

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Tomahawk Manufacturing, Inc., et al. v. Spherical Industries, Inc., et al.

Tomahawk Manufacturing · No. 2:23-cv-01007-APG-NJK · Decided January 26, 2026

SUMMARY

The United States District Court for the District of Nevada denies defendants’ motion to seal an email containing communications from former counsel to defendants. The court holds that forwarding the privileged email to the courtroom deputy voluntarily disclosed it to a third party and waived attorney-client privilege. The court orders that the document remain sealed temporarily to allow defendants to seek relief from the Ninth Circuit.

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 TOMAHAWK
MANUFACTURING, INC., Case No.: 2:23-cv-01007-APG-NJK et al., 4 Order Denying
Defendants’ Motion to Seal Plaintiffs 5 [ECF No. 484] v. 6 SPHERICAL INDUSTRIES, INC., et
al., 7 Defendants 8 9 The defendants move to seal ECF No. 157, which is a January 3, 2024 email
that 10 defendant Christopher Duggan sent to my courtroom deputy asking her to forward an
attached 11 email to me.

The attached email was from the defendants’ counsel to Duggan and defendant 12 Will Hardy. The
defendants argue that ECF No. 157 should be sealed because it was “an 13 inadvertent disclosure”
of attorney-client communications during a time when the relationship 14 between Duggan and
his prior counsel had “completely broken down.” ECF No. 484 at 3.

The 15 plaintiffs take no position on whether this document should be sealed. ECF No. 492 at 1.
16 Duggan’s email to my courtroom deputy is not attorney-client material, so it should not 17 be
sealed. But the email that Duggan forwarded to my courtroom deputy is from the defendants’ 18
former counsel to Duggan and Hardy, advising them that he intended to withdraw as their 19
counsel and providing some advice for how they should proceed in light of his withdrawal.

ECF 20 No. 157 at 2-3. The forwarded email from counsel thus is attorney-client privileged
material. 21 See *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116-17 (9th Cir. 2020) (stating
the 22 privilege “protects confidential communications between attorneys and clients, which are
made 23 for the purpose of giving legal advice). 1 Although the forwarded email is subject to the
privilege, a client can expressly waive the 2 privilege by “voluntarily disclosing privileged
documents to third parties” who are “not bound 3 by the privilege.” *Id.* at (quotation omitted).

In determining whether the privilege was waived, I 4 consider “the circumstances surrounding the disclosure.” *United States v. de la Jara*, 973 F.2d 5 746, 749 (9th Cir. 1992). “Inadvertence does not as a matter of law prevent the occurrence of 6 waiver.” *Clady v. Los Angeles Cnty.*, 770 F.2d 1421, 1433 (9th Cir. 1985) (quotation omitted). 7 Rather, it is “only one factor to be considered.” *Id.* The “focal point of privilege waiver analysis 8 should be the holder’s disclosure of privileged communications to someone outside the attorney- 9 client relationship, not the holder’s intent to waive the privilege.” *Tennenbaum v. Deloitte & 10 Touche*, 77 F.3d 337, 341 (9th Cir.

1996). Other factors to consider include whether the 11 privilege holder pursued “all reasonable means of preserving the confidentiality of the privileged 12 matter.” *de la Jara*, 973 F.2d at 750. The defendants bear the burden of proving that the 13 attorney-client privilege applies, including proving that they have “not waived the privilege.” 14 *Weil v. Inv./Indicators, Rsch. & Mgmt., Inc.*, 647 F.2d 18, 25 (9th Cir.

1981). 15 The defendants failed to meet their burden to show Duggan did not waive the privilege 16 by forwarding counsel’s email to my courtroom deputy with the stated intent that she forward it 17 to me. Duggan purposefully sent the email to someone outside the attorney-client relationship. 18 Nothing compelled him to do so. He could have simply advised the court that he intended to go 19 pro se and wanted to file emergency motions.

See ECF No. 157 at 2. Although he asked my 20 courtroom deputy to consider the email as attorney-client privileged material, telling a third- 21 party recipient that it is privileged but sharing it anyway is insufficient to maintain the privilege. 22 There was no need for Duggan to forward the email, and his voluntary choice to do so waived 23 the privilege.

1 I therefore deny the defendants’ motion to seal ECF No. 157. But because immediate disclosure would deprive the defendants of the opportunity to seek relief from my order either through an appeal or writ, I will keep ECF No. 157 under seal until March 2, 2026. If the defendants have not moved for relief from the Ninth Circuit by that date, I will unseal ECF No. If they have, I will keep ECF No. 157 sealed until the Ninth Circuit rules.

6) II. CONCLUSION 7 I THEREFORE ORDER that the defendants’ motion to seal ECF No. 157 (ECF No. 8|| 484) is DENIED. 9 I FURTHER ORDER that ECF No. 157 shall remain under seal until March 2, 206. If 10|| the defendants have not moved for some form of relief from the Ninth Circuit by that date, I will 11||unseal ECF No. 157. If they have, I will keep ECF No. 157 sealed until the Ninth Circuit rules.

12 DATED this 25th day of January, 2026. 13 4 ANDREW P. GORDON. 15 CHIEF UNITED STATES DISTRICT JUDGE 16 17 18 19 20 21 22 23

