Svendsen v. Fergus Falls HRA

Sanctions and expenses (2026)

Minnesota District Court, Otter Tail County

56-CV-24-1426 | February 17, 2026

IN THIS EDITION

Complete court order and memorandum

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Independent edition prepared October 29, 2026

Source PDF page 1

STATE OF MINNESOTA **IN DISTRICT COURT**

COUNTY OF OTTER TAIL **SEVENTH JUDICIAL DISTRICT**

Stephen Roy Svendsen,

Plaintiff, **ORDER AND MEMORANDUM**

vs.

Pamela J. Minten, Mikel B. Olson, Fergus Falls HRA, Chris Harig, and City of Fergus Falls,

Defendants. Court File No. 56-CV-24-1426

The above-entitled matter came before the Honorable Kevin M. Miller, Judge of District Court, for a motion hearing on November 21, 2025, at the Otter Tail County Courthouse, Fergus Falls, Minnesota. Plaintiff Stephen Svendsen appeared as a self-represented litigant. MacKenzie Hertz, Esq., and Jack Buck, Esq., appeared on behalf of Defendants Pamela J. Minten, Mikel B. Olson, Fergus Falls HRA, Chris Harig, and City of Fergus Falls.

Based on the motions, the arguments of the parties, and the applicable law, the Court makes the following:

ORDER

1. Plaintiff's motion for sanctions is hereby **denied**.

2. Plaintiff's motion for in camera review is hereby **denied**.

3. Defendant HRA's request for reasonable expenses is hereby **granted**. Plaintiff shall pay to Defendant HRA reasonable expenses in the amount of $999.00.

4. The attached memorandum is incorporated by this reference.

Source PDF page 2

Dated: 2/17/26 BY THE COURT:

_____

Kevin M. Miller

Judge of District Court

Source PDF page 3

MEMORANDUM

On October 6, 2025, Plaintiff Stephen Svendsen filed a notice of motion and motion for sanctions. On October 6, 2025, Plaintiff filed an amended notice of motion and motion for sanctions. On October 28, 2025, Plaintiff filed a notice of motion and motion for in camera review of withheld and redacted discovery. On October 31, 2025, Plaintiff filed an amended notice of motion and motion for in camera review of withheld and redacted discovery. On November 7, 2025, Defendant Fergus Falls HRA filed a brief opposing Plaintiff's motions for sanctions and in camera review of withheld and redacted discovery.

Plaintiff has requested sanctions against Defendant HRA for spoliation of "critical evidence," specifically a letter from the United State Department of Housing and Urban Development (HUD) referenced in Defendant HRA's September 21, 2022, Board of Directors meeting minutes. The meeting minutes from Defendant HRA's Board of Directors meeting on September 21, 2022, state, "The Fergus Falls HRA received correspondence from Housing and Urban Development that non-renewals need to include good cause for it to be an approved action." Defendant HRA responded to Plaintiff's request for documents that it was not in possession of a letter from HUD dated September 21, 2022.

The alleged HUD letter and documents cited in a privilege log Defendant HRA provided to Plaintiff are the bases for Plaintiff's motion for in camera review of withheld and redacted discovery. Plaintiff has requested in camera review of the documents alleged to be withheld or redacted by Defendant HRA pursuant to Minnesota Rule of Civil Procedure 26.02(f) and 26.03. Plaintiff has argued that the documents Defendant HRA has stated are privileged attorney-client communications are subject to the crime-fraud exception, stating the Defendant HRA's "redactions potentially hide non-privileged facts or evidence of retaliation and spoliation." *See* Source PDF page 4 Plaintiff's Memorandum in Support of In Camera Review of Withheld and Redacted Discovery, p. 3. As noted above, Defendant HRA has stated it is not in possession of a letter from HUD and other documents Plaintiff requested are protected by the attorney-client privilege, as the documents include legal advice from Defendant HRA's attorney(s) to Defendant HRA regarding Plaintiff's litigation against Defendant HRA. Defendant HRA provided a privilege log to Plaintiff which describes the type of document, whether the document was withheld or redacted, the date of the communication, who sent the communication, who received the communication, the subject of the communication, and the claimed privilege.

Analysis

I. Plaintiff's Motion for Sanctions

"'Spoliation is the destruction of evidence.'" *Yath v. Fairview Clinics, N.P.*, 767 N.W.2d 34, 41 (Minn. Ct. App. 2009) (citing *Wajda v. Kingsbury*, 652 N.W.2d 856, 860 (Minn. Ct. App. 2002)). "Sanctions for spoliation may be appropriate when a person knows or should have known that the evidence she destroyed was relevant to pending or future litigation. A district court has broad authority to determine what, if any, sanction is to be imposed for spoliation of evidence." *Id* (citing *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118-19 (Minn. 1995)). "The appropriateness of a sanction for spoliation of evidence is determined by the prejudice to the opposing party." *Wajda v. Kingsbury*, 652 N.W.2d 856, 860 (Minn. Ct. App. 2002) (citing *Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. Ct. App. 1998)).

The Court will not impose sanctions for spoliation because Plaintiff has not shown that Defendant HRA destroyed evidence. Plaintiff argued that Defendant HRA's answer that it was "not in possession" of the letter HUD is an "evasive response" suggesting "an inference of bad faith destruction or non-preservation . . . warranting an adverse inference, monetary sanctions, Source PDF page 5 and further discovery orders." *See* Plaintiff's Memorandum in Support of Sanctions, p. 1-2. Plaintiff's assertion that Defendant HRA has destroyed a letter from HUD is based on meeting minutes from the HRA Board of Directors meeting on September 21, 2022, stating, "The Fergus Falls HRA received correspondence from Housing and Urban Development that non-renewals need to include good cause for it to be an approved action." Defendant HRA has stated that the meeting minutes would be more accurate if they stated that the HRA received "correspondence that HUD" rather than "correspondence from HUD that" non-renewals need to include good cause for it to be an approved action. Defendant HRA also provided an affidavit from Defendant Mikel Olson, Executive Director of Fergus Falls HRA, that there was no correspondence between Defendant HRA and any representative of HUD regarding Plaintiff's lease or non-renewal of his lease and that the correspondence referred to in the September 21, 2022, meeting minutes was an email from Mr. Olson to Pamela Minten with a link to 24 CFR 966.4. Plaintiff has not proven that Defendant HRA was in possession of a letter from HUD and destroyed the letter. Based on Plaintiff's lack of proof that Defendant HRA destroyed any evidence, the motion for sanctions for spoliation will be denied.

II. Plaintiff's Motion for In Camera Review of Withheld and Redacted Documents

"[C]ommunications that seek to elicit legal advice from an attorney acting in that capacity, that relate to that purpose, and that are made in confidence by the client are protected from disclosure, unless the privilege is waived. The purpose of the privilege is to encourage the client to confide openly and fully in his attorney without fear that the communications will be divulged and to enable the attorney to act more effectively on behalf of his client." *Natl Texture Corp v. Hymes*, 282 N.W.2d 890, 895-96 (Minn. 1979). "The privilege, however, is not without limits. For example, courts have held that the privilege may not be used to shield communications regarding a future Source PDF page 6 crime or fraud." *Kobluk v. Univ. of Minnesota*, 574 N.W.2d. 436, 440 (Minn. 1998) (citations omitted). "To invoke the crime-fraud exception to the attorney-client privilege, the proponent must make a prima facie showing that a communication was '(1) made in furtherance of a crime or fraud and (2) was closely related to the fraud.'" *State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 692 (Minn. Ct. App. 2000) (citing *Levin v. C.O.M.B. Co.*, 469 N.W.2d 512, 515 (Minn. Ct. App. 1991)).

The Court will not conduct an in camera review of documents Defendant HRA withheld or redacted. Plaintiff has alleged that an in camera review to evaluate disputed privilege claims is warranted due to the crime-fraud exception. However, Plaintiff has not provided support for his argument beyond his own assertions and suspicions. Plaintiff has not made a prima facie showing that the communications contained in the privilege log Defendant HRA provided were made in furtherance of a crime or fraud or were closely related to the fraud. Therefore, the motion for in camera review of withheld and redacted documents will be denied.

III. Defendant HRA's Request for Reasonable Expenses

Pursuant to Minnesota Rule of Civil Procedure 37, a motion for an order compelling disclosure or discovery "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." Minn.R.Civ.P. 37.01(b). As set forth in Minnesota Rule of Civil Procedure 37.01(d)(2), "If the motion is denied, the court may enter any protective order under Rule 26.03 and shall, after affording an opportunity to be heard, require the moving party . . . to pay to the party . . . who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." Source PDF page 7 Minn.R.Civ.P. 37.01(d)(2).

Plaintiff failed to certify that he in good faith conferred or attempted to confer with Defendant HRA prior to filing his motions and amended motions on October 6, 2025; October 28, 2025; and October 31, 2025. Based on Plaintiff's lack of good faith to confer with Defendant HRA, the Court shall require Plaintiff to pay to Defendant HRA its reasonable expenses incurred in opposing Plaintiff's motions filed on October 6, 2025; October 28, 2025; and October 31, 2025, including attorney fees as set forth in Minnesota Rule of Civil Procedure 37.01.

For the above reasons, Plaintiff's motion for sanctions and motion for in camera review are denied, and Plaintiff shall pay to Defendant HRA its reasonable expenses incurred in opposing the motions, including attorney fees.

KMM