



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 437 v. Shayesteh-Fard*, 2022 BCCRT 1150

B E T W E E N :

The Owners, Strata Plan VR 437

APPLICANT

A N D :

FARIDEH SHAYESTEH-FARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about access to an email account and disclosure of emails. The respondent, Farideh Shayesteh-Fard, co-owns a strata lot in the applicant strata corporation, The Owners, Strata Plan VR 437 (strata). The strata seeks an order for Ms. Shayesteh-Fard to provide access to an email account (business email account). The strata says it owns the business email account as a common asset and uses for

its business. The strata also says Ms. Shayesteh-Fard passed herself off as the strata's representative, causing confusion. It seeks an order for Ms. Shayesteh-Fard to disclose emails from the business email account plus her personal email account (personal email account). In particular, it seeks copies of emails Ms. Shayesteh-Fard sent and received about strata related business, including those about its newsletters, a parkade project, and any other communications she had as a strata council member from September 14, 2016 to present.

2. Ms. Shayesteh-Fard disagrees. She says both email accounts are her personal property and not the strata's. She denies passing herself off as the strata's representative and raises other objections that I discuss below.
3. A lawyer, Leah Vidovich, represents the strata. Ms. Shayesteh-Fard represents herself.
4. For the reasons that follow, I dismiss the strata's claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

The CRT's 3 Preliminary Decisions

9. In this dispute the CRT issued 3 preliminary decisions. I summarize them as follows.
10. In a December 31, 2021 preliminary decision, the CRT allowed the strata's request to have a legal representative in this dispute.
11. In a February 7, 2022 decision, the CRT determined it had jurisdiction over this dispute. It held that the issues included whether the business email account was a common asset. It found that this issue fell under the CRT's strata property jurisdiction under CRTA section 121(1)(b). The CRT also found that if Ms. Shayesteh-Fard sent strata-related emails from either the business email account or personal email account, those might be records the strata is required to keep under SPA section 35(2)(k). The CRT found that the strata's entitlement to disclosure of such emails was within the CRT's strata property jurisdiction. The CRT also directed the strata to amend its Dispute Notice to clarify what types of correspondence it was seeking from Ms. Shayesteh-Fard's email accounts. The strata amended its Dispute Notice on May 11, 2022.
12. Finally, on April 27, 2022, the CRT decided that Ms. Shayesteh-Fard should not be compelled to participate in a facilitated settlement teleconference.
13. I agree with the reasoning in the 3 preliminary decisions and find it unnecessary to repeat them in full. However, I note that in *Dockside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371*, 2007 BCCA 183, the BC Court of Appeal noted that all remedies for breaches of SPA section 31 are set out in SPA section 33. CRTA

section 122(1) specifically says the CRT has no jurisdiction to decide claims under SPA section 33. SPA section 31 outlines the standard of care required of each strata council member in performing the duties of the strata corporation. Accordingly, I find I have no jurisdiction over the issue of whether Ms. Shayesteh-Fard breached the standard of care expected of a strata council member by failing to provide the documents at issue to the strata. I will return to this point below.

14. Ms. Shayesteh-Fard says the strata failed to comply with the February 7, 2022 decision. She says the strata's request for documents is still vague, despite its amendments to the Dispute Notice. I note the CRT does not have jurisdiction to enforce its decisions, but I find the strata's request for documents is reasonably clear and I have stated it above. However, I find nothing turns on this as I have dismissed the strata's claims for other reasons.

Section 92 of the CRTA

15. Ms. Shayesteh-Fard says the strata provided false evidence in contravention of CRTA section 92. That provision says it is an offence to provide false or misleading evidence or information in a CRT proceeding. The CRT has no jurisdiction to impose fines or a conviction under section 92. So, I need not consider that here. I have reviewed the parties' evidence and submissions and where relevant address the weight I give them below.

Ms. Shayesteh-Fard's Late Evidence

16. Ms. Shayesteh-Fard provided numerous documents as late evidence. These were labelled exhibits A through W. Most of these documents consisted of further submissions. However, they also included written statements from former strata council members about the creation of the business email account.
17. Ultimately, I find the late submissions and evidence are relevant and find them admissible. In particular, I find the written statements have probative value as they are from the former council members that were present when discussions about the business email account were first held. The strata had the opportunity to view the

evidence and provide submissions. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing the late evidence and submissions given the process explained above.

ISSUES

18. The issues in this dispute are as follows:

- a. Is the business email account the strata's common asset, and if so, what is the appropriate remedy?
- b. Should I order Ms. Shayesteh-Fard to disclose to the strata any requested documents from either the business email account or personal email account?

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the strata as applicant must prove its claims on a balance of probabilities. This means more likely than not. I have reviewed all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

20. I begin with the undisputed background. A title search shows Ms. Shayesteh-Fard became a co-owner of strata lot 241 in October 2015. The minutes for the November 2016 annual general meeting (AGM) and a selection of strata council meeting minutes from 2016 onwards are in evidence. They do not form a complete record, but I conclude from them the following. Ms. Shayesteh-Fard filled a vacancy on the strata council on September 14, 2016. She held the titles of secretary and communication officer. Ms. Shayesteh-Fard subsequently left the council around November 2017. However, she served as a volunteer for the council from June 2018. The owners later elected her back on council in 2019 and she served as president for that year and part of 2020. Ms. Shayesteh-Fard then left the council. The specific dates are not in evidence, but I find nothing significant turns on this.

21. It is undisputed that Ms. Shayesteh-Fard is currently not a member of the strata council.

Issue #1. Is the business email account the strata's common asset, and if so, what is the appropriate remedy?

22. I turn to the chronology of events about the creation of the business email account. The strata council meeting minutes of September 14, 2016 show that Ms. Shayesteh-Fard agreed to write a newsletter for the strata. Ms. Shayesteh-Fard says that at the time, she suggested creating the business email account to the council. She says the council agreed and decided that Ms. Shayesteh-Fard should set up a private email account to receive feedback from owners about the newsletter. The September 2016 minutes do not mention the business email account.

23. Ms. Shayesteh-Fard wrote the newsletter as contemplated. Excerpts show she included the business email account as contact information.

24. In December 2019 a council member, KW, exchanged emails with Ms. Shayesteh-Fard. KW asked her to provide all strata council members full access to the business email account. Ms. Shayesteh-Fard refused and said it was her own personal account. KW disagreed and alleged that Ms. Shayesteh-Fard had also used her personal email account for strata business and had to disclose documents from it. KW said if she did not comply, the strata would apply to the CRT for dispute resolution. The strata did so in October 2021.

25. Ms. Shayesteh-Fard says the business email account is now "inactive". I find this unproven by evidence. The strata provided a copy of the June 27, 2022 email it sent to the business email account. The sender, ST, commented that they did not receive any error messages. So, I find it likely that the business email account is still functional, though ultimately nothing turns on this.

26. I now consider whether the business email account is the strata's common asset. SPA section 1 defines a common asset to include personal property held by or on behalf of a strata corporation. Section 82(1) says the strata may acquire personal property for the use of the strata corporation. Section 82(3) says the strata corporation

must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting of an acquisition or disposal of personal property if the personal property has a market value of more than \$1,000. There is no indication that the strata held such a vote in connection with the business email account.

27. For the reasons that follow, I find circumstances support the conclusion that Ms. Shayesteh-Fard created the business email account for herself.
28. The newsletters expressly stated that the business email account was not meant for contacting the strata council. For example, the spring 2017 newsletter said that to “get in touch with your Strata Council” owners had to submit a letter or note to the property management office, marked to the attention of “Strata Council VR 437”. In contrast, it said to use the business email account to “get in touch with our Newsletter”.
29. Notably, only Ms. Shayesteh-Fard ever had access to the business email account. No one else requested access until December 2019.
30. Finally, Ms. Shayesteh-Fard provided written statements from 3 former strata council members who were present at the September 14, 2016 council meeting. The statements were from the former president RR, former vice-president NK, and former treasurer, AM. All 3 say that the business email account belonged to Ms. Shayesteh-Fard.
31. I note that the written statements are not in an ideal format for evidence. In each, Ms. Shayesteh-Fard provided a detailed statement and left an area for RR, NK, and AM to comment. I find the statements would be more reliable or credible if each of RR, NK, and AM had written down their recollections without such cues. However, as each of the witnesses were present at the meeting, I still find their evidence significant and rely on it.
32. Against the above, I have weighed the fact that the business email address was connected to the strata’s newsletter, which I find is also part of the strata’s operations

or business. Further, the business email address contains the strata corporation's name. On its face, it appears to be connected to the strata.

33. Ultimately, I place greater weight on the witness statements and the fact that the business email address's stated purpose was to reach the "Newsletter", rather than the strata council. I find that the business email account belongs to Ms. Shayesteh-Fard and is her personal property. As such, I find there is no legal basis to order Ms. Shayesteh-Fard to provide the strata access to it. I dismiss this claim.

Issue #2. Should I order Ms. Shayesteh-Fard to disclose to the strata any requested documents from either the business email account or personal email account?

34. The strata says that Ms. Shayesteh-Fard emailed owners and, intentionally or not, caused confusion by creating the impression that she was writing on behalf of the strata council. The strata says she also spread misinformation. The strata seeks disclosure of emails, sent and received from the business email account and her personal email account, in connection with the following: the strata's newsletters, a parkade restoration project, correspondence written in her capacity as a strata council member, and emails about strata-related business.
35. Ms. Shayesteh-Fard denies these allegations and says they are unsupported by evidence.
36. I find that the strata essentially alleges the tort of passing off. The elements of this tort are the existence of goodwill, misrepresentation causing deception of the public, and actual or potential damage to the applicant. See *Vancouver Community College v. Vancouver Career College (Burnaby) Inc.*, 2017 BCCA 41.
37. I find the strata's allegations are unsupported by any evidence. For example, the strata did not provide copies of the misleading emails or proof of any loss. There are no witness statements from owners claiming that Ms. Shayesteh-Fard misled them. There is no evidence or submission to show the existence of goodwill. So, I find this tort unproven.

38. The strata did not provide any other legal basis for requesting the documents. Further, as stated above, the CRT lacks jurisdiction to decide whether Ms. Shayesteh-Fard breached any duties owed to the strata under SPA section 31. In particular, I am unable to decide whether Ms. Shayesteh-Fard's refusal to disclose the documents breached 1) her statutory duty to act honestly and in good faith with a view to the best interest of the strata corporation, or 2) her statutory duty to exercise reasonable care, diligence, and skill. So, I cannot consider these as grounds to make the requested order.
39. I note that the strata is required to retain and provide certain records on request. Section 35 of the SPA and section 4.1 of the *Strata Property Regulation* (SPR) set out the records that a strata corporation must prepare and retain. SPA section 36(1)(a) says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them, to an owner. However, these provisions apply to the strata rather than its owners. I find there is nothing in the SPA that requires Ms. Shayesteh-Fard to produce the documents the strata requests.
40. As there is no legal basis before me to make the strata's requested order, I dismiss this claim as well.

CRT FEES AND EXPENSES

41. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I dismiss the strata's claims for reimbursement of CRT fees. The strata did not claim for any specific dispute-related expenses.
42. Ms. Shayesteh-Fard claims \$5,000 as compensation for time spent on this proceeding. CRT rule 9.5(5) says that the CRT will not award reimbursement of time spent on a CRT proceeding except in extraordinary circumstances. I find those circumstances lacking in this dispute. I find the facts and evidence were within the

range of ordinary complexity and volume. Further, Ms. Shayesteh-Fard did not provide evidence to show why \$5,000 was appropriate. So, I dismiss her claim for compensation.

43. In submissions, Ms. Shayesteh-Fard also claims \$5,000 as compensation for stress and anxiety caused by the strata. Ms. Shayesteh-Fard did not properly file a counterclaim for it. In any event, to succeed in a claim for emotional distress, there must be an evidentiary basis for awarding damages, such as medial evidence. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253 and the non-binding but persuasive decision of *Eggberry v. Horn et al*, 2018 BCCRT 224. There is no such evidence before me, so I dismiss Ms. Shayesteh-Fard's claim for stress and anxiety.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Shayesteh-Fard.

ORDER

45. I dismiss the strata's claims and this dispute.

David Jiang, Tribunal Member