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# Was father's money for children to buy house a gift or loan?

By **James R.G. Cook**

Law360 Canada (August 26, 2025, 2:23 PM EDT) -- Despite the recent market decline in Ontario, the high cost of real estate often pushes families to join together to fund down payments. In such circumstances, the legal consequences of commingling family funds may blur the lines between generosity and expectation. The case of *Klemensiewicz v. Klemens*, 2025 ONSC 4603 demonstrates how shifting relationships and paperwork crafted to appease lenders can become the battleground for questions of trust, intention, and the toll of litigation in family real estate feuds.

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The case arose from a bitter family dispute involving what the application judge called "two warring factions" dating back to the divorce of the applicant father and his wife in 2010. The father's faction included two of the couple's four children, while the other two children sided with their mother.


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At the time of the divorce, the father moved in with two of the children to their small house in Mississauga, Ont. Soon after, they decided to move to a larger home in the neighbourhood with a fully outfitted basement suite that would accommodate the father. However, the children could not afford the property without financial assistance from their father.

He eventually gave them $525,000 and, with these funds, the children purchased the property. They contemplated using a type of loan agreement found on the internet to document the transaction, but it was never signed. What was signed was a general form obtained from a bank entitled a "gift letter." The form stated in part that the father confirmed that a financial gift of $525,000 was being provided to the two children and that the funds were a genuine gift and were non-repayable. The father never made any requests for repayment thereafter.

By 2025, circumstances had changed, and the father sought to recover his funds of $525,000 from the children who were formerly aligned with him. He sought a declaration that the funds of $525,000 were held in a constructive or resulting trust for his benefit.

Where a party transfers money to another for no consideration, the onus generally shifts to the

recipient to prove that the funds were a gift. Otherwise, equity presumes a "resulting trust" in favour of the transferor: *Pecore v. Pecore*, 2007 SCC 17, at para. 24.

Accordingly, the respondent children had the onus to rebut the legal presumption that they received the funds in trust from their father rather than by way of gift.

Fortunately for the children, there was ample evidence supporting their position. The father admitted that he knew within a few months of the purchase in 2010 that he was not on the title of the house, yet he never did anything to alter the situation thereafter. Further, he admitted to paying rent and writing rent cheques to his children.

The application judge noted that the father could easily afford the gift as demonstrated by his financial disclosure in the family law proceedings. There was no documentary evidence supporting the contrary position that the money was a loan.

In the application judge's view, the attempt to reconfigure the $525,000 as a loan was a result of "family tectonics" shifting before the application. The father and the respondent children were originally on one side; the other two children were on the other side with their mother, who passed away in 2021. By 2025, the father wanted the money back.

Further, the father's application materials belied his position since he initially contended that the $525,000 was his contribution to the purchase of the home and that he should be registered as a titleholder. After cross-examination, however, when it became clear that the father knew from the beginning that he was not on title, he changed positions to argue that the money was a loan.

The application judge therefore concluded that the $525,000 was a gift and that the children had rebutted the presumption of resulting trust.

Although the application was determined on that basis, the judge also found that the father's application was time-barred under s. 4 of the Ontario *Real Property Limitations Act*, which imposes a 10-year limitation on any action to recover land from the time the action first accrued. Courts have held that such claims include claims of resulting trusts in respect of land: *Waterstone Properties Corporation v. Caledon (Town*), 2017 ONCA 623, at para. 32.

The transaction at issue and transfer of funds took place in 2011, and the evidence was that the father knew he was not on title to the property since that time. The application judge found that the claim was statute-barred since the material facts forming the claim were discovered or ought to have been discovered by the exercise of reasonable diligence at the time, citing *Browne v. Meunier*, 2023 ONCA 223, at paras. 9 and 14. As the application was not commenced until 2024, it was out of time.

The dispute illustrates how the true nature of a seemingly generous gesture may become a matter of contention years later. Perhaps the dispute could have been avoided had the family confirmed that the father's contribution was a gift in a written acknowledgement corroborating that the lender's "gift letter" did indeed reflect their intentions. If funds are not intended to be a gift, a trust or other type of written agreement may be prepared.

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