iowa Code 504A.44 of the Iowa Nonprofit Corporation Act in place at the time of the merger.<sup>62</sup>

According to its bylaws and pursuant to statute, Sun Valley had the power to contract for the annexation of additional property. SVILA contracted with Romare’s predecessor-in-interest to annex the property, including the South Shore Woodlands Subdivision, and to subject the property to the Declaration. By agreement and statute, Sun Valley took on all the rights, privileges, and every other interest (e.g., authority to enforce the Declaration) belonging to or due each of the merging or consolidating corporations.<sup>63</sup>

In June 2001 SVILA entered into an Annexation Agreement with Victor Vacco, who acquired property adjacent to the lake which he platted as the South Shore Woodlands Subdivision of Sun Valley Lake.<sup>64</sup> Pursuant to the Annexation Agreement, Vacco agreed “to subject his property . . . to the Covenants, as though said property were originally described when said Covenants were executed on April 6, 1988.”<sup>65</sup> Vacco thereafter conveyed his interest in the South Shore Woodlands Subdivision to Sun Valley Lots, LLC, with said conveyance recorded on March 18, 2002.<sup>66</sup> Romare

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<sup>61</sup> Exh. H, p. 6 (D0301).

<sup>62</sup> Exh. J.

<sup>63</sup> *Id.*, p. 5 (footnotes omitted).

<sup>64</sup> Exh. E (attached to Plaintiff’s Resistance to Defendants’ First Motion for Partial Summary Judgment, April 29, 2024 (D0190)).

<sup>65</sup> *Id.*

<sup>66</sup> Exh. 6-B.

ultimately acquired title to his lake front property, lot 1975 of South Shore Woodlands Subdivision, by Warranty Deed from Sun Valley Lots.<sup>67</sup>

As summarized by the Court in overruling Romare's 2<sup>nd</sup> and 3<sup>rd</sup> motions for partial summary judgment:

Sun Valley consolidated with an entity, sometimes called the "Association," which adopted the Declaration. Sun Valley became the Association. According to its bylaws and pursuant to statute, Sun Valley had the power to contract for the annexation of the Property. Sun Valley contracted with Romare's predecessor-in-interest to subject the Property to the Declaration. By agreement and statute, Sun Valley took on all the rights, privileges, and every other interest (e.g., authority to enforce the Declaration) belonging to or due each of the merging or consolidating corporations.<sup>68</sup>

Even when viewed in a light most favorable to Romare, there are no material facts in dispute as to any of the foregoing events. Accordingly, the Court finds, as a matter of law, the annexation of the property located in the South Shore Woodlands development, including the lot subsequently acquired by Romare, was legal and appropriate.

## **2. Is Romare's Property Subject to the 1978 Covenants or the 1988 Declaration?**

SVILA seeks summary determination Romare's lot is subject to the 1988 Declaration, as opposed to the 1978 Covenants. As noted above, the 1978 Covenants were enacted by SVL prior to the sale to Patten.<sup>69</sup> Several easements, a sewer line easement, road right-of-way easements and a utility line easement, were included in the 1978 Covenants. On their face, the 1978 Covenants continued only until January 1, 1991.<sup>70</sup> They no longer encumber or restrict use of the property.

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<sup>67</sup> Exhs. 6-D and 6-E.

<sup>68</sup> Order Denying Defendants' Second and Third Motions for Partial Summary Judgment, June 18, 2024 (D0250).

<sup>69</sup> Exh. K to Plaintiff's Statement of Facts in Resistance to Defendants' 4<sup>th</sup> Motion for Partial Summary Judgment, May 13, 2024 (D0206).

<sup>70</sup> Exh. K, p. 2, ¶ 9.

In contrast, the Declarations enacted on April 6, 1988, were executed and recorded as “covenants and restrictions to run with the land.” When Vacco’s property was annexed to SVILA, the annexation agreement specifically recited the property was subject to the Declaration executed on April 6, 1988.<sup>71</sup> Romare acquired Lot 1975 located in the South Shore Woodlands subdivision in August 2020.<sup>72</sup>

Even when viewed in a light most favorable to Romare, there are no material facts in dispute as to whether the 1978 Covenants apply to Romare’s property. They do not. Even when viewed in a light most favorable to Romare, there are no material facts in dispute as to whether the 1988 Declaration applies to Romare’s property. It does.

### **3. Do short-term tenancies or Brenna Young’s Services make Sun Valley Lake a Public Lake?**

Evidence in this case establishes there are several homeowners on Sun Valley Lake who rent their homes, on a short-term basis, on vacation rental sites such as VRBO.<sup>73</sup> SVILA’s rules specifically allow such rentals, but place restrictions on the renter’s use of the lake.<sup>74</sup> Long-term rentals are allowed for all residents. Short-term rentals are allowed only by homeowners who were renting their home on a short-term basis prior to December 31, 2020.<sup>75</sup> The Rules do not allow renters to operate power boats or to fish in the lake. Renters are, however, allowed to swim in the lake and operate non-power boats owned by the member owner, including canoe and paddle boats.<sup>76</sup>

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<sup>71</sup> Id. p. 1.

<sup>72</sup> Exhs. 6-D and 6-E.

<sup>73</sup> Exhs. 18, 19 & 20 (attached to Defendants’ Fifth Motion for Partial Summary Judgment, April 29, 2024 (D0189)).

<sup>74</sup> Exh. M (attached to Plaintiff’s Statement of Disputed Facts in Resistance to Defendants’ Fifth Motion for Partial Summary Judgment, May 17, 2024 (D0211)).

<sup>75</sup> Id., Rule V(a).

<sup>76</sup> Id., Rule VIII.

In addition, one of the homeowners, Brenna Young, operates a business known as Captain Young Travels.<sup>77</sup> Ms. Young outlines the nature of her business in a Declaration filed by SVILA.<sup>78</sup> Ms. Young's family owns a home on Sun Valley Lake. In the summer of 2023 Ms. Young, who is a certified U.S. Coast Guard Captain, provided safety and boat operation training to another resident on the lake over a two-day period. The training was provided in the other resident's boat.<sup>79</sup> In addition, Ms. Young was hired by another Sun Valley Lake resident to drive the resident's boat around the lake during a bachelorette party.<sup>80</sup>

Romare contends the foregoing use renders Sun Valley Lake a nonprivate lake within the meaning of the statute. The Code defines a "private lake" as:

"any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests."<sup>81</sup>

Romare asserts the rentals and "commercial activity" engaged in by Ms. Young take Sun Valley Lake out of the definition because the lake is "open to the use of the general public."

With regard to Ms. Young's "business," the Court concludes, as a matter of law, even when viewed in a light most favorable to Romare, Ms. Young's activities do not disqualify the lake from being a private lake. Ms. Young, herself a SVILA member, has engaged in two activities where she provided boating assistance to other SVILA members, using the other members' boats. This is no different than the 14-year-old child of a SVILA member getting paid to cut a neighbor's yard. While Ms. Young has a

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<sup>77</sup> Exh. 22 (attached to Defendants' Fifth Motion for Partial Summary Judgment, April 29, 2024 (D0189)).

<sup>78</sup> Exh. N (attached to Plaintiff's Exhibits in Support of Second Motion for Partial Summary Judgment, July 29, 2024 (D0303)).

<sup>79</sup> There is no indication in the record whether she was paid for the training or not.

<sup>80</sup> When her Declaration was executed, Ms. Young had not yet done the bachelorette party.

<sup>81</sup> Iowa Code § 462A.2(31).

“business,” she is not regularly engaging in that business on Sun Valley Lake; neither is she opening the lake to the use of the general public or even involving anyone other than “owners and their personal guests” in her endeavors.

The Court previously discussed the other aspect of Romare’s argument, related to home rentals, in ruling on Romare’s 5<sup>th</sup> motion for partial summary judgment.<sup>82</sup> As the Court noted:

“The Iowa Supreme Court laid down the rule that the term ‘owner’ is one of quite general application, and is frequently applied to one having an interest in or claim upon property much less than absolute and unqualified title. For instance, a ‘tenant’ is one who has the temporary use and occupation of real property owned by another; the duration and terms of the tenancy being fixed. A tenancy involves an interest in realty which passes to the tenant . . .

A tenant of the fee simple owner of real property at the Development has an interest in the real property. Though the tenant’s interest in using and occupying the real property is temporary, qualified, and less than absolute, the tenant is an owner during the tenancy. Like the real property owner, the tenant’s use of Sun Valley Lake is restricted.”<sup>83</sup>

This Court concurs with that analysis. Even when viewed in a light most favorable to Romare, the Court finds the facts related to rental of homes by homeowner members of SVILA and the occasional services provided by Ms. Young to other SVILA members, using their boats, do not render Sun Valley Lake a public lake within the meaning of Iowa Code § 462A.2(31).

#### **4. Is Sun Valley Lake’s Status as a “Water of the State” Under Iowa Code Chapter 455B Relevant to This Litigation?**

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<sup>82</sup> Order Denying Defendants’ Fifth Motion for Partial Summary Judgment, June 26, 2024 (D0254).

<sup>83</sup> *Id.*, p. 4 (citing *Prudential Ins. Co. of America v. Kraschel*, 266 N.W. 550 (1936), 24 Black’s Law Dictionary 1465, 1466 (6th ed. 1990)).

The Iowa Code defines “water of the state” as “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.”<sup>84</sup>

There is no question Sun Valley Lake is a “water of the state.” Neither is there any question that Sun Valley Lake is, itself, “navigable,” as that term is defined in the Code.<sup>85</sup> While its status as a water of the state may have an impact on the use of the water<sup>86</sup>, or even the possession limit of fish taken from the lake, the fact Sun Valley Lake is a “water of the state” is neither relevant nor material to the issue of whether it is a private or public lake. As discussed below, whether Sun Valley Lake is private or public hinges upon whether the lake meets the definition set forth in Iowa Code § 462A.2(22).

#### **5. Is the Lake a Common Area Transferred to and Owned by SVILA?**

In *Sun Valley Iowa Lake Association* the Iowa Supreme Court recognized and confirmed SVILA owns all but 2.5 acres of Sun Valley Lake and the land beneath it. The Supreme Court affirmed the district court decision awarding SVILA all of the “common areas” at Sun Valley Lake, specifically including “all lots and gazebos designated by Patten in the December 1, 1989, letter to the assessor; the roads; **the lake**; the picnic area (lot 500 and picnic area by the volleyball court); the tennis court; one swim and beach area; and the clubhouse.”<sup>87</sup>

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<sup>84</sup> Iowa Code § 455B.171(41).

<sup>85</sup> Iowa Code § 462A.2(22).

<sup>86</sup> As shown by the permits required to use lake water to water the golf course.

<sup>87</sup> *Sun Valley Iowa Lake Association*, 551 N.W.2d at 634.

A conveyance of these common areas to SVILA was initially made by a Warranty Deed, recorded on September 14, 1995.<sup>88</sup> A corrected Warranty Deed was prepared and recorded on December 6, 1995.<sup>89</sup> This corrected deed excepted from conveyance “the water within the Sun Valley Lake, but only to the extent that the same is considered public water and within the public wealth of the people of the State of Iowa pursuant to Section 455B.262 of the Code of Iowa.”<sup>90</sup>

Iowa Code Section 455B.262 provides, in part:

“The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served . . .

Water occurring in a basin or watercourse, or other body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state.”

As noted in the preceding section, the conveyance, subject to the provisions of Iowa Code Section 455B.262, simply recognizes the ongoing right on the part of the state to oversee and regulate “waters of the state” even if those waters are contained within a private lake. It does not impact the conveyance of “the lake” to SVILA.

As noted by SVILA in their Brief, the Ringgold County Assessor reinforces SVILA’s ownership of the properties underlying and surrounding the lake. The sole exception to SVILA’s ownership is approximately 2.5 acres, retained by Quenton as a marina at the time of his sale to the Patten Corporation.<sup>91</sup>

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<sup>88</sup> Exh. 11 (D0088).

<sup>89</sup> Exh. 12 (D0089).

<sup>90</sup> *Id.*

<sup>91</sup> Sun Valley Iowa Lake Association, 551 N.W.2d at 625.

Based upon all the information before the Court, even when the facts are viewed in a light most favorable to Romare, the undisputed facts establish Sun Valley Lake is a “common area” owned by SVILA.

#### **6. Was the Consolidation Agreement Between ILA and SVPOA valid?**

As noted above, on May 15, 1989, Patten and the two associations – SVLPOA and ILA – entered into an agreement calling for the merger of the two associations, with the resulting association to be called the Sun Valley Iowa Lake Association – SVILA.<sup>92</sup> Articles of Consolidation, dated October 14, 1989, were filed with the Secretary of State.<sup>93</sup>

The Articles of Consolidation reflect the plan of consolidation was adopted at a meeting of each of the consolidating companies by a vote of at least two-thirds of voting members. The Plan recites, upon consolidation

“the new corporation shall thereupon possess all the rights, privileges, immunities and franchises of each of the constituent corporations, and all property, real, personal and mixed, and debts due to whatever account, and all choses in action, and every other interest belonging to or due to each.”<sup>94</sup>

Included in the consolidation was all real estate, as well as the responsibility to pay any liabilities and obligations of the constituent corporations. The Plan specifically reflects the “Declaration of Covenants and Restrictions made April 6, 1988 . . . shall continue to impose mutual and beneficial restrictions, covenants, equitable servitudes.”<sup>95</sup> This consolidation was accomplished in conformity with all requirements set forth in Iowa Code Chapter 504A dealing with mergers and consolidations.

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<sup>92</sup> Sun Valley Iowa Lake Association, 551 N.W.2d at 626-27. Exh. H (D0301).

<sup>93</sup> Exh. H (D0301).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

As a result of the merger, SVILA became the owner of all assets, including real property, owned by either of the corporations prior to the merger. Accordingly, SVILA became the owner of the common areas, including the lake and the lakebed.<sup>96</sup>

Based on the foregoing, even when the facts are viewed in a light most favorable to Romare, there is no evidence to establish any improprieties in connection with the consolidation of ILA and SVLPOA forming SVILA.

### **7. Does § 462A.2(31) Require Common Ownership of Property Surrounding a Lake?**

As noted above, a private lake is defined as:

“any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.”<sup>97</sup>

In this count of its motion for partial summary judgment SVILA seeks to discount any argument that Iowa Code § 462A.2(31) requires “common” ownership among various parcels of land surrounding the lake.

Sun Valley Lake is surrounded by privately owned, individual parcels of property, all of whom are members of SVILA. No fair reading of § 462A.2(31) leads to the conclusion there must be some sort of joint ownership of all the property surrounding the lake.

The very portion of Iowa Code § 614.25(5) which exempts the Declaration in this case from the Stale Uses and Reversions Act clearly contemplates this situation, exempting “an agreement between two or more parcel owners for the joint use of . . . bodies of water.”<sup>98</sup>

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<sup>96</sup> Romare suggests SVILA does not own all parts of the lakebed, but provides no proof of that fact. As pointed out by SVILA, to the extent there are any unknown interests to any portion of the lake or lakebed, SVILA would still be entitled to ownership based on adverse possession.

<sup>97</sup> Iowa Code § 462A.2(31).

<sup>98</sup> Iowa Code § 614.24(5)(c).

Even when viewed in a light most favorable to Romare, no fair reading of Iowa Code § 462A.2(31) requires there to be joint ownership of all of the private property surrounding the lake.

#### **8. Does the Road Right-of-Way Create a Public Access to the Lake?**

Two roadways, 130<sup>th</sup> Street and 300<sup>th</sup> Ave., have rights-of-way which extend into the lake. Romare contends individual members of the public have the right to use these roadway easements and can use them to launch a boat or an inner tube to gain access to Sun Valley Lake.

“An easement is a liberty, privilege or advantage in land without profit, existing distinct from ownership.”<sup>99</sup> “An easement is an interest in land which entitles the owner of the easement to use or enjoy land *in the possession of another*.”<sup>100</sup>

“Once a valid easement has been created and the servient landowner justly compensated, the continued use of the easement must not place a greater burden on the servient estate than was contemplated at the time of formation.”<sup>101</sup> “[W]hen a city possesses an easement, third parties can only use it to the extent the city could use it.”<sup>102</sup>

The easements in the case at bar were specifically created for a single purpose: creating a road right-of-way. While members of the public may take advantage of the easement, they may only use the easement to the same extent as the owner of the easement, Ringgold County: for purposes of vehicular traffic. To allow members of the public to use the easement as a means of access to the lake would improperly burden

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<sup>99</sup> Hawk v. Rice, 325 N.W.2d 97, 98 (Iowa 1982).

<sup>100</sup> Bormann v. Board of Supervisors, 584 N.W.2d 309, 316 (Iowa 1998) (emphasis added).

<sup>101</sup> Keokuk Junction Railway Co. v. IES Industries, Inc., 618 N.W.2d 352, 355 (Iowa 2000).

<sup>102</sup> Keokuk Junction, 618 N.W.2d at 362 (citing Consolidated Cable Utilities, Inc. v. City of Aurora, 439 N.E.2d 1272, 1276-77 (Ill. App. 1982)).

the servient estate (SVILA) in a way not contemplated at the time the easement was created.

SVILA is the owner of the land beneath the easement, to the center of the road. It is common for public street easements in cities to extend into the yards of the homeowners along the street. Just as the public right-of-way within the city does not give others the right to access the private properties lying beyond the scope of the right-of-way, the roadway easements along 130<sup>th</sup> St. and 300<sup>th</sup> Ave. do not give the general public the right to access Sun Valley Lake. The “legal opinions” to the contrary expressed by Romare’s expert, who is unqualified to render legal opinions, are without merit.

Even when viewed in a light most favorable to Romare, the undisputed facts establish, to the extent any roadway easement extends into the waters of Sun Valley Lake, as a matter of law the roadway easement does not give members of the public a means of accessing the lake.

#### **9. Was the Land Abutting the Roadway Right-of-Way gifted to the County?**

SVILA states Romare contends the property owners abutting the highway near the lake made a gift of land to the County for purposes of building the roadway. Exhibit EE<sup>103</sup> reflects contracts between Ringgold County and property owners along the highway. In the contracts the property owners agree “to give to [the County] enough earth from land along the present highway to build a Public Highway.”<sup>104</sup>

As a matter of law, those contracts do not constitute a gift to the County of property abutting the highway. They are simply agreements by the bordering property owners for the County to remove earth from the abutting landowners’ property to use in constructing the highway.

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<sup>103</sup> (D0303).

<sup>104</sup> Exh. EE (D0303).

Even when the facts are viewed in a light most favorable to Romare, as a matter of law, the abutting property owners continue to own the property along the highway, despite the removal of earth from their property for purposes of building the highway.

#### **10. Does *State v. Meyers* Set Forth the Law for Determining Whether Sun Valley Lake is a Private Lake?**

SVILA asks the Court to confirm the Iowa Supreme Court's decision in *State v. Meyers*<sup>105</sup> sets forth the law and analysis for determining whether Sun Valley Lake is a public or private lake.

In *Meyers*, a criminal case, Meyers was stopped for displaying a blue light while boating on Lake Panorama in violation of a statute prohibiting the display of a blue light except by an authorized emergency vessel.<sup>106</sup> When the officers approached Meyers, they believed he was intoxicated and arrested him for boating while intoxicated. Meyers challenged the stop, contending Lake Panorama was a private lake and the DNR did not have jurisdiction to make the stop.

The Court's description of Lake Panorama in *Meyers* is strikingly similar to the description of Sun Valley Lake in the case at bar:

"Lake Panorama is now about fifty years old. In 1970, with the permission of the state, the Middle Raccoon River was dammed near Panora by a group of private property owners, creating Lake Panorama. At present, all of the property surrounding the lake is privately owned and every owner of lakefront property is a member of the LPA. The LPA owns the dam. The LPA also owns the bed under the lake, as well as the lake's only marina and boat ramp. Use of the boat ramp is limited to LPA members. The LPA has put up signs stating that Lake Panorama is a 'private lake.' The LPA also conducts its own patrols of the lake and has its own boating regulations, which it enforces."<sup>107</sup>

In evaluating the public/private issue, the Court noted the "general rule is that even when the bed under a navigable body of water is privately owned, the body of

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<sup>105</sup> 938 N.W.2d 205 (Iowa 2020).

<sup>106</sup> Iowa Code § 462A.12(4) (2018).

<sup>107</sup> *Meyers*, 938 N.W.2d at 207.

water belongs to the public if the public can lawfully access that body of water.”<sup>108</sup>In *Meyers* the DNR officer testified he was able to put his boat in at Springbrook State Park, above the lake, and navigate from there into Lake Panorama.

The Court in *Meyers* approvingly quoted a Michigan case which observed:

“relevant authorities have considered a waterway navigable in the appropriate case if a small sport fishing boat could negotiate it at its ordinary stage. However, the existence of occasional natural obstructions to navigation, such as rapids or falls, or the construction of authorized or unauthorized artificial obstructions to navigation, such as dams, generally does not change the character of an otherwise navigable stream.”<sup>109</sup>

Applying that rationale to the case at bar, neither the dam nor the spillway renders Sun Valley Lake non-navigable simply because a vessel may not traverse either structure. The issue in this case is whether either the inlet or the outlet are navigable up to the dam or away from the spillway.

The Court in *Bott* concluded:

“[W]e hold that lakes which are private for purposes of determining whether public use of the lake surface is permissible are limited to those lakes having no navigable inlet or navigable outlet, completely surrounded by land owned by a private person to which the public has no other ordinary lawful means of access. Since the presence of navigable inlets or outlets provides the public with a lawful means of access to a lake which is navigable in fact, such a lake cannot be determined to be wholly private. The public’s right to use inland waters impressed with the trust to which the public has lawful access may not be abrogated.”<sup>110</sup>

The Court also observed the applicability of Iowa Code § 462A.2(22):

“Navigable waters” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years.”

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<sup>108</sup> *Meyers*, 938 N.W.2d at 208.

<sup>109</sup> *Meyers*, 938 N.W.2d at 209 (quoting *Bott v. Commission of Natural Resources*, 327 N.W.2d 838, 871-72 (Mich. 1982)).

<sup>110</sup> *id.*

As applied to the case at bar, the test set forth in Iowa Code § 462A.2(22) is the appropriate test for determining whether Sun Valley Lake is public or private. If the finder of fact determines either the inlet to or the outlet from Sun Valley Lake is “navigable” pursuant to the definition set forth in that Code section, Sun Valley Lake is a public lake.

This outcome should come as no surprise to either party. Experts by both parties have utilized this test in helping to determine whether or not Sun Valley Lake is public or private. The Court specifically holds the foregoing test as to whether body of water is public or private is applicable in this case.

**11. Is Romare a Member of SVILA, Subject to SVILA’s Rules?<sup>111</sup>**

In this division of SVILA’s motion for partial summary judgment, SVILA seeks to confirm a decision already made in their favor in connection with their cross-motion for summary judgment filed April 29, 2024.<sup>112</sup> In the Ruling on said motion, the Court noted:

“After affording Romare every legitimate inference to be drawn from the evidence, there is no genuine dispute that: 1) Sun Valley Lake is located in Ringgold County, Iowa; 2) the South Shore Woodlands Subdivision is an official plat; 3) the Annexation Agreement caused the South Shore Woodlands Subdivision to be incorporated in the Development at Sun Valley Lake; 4) within the South Shore Woodlands Subdivision is the Property locally known as 3121 Big Bend Road; 5) Romare has an ownership interest in the Property; 6) the Annexation Agreement caused the Property to be subject to the terms of the Declaration; and 7) Romare is subject to the Declaration.”

If this conclusion is again reached, since Romare is subject to the Declaration, he is required to be a member of SVILA.

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<sup>111</sup> In addressing this issue raised by SVILA, the Court also addresses Romare’s 8<sup>th</sup> Motion for Partial Summary Judgment, filed July 31, 2024 (D0310), wherein Romare urges his membership in SVILA is optional as a matter of law.

<sup>112</sup> (D0190) & (D0192).

As set forth in division A-1, above, ILA and SVLPOA consolidated into a new entity, SVILA.<sup>113</sup> The Articles of Consolidation confirm each organization approved the merger by a vote of two-thirds of their members. The Plan and Agreement of Consolidation specifically provides SVILA shall “possess all the rights, privileges, immunities and franchises” of each of the merging entities. The Plan also specifically provides “owners who purchased lots subsequent to April 6, 1988” are “subject to the terms and provisions of a certain Declaratory Statement of Covenants and Restrictions (the ‘Declaration’), dated April 6, 1988.”<sup>114</sup>

Pursuant to the original Declaration dated April 6, 1988, “[e]ach owner shall by reason of ownership, become a member of the Association.”<sup>115</sup> Pursuant to the Annexation Agreement executed on June 9, 2001, and filed on June 21, 2001, “Vacco agrees to subject his property, as shown on the attached plat, to the Covenants, as though said property were originally described when said Covenants were executed on April 6, 1988.”<sup>116</sup> The recorded Plat for South Shore Woodlands was filed on June 21, 2001, as the next numbered document after the Annexation Agreement, eleven (11) minutes after the Annexation Agreement, and is the plat referred to in that Annexation Agreement.<sup>117</sup>

Vacco thereafter conveyed his interest in the South Shore Woodlands Subdivision to Sun Valley Lots, LLC, with said conveyance recorded on March 18, 2002.<sup>118</sup> Romare ultimately acquired title to his lake front property, lot 1975 of South Shore Woodlands Subdivision, by Warranty Deed from Sun Valley Lots.<sup>119</sup>

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<sup>113</sup> Exh. H.

<sup>114</sup> Exh. H, p. 6 (D0301).

<sup>115</sup> Exh. 1 (D0053).

<sup>116</sup> Exh. 14 (D0101).

<sup>117</sup> Exh. 13 (D0100).

<sup>118</sup> Exh. 6-B.

<sup>119</sup> Exhs. 6-D and 6-E.

All the foregoing facts are undisputed. Based on all the foregoing facts, even when viewed in a light most favorable to Romare, as the owner of lot 1975 in the South Shore Woodlands Subdivision, Romare's membership in SVILA is mandatory. As a member of SVILA, Romare is bound by SVILA's rules, including payment of annual dues as well as abiding by the rules related to the use of the common areas, specifically including the lake.

In Romare's 8<sup>th</sup> Motion for Partial Summary Judgment, filed July 31, 2024<sup>120</sup>, Romare suggests the language in the Plan of Consolidation means for anyone owning property once owned by Romare, membership in SVILA is optional. Pursuant to the express terms of the plan of consolidation

“for those owners who purchased lots subsequent to April 6, 1988, and all owners whose lots now are, or hereafter may become, subject to the terms and provisions of a certain Declaratory Statement of Covenants and Restrictions, dated April 6, 1988, . . . and their successors in title, membership shall be mandatory.”<sup>121</sup>

Contrary to Romare's construction of this language, the Court construes this language to mean that owners who purchased lots subsequent to April 6, 1988, shall be subject to the Declarations and membership in SVILA shall be mandatory. As Romare notes in his brief, “[w]ords of a contract must be given their commonly understood meaning.”<sup>122</sup> This Court's construction gives the words of the contract their commonly understood meaning.

This Court reaches the same result reached by the Court in granting SVILA's cross motion for summary judgment, quoted at the outset of this section. Even when the facts are viewed in a light most favorable to Romare, because he bought his lot “subsequent to April 6, 1988,” Romare is subject to the Declarations and is a mandatory

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<sup>120</sup> (D0310).

<sup>121</sup> Exh. H (attached to Plaintiff's Statement of Undisputed Facts in Resistance to Defendants' Eighth Motion for Partial Summary Judgment, August 19, 2024 (D0336)).

<sup>122</sup> Iowa Realty Co., Inc. v. Jochims, 503 N.W.2d 385, 386 (Iowa 1993).

member of SVILA. Romare's 8<sup>th</sup> motion for partial summary judgment, filed July 31, 2024, is overruled. Based on the foregoing discussion, SVILA's 2<sup>nd</sup> motion for partial summary judgment filed July 29, 2024, is granted in its entirety.

**B. Romare's 7<sup>th</sup> Motion for Partial Summary Judgment.**

In his 7<sup>th</sup> Motion for Partial Summary Judgment, filed July 30, 2024, Romare raises an issue previously raised: Does mandatory membership in SVILA constitute a use restriction, subject to Iowa's Stale Uses and Reversions Act?<sup>123</sup> On both prior occasions Romare has raised this issue, it has been decided against him: in the Ruling on Temporary Injunction filed October 2, 2023<sup>124</sup> and in the Order Denying Defendants' First Motion for Partial Summary Judgment filed May 23, 2024.<sup>125</sup>

Pursuant to the Code, claims existing based on provisions in a deed placing use restrictions on land may not be maintained after 21 years from the recording of the deed.<sup>126</sup> This statute is commonly referred to as the Stale Uses and Reversions Act. Romare contends the provisions of this statute render the Declarations unenforceable. He claims since no verified claim was filed within 21 years of the creation of the Declarations (on April 6, 1988), the use restrictions and other provisions included in the Declarations no longer apply.

"Use restrictions" are defined in Iowa Code § 614.24(5). Specifically excluded from inclusion as "use restrictions" are "an agreement between two or more parcel owners providing for the sharing of costs and other obligations for real estate taxes, insurance premiums, and for maintenance, repair, improvements, services, or other costs related to two or more parcels of real estate."<sup>127</sup> Also excluded from inclusion as

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<sup>123</sup> (D0304).

<sup>124</sup> (D0118).

<sup>125</sup> (D0216).

<sup>126</sup> Iowa Code § 614.24(1). The time for pursuing a claim may be extended for an additional twenty-one years by timely filing a verified claim.

<sup>127</sup> Iowa Code § 614.24(5)(b).

“use restrictions” are “agreement[s] between two or more parcel owners for the joint use and maintenance of driveways, party walls, landscaping, fences, wells, roads, common areas, waterways, and *bodies of water*.”<sup>128</sup> (emphasis added).

In urging no mandatory membership in SVILA may be legally compelled, Romare relies upon a recent unpublished opinion by the Iowa Court of Appeals. In *Scholtus v. Parkside Knolls-South Homeowners Assn.*<sup>129</sup>, the Court concluded use restrictions which had admittedly expired pursuant to the Stale Uses and Reversions Act could not later be reinstated without the approval and agreement of all the property owners. Romare argues *Scholtus* stands for the proposition there is no “legal vehicle that would compel [a homeowner] to join [a HOA] without restrictive covenants in place at the time of their purchase of the lots.”<sup>130</sup>

Both parties in the *Scholtus* case agreed the restrictive covenants had expired pursuant to the Stale Uses and Reversions Act prior to the plaintiff-lot owner’s purchase of the property. In the case at bar, the restrictions contained in the Declaration, including the obligation to be a member of SVILA, were use restrictions contained on the title to the property, intended to run with the land. They are restrictions specifically exempted from the time-limiting language of the Stale Uses and Reversions Act; they are specifically exempted by reason of Iowa Code §§ 614.24(5)(b) & (c). Accordingly, the restrictions contained in the Declaration did not lapse after 21 years.

As was concluded by the two judges who decided this issue before me, this Court finds, even when the facts are viewed in a light most favorable to Romare, the Declaration in the case at bar is not barred by the Stale Uses and Reversions Act because the provisions in the Declaration are specifically excluded from coverage by the

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<sup>128</sup> Iowa Code § 614.24(5)(c).

<sup>129</sup> 995 N.W.2d 114 (Iowa Ct. App. 2023), 2023 WL 3089879.

<sup>130</sup> Quoting *Scholtus*, *id.*

plain language of both Iowa Code §§ 614.24(5)(b) & (c). Accordingly, Romare's 7<sup>th</sup> Motion for Partial Summary Judgment, filed July 30, 2024, is hereby denied.

**C. Plaintiff's 3<sup>rd</sup> Motion for Partial Summary Judgment - What is a "vessel"?**

In its 3<sup>rd</sup> Motion for Partial Summary Judgment, filed August 30, 2024, SVILA asks the Court to rule on the appropriate definition of a "vessel" as that term is used in Iowa Code Chapter 462A. The definition of a vessel is important in terms of determining whether the inlet to or outlet from Sun Valley Lake is navigable. SVILA specifically argues the term "vessel" does not include an inner tube on which a person is floating down a stream, a definition suggested by Romare. SVILA specifically urges a vessel must, at a minimum, be a propelled craft such as a canoe, kayak or larger vessel.

The statute specifically defines a "vessel" as "every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft."<sup>131</sup> Several other definitions contained in Iowa Code § 462A.2 are also arguably relevant. An "*inflatable vessel*" means a vessel which achieves and maintains its intended shape and buoyancy by inflation."<sup>132</sup> "Operate" means to navigate or otherwise use a vessel or motorboat."<sup>133</sup> "*Passenger*" means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices."<sup>134</sup> "Personal watercraft" means a vessel, less than sixteen feet in length, which is propelled by a waterjet pump or similar machinery as its primary source of motor propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated by a person sitting, standing, or kneeling inside the vessel."<sup>135</sup> "Operate"

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<sup>131</sup> Iowa Code § 462A.2(40).

<sup>132</sup> Iowa Code § 462A.2(18).

<sup>133</sup> Iowa Code § 462A.2(24).

<sup>134</sup> Iowa Code § 462A.2(27).

<sup>135</sup> Iowa Code § 462A.2(30).

means to navigate or otherwise use a vessel or motorboat.” Finally, “*watercraft*’ means any vessel which through the buoyant force of water floats upon the water and is capable of carrying one or more persons.”<sup>136</sup>

As noted by Romare, there are other definitions, elsewhere in Chapter 462A, arguably relevant to this determination. Pursuant to Iowa Code § 462A.6, “A vessel shall not be required to be registered if it is: . . . (6) An air mattress, inner tube, or other toy or beach type item which is being used in a recognized swimming area.”<sup>137</sup> Pursuant to the same code section, registration is not required for “ inflatable vessels, seven feet or less in length” or for “conventional design canoes and kayak type vessels, thirteen feet or less in length.”<sup>138</sup> Iowa Code §462A.3A provides: “Water occurring in any river, stream, or creek having definite banks and bed with visible evidence of the flow of water is flowing surface water and is declared to be public waters of the state of Iowa and subject to use by the public for navigation purposes in accordance with law.”

No Iowa Supreme Court decisions shed light on the definition of the term “vessel.” As noted by SVILA, however, an Iowa Attorney General Opinion did broach that subject.<sup>139</sup> In the opinion, the AG was asked “whether ‘vessel’ as used in Iowa Code section 462A.9(6)<sup>140</sup> includes an air mattress, inner tube, or similar water toy on which a person can float.”<sup>141</sup> As noted by Romare, this section is a “criminal statute” and the AG applied “the rule of construction that penal statutes are strictly construed. A court must resolve doubts against the state and in favor of the accused.”<sup>142</sup> The AG ultimately concluded “an air mattress, inner tube, or similar water toy is not clearly within

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<sup>136</sup> Iowa Code § 462A.2(43).

<sup>137</sup> This provision arguably establishes air mattresses, inner tubes and other toy or beach type items *are* vessels, but need not be registered if used in a recognized swimming area.

<sup>138</sup> Iowa Code § 462A.6(7).

<sup>139</sup> Exh. HH (D0353); Iowa A.G. Opinion No. 9908-1(L), 1999 WL 965289.

<sup>140</sup> This Code section provides “every vessel shall carry at least one life preserver, life belt, ring buoy or other device of the sort prescribed by the rules of the commission, for each passenger . . .”

<sup>141</sup> Exh. HH, p. 1.

<sup>142</sup> Exh. HH, p. 2 (citing *State v. Phillips*, 569 N.W.2d 816, 818 (Iowa 1997)).

the scope of the term ‘vessel’ as defined in Iowa Code section 462A.2(29) and used in Iowa Code section 462A.9(6).” While attorney general opinions are to be given “respectful consideration,” the courts are not bound by them.<sup>143</sup>

The Merriam-Webster online dictionary defines a “vessel” as “1. a container (such as a cask, bottle, kettle, cup, or bowl) for holding something . . . 2. A watercraft bigger than a rowboat.”<sup>144</sup> Typical boats, like containers used in a kitchen, are capable of “holding” the passenger(s). The statute in this case makes it clear, however, that “vessels” may operate by “sitting, standing, or kneeling *on* the vessel rather than being operated by a person sitting, standing, or kneeling *inside* the vessel.”<sup>145</sup>

Although considering a “vessel” at the other end of the spectrum in terms of size, compared to the vessels being considered in this case, the United States Supreme Court had the occasion to consider whether “a house-like plywood structure with empty bilge space underneath the main floor to keep it afloat” was a vessel.<sup>146</sup> The Court in *Lozman* specifically considered whether the floating house-like structure met the definition of a vessel in the Rules of Construction Act<sup>147</sup>: “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water,” a definition strikingly similar to Iowa’s definition.

The Court in *Lozman* observed:

“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 even a fair-sized item or two when they do so. Rather, the statute applies to an ‘artificial contrivance’ ... capable of being used ... *as a means of transportation on water.*” “[T]ransportation’ involves the ‘conveyance (of things or persons)

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<sup>143</sup> Meyers, 938 N.W.2d at 211 (citing *Rilea v. Iowa Department of Transportation*, 919 N.W.2d 380, 391-92 (Iowa 2018) and *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, 17 (Iowa 2010)).

<sup>144</sup> Merriam-Webster.com/dictionary/vessel.

<sup>145</sup> Iowa Code § 462A.2(30).

<sup>146</sup> *Lozman v. City of Riviera Beach, Fla.*, 568 U.S.115, 133 S.Ct. 735, 737 (2013).

<sup>147</sup> 1 U.S.C. § 3.

from one place to another.’ ([t]he act of transporting, carrying, or conveying from one place to another’). And we must apply this definition in a ‘practical,’ not a ‘theoretical,’ way.”<sup>148</sup>

In the end, the Court concluded “in our view a structure does not fall within the scope of this 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.”<sup>149</sup>

As a practical matter, in the case at bar the issue is not whether a particular object is a “vessel.” Rather, the issue is whether or not the incoming or outgoing streams are “navigable.” As both parties’ experts have noted in their reports, and as discussed more in the following division, the questions are: how much water is flowing into and out of Sun Valley Lake, and is the flow sufficient (deep enough and wide enough) for the navigation of vessels? Internet literature suggests kayaks, which both parties would acknowledge as a vessel, have a “draft” of only three to six inches.<sup>150</sup>

Ultimately, it will be up to the jury to decide what is a vessel, as a question of fact, and it will be up to the trial judge to instruct the jury on an appropriate definition. Using both the statutory definition and the U.S. Supreme Court’s guidance, the Court would suggest the following as an appropriate definition for the term “vessel”:

A “vessel” is every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. An object is a “vessel” if a reasonable observer, looking at the object’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.

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<sup>148</sup> Lozman, 568 U.S. at 121 (internal citations omitted).

<sup>149</sup> *Id.*

<sup>150</sup> “Draft” is defined in the Merriam-Webster online dictionary as: “the depth of water a ship draws, especially when loaded.” <https://www.merriam-webster.com/dictionary/draft>. Regarding the draft for kayaks and canoes, see: <https://www.glen-l.com/blog/approximating-displacement-for-canoes-and-kayaks/#:~:text=>; [https://www.reddit.com/r/kayakfishing/comments/elxnx6/average\\_draft/](https://www.reddit.com/r/kayakfishing/comments/elxnx6/average_draft/); <https://boatkinds.com/what-is-draft-on-a-boat/>.

**D. Plaintiff's 1<sup>st</sup> Motion for Partial Summary Judgment- Is Sun Valley a private lake?**

Plaintiff's motion for partial summary judgment, filed June 11, 2024, asks the Court to decide, as a matter of law, Sun Valley Lake is a private lake because it has neither a navigable inlet nor a navigable outlet.<sup>151</sup> SVILA contends the evidence proves conclusively that Sand Creek is not navigable.

In support of their motion, SVILA submitted affidavits authored by four different long-term residents at Sun Valley Lake: Bill Breckenridge, who has lived around the lake since it was formed<sup>152</sup>; Mike Chapman, who has owned a home on the lake for 22 years<sup>153</sup>; Bill Wells, who has owned a home or lot at Sun Valley Lake for nearly 45 years<sup>154</sup>; and Greg Jobe, who has been at or around the lake for 37 years. All of them state they have never seen anyone operating a manned vessel on either the stream flowing into or exiting the lake. They all opine neither stream has ever had enough water capable of floating a manned vessel for six months out of any year. All also confirm they have never seen anyone launch a boat into the lake from any of the locations where the road right-of-way intersects with the lake.

In addition to this lay testimony, SVILA presents the expert testimony of an expert, Paul Speed, who is a water resources engineer. Mr. Speed has undertaken an extensive study of the streams leading into the lake and out of the lake, including stream bed modeling. He has evaluated his measurements in terms of weather data showing a history of the precipitation that has fallen and would be available to flow in the streams. He has compiled all of the data he has obtained into a Report.<sup>155</sup> Mr. Speed also

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<sup>151</sup> Plaintiff's Motion for Partial Summary Judgment, June 11, 2024 (D0227).

<sup>152</sup> Exh. Q (D0226).

<sup>153</sup> Exh. R (D0226).

<sup>154</sup> Exh. S (D0226).

<sup>155</sup> Exh. O (D0229 – D0233). Mr. Speed's narrative report appears in Exh. O, part 5 of 5, beginning on pg. 437 (D0229).

authored a short affidavit in which he opines “the unnamed tributary flowing into and out of Sun Valley Lake does not meet the requirements for being ‘navigable.’”<sup>156</sup>

In his analysis, Mr. Speed assumes for a stream to be navigable, it must be at least 5 feet wide and 1 foot deep, the dimensions he believes are necessary to allow a small kayak to navigate the stream. He based his analysis of the size of the streams on historical rainfall data from 1951 to 2024. Mr. Speed concludes from his data analysis there has never been a single year since 1951 when either the incoming or outgoing streams would have been navigable for 183 days (i.e. for six months in at least one out of every ten years).

Although Romare spends the majority of the Brief resisting SVILA’s motion for partial summary judgment raising legal arguments considered either herein or in prior rulings, Romare also relies on both lay and expert testimony in resistance to the motion. Romare points to excerpts from a book written by Bill Breckenridge, the current President of SVILA, about his childhood recollections growing up before the lake was constructed.

Romare also points to testimony by Clinton Anderson, whose father is the individual responsible for the creation of Sun Valley Lake. Anderson testified at the temporary injunction hearing held on July 14, 2023, he grew up in the area and had memories of the size of the stream that was dammed to form the lake. He testified the stream “always had water in it” with the amount dependent on the weather.<sup>157</sup> He remembered the stream being 20 feet across, and deep enough to swim in at times; he estimated the depth of the water, at its shallowest point, to be “a foot and a half, two foot, I suppose.”<sup>158</sup> His father told him he and his friends would get wooden slats from the

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<sup>156</sup> Exh. U (D0226).

<sup>157</sup> Romare App. p. 447 (D0258).

<sup>158</sup> Id. at p. 448.

sawmill and float down the stream. He testified even when the stream was the shallowest, there was still enough water to float a tube on it.<sup>159</sup>

Romare also relies upon testimony by Judith Joyce, a geomorphologist and professional wetland specialist who is experienced in soils, hydrology, stream wetlands and working on environmental permitting. Her review of this case resulted in a Hydrogeomorphology Summary Report, offered into evidence at the July 14, 2023, temporary injunction hearing.<sup>160</sup>

Joyce defined a perennial stream as one with a continuous year-round flow of water in a typical year. An intermittent stream is a stream that flows seasonally, or at certain times of the year, depending on precipitation and groundwater.<sup>161</sup> Joyce specifically opined the term “vessel” would include an inner tube.<sup>162</sup> In addition, when pressed, she testified that in her opinion, more likely than not, the stream from which Sun Valley Lake was formed was navigable.<sup>163</sup>

When considering a motion for summary judgment, the facts are viewed in a light most favorable to the party against whom the motion is asserted and the nonmoving party is afforded every legitimate inference the record will bear.<sup>164</sup> As to the issue of whether or not the unnamed stream which provided, and continues to provide, water to Sun Valley Lake, is “navigable” as that term is defined in Iowa Code § 462A.2(22), the Court finds when the facts are viewed in a light most favorable to Romare, SVILA is not entitled to summary judgment. Joyce testified, in her opinion, more likely than not, the stream from which Sun Valley Lake was formed was navigable. In addition, testimony by Clinton Anderson describing the stream before the lake was formed would allow a

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<sup>159</sup> *Id.* at p. 450.

<sup>160</sup> Exhs. K-1 – K-4 (D0095 – D0098).

<sup>161</sup> Romare App. pp. 501-02 (D0257).

<sup>162</sup> *Id.* at 506.

<sup>163</sup> *Id.* at 530.

<sup>164</sup> *Campbell, supra; Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005).

reasonable juror to conclude the stream was “navigable.” Accordingly, SVILA’s motion for partial summary judgment filed June 11, 2024, must be denied.<sup>165</sup>

**V. Summary/Conclusion/Order:**

Based on the foregoing analysis:

**IT IS THEREFORE ORDERED** SVILA’s motion for partial summary judgment filed June 11, 2024 (D0227), discussed in division IV-D, above, is denied.

**IT IS FURTHER ORDERED** SVILA’s 2<sup>nd</sup> motion for partial summary judgment filed July 29, 2024 (D0300), including all sub-parts, discussed in division IV-A, above, is granted.

**IT IS FURTHER ORDERED** Romare’s 7<sup>th</sup> motion for partial summary judgment filed July 30, 2024 (D0304), discussed in division IV-B, above, is denied.

**IT IS FURTHER ORDERED** Romare’s 8<sup>th</sup> motion for partial summary judgment filed July 31, 2024 (D0310), discussed in division IV-A-11, above, is denied.

**IT IS FURTHER ORDERED** SVILA’s 3<sup>rd</sup> motion for partial summary judgment filed August 30, 2024 (D0353), discussed in division IV-C, above, is neither granted nor denied, although the Court does suggest a definition of a “vessel.” The final decision regarding the definition shall be left with the trial judge.

**IT IS FURTHER ORDERED** Romare’s renewed 1<sup>st</sup> motion for partial summary judgment, originally filed February 26, 2024 (D0155), is denied for all the reasons set forth in the Order filed May 23, 2024 (D0216) and for the reasons set forth in division IV-A-2 and IV-A-11, above.

**IT IS FURTHER ORDERED** Romare’s renewed 2<sup>nd</sup> motion for partial summary judgment, originally filed April 22, 2024 (D0182), is denied for all the reasons set forth in

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<sup>165</sup> The Court is aware, on September 27, 2024, Romare filed a Supplemental Report of Judith Joyce and SVILA has filed a motion to strike that report as not timely filed. The Court did not consider the contents of the Joyce Supplemental Report in this Ruling.

the Order filed June 18, 2024 (D0250) and for the reasons set forth in division IV-A-1 and division IV-A-6, above.

**IT IS FURTHER ORDERED** Romare's renewed 3<sup>rd</sup> motion for partial summary judgment, originally filed April 22, 2024 (D0181), is denied for all the reasons set forth in the Order filed June 18, 2024 (D0250) and for the reasons set forth in divisions IV-A-1, IV-A-2, IV-A-6 and IV-A-11, above.

**IT IS FURTHER ORDERED** Romare's renewed 4<sup>th</sup> motion for partial summary judgment, originally filed April 23, 2024 (D0183), is denied for all the reasons set forth in the Order filed June 24, 2024 (D0252) and for the reasons set forth in divisions IV-A-2, IV-A-5, IV-A-8 and IV-A-9, above.

**IT IS FURTHER ORDERED** Romare's renewed 5<sup>th</sup> motion for partial summary judgment, originally filed April 29, 2024 (D0189), is denied for all the reasons set forth in the Order filed June 26, 2024 (D0254) and for the reasons set forth in division IV-A-3, above.

**IT IS FURTHER ORDERED** Romare's renewed 6<sup>th</sup> motion for partial summary judgment, originally filed April 30, 2024 (D0194), is denied for all the reasons set forth in the order filed July 8, 2024 (D0280) and for the reasons set forth in divisions IV-A-4, IV-C and IV-D, above.

**IT IS FURTHER ORDERED** SVILA's motion for sanctions against Romare in its Resistance to Romare's renewed motions for partial summary judgment Nos. 1 through 6 (D0327) is denied.

**IT IS FURTHER ORDERED** the Court takes no action on SVILA's motions in limine urged in their Second Motion for Partial Summary Judgment filed July 29, 2024 (D0300). Motions in limine shall be reserved for determination by the trial judge assigned to the case.



State of Iowa Courts

**Case Number**  
CVCV506844

**Case Title**  
SUN VALLEY IOWA LAKE ASSOCIATION V. JOE ROMARE

**Type:**

ET  
OTHER ORDER

So Ordered

Brad McCall, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2024-10-07 15:54:51