

Estate's claim to recover \$700,000 gift from elderly man to fiancée dismissed

Litigation | Litigation & Dispute Resolution | Ontario Court of Appeal | Trustee Act

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We have [previously written](#) about gratuitous transfers of real estate between family members, and the requirement on the recipient's part to prove that the transfer was intended to be a gift if the purpose of the transaction is subsequently challenged. A recent decision of the Ontario Court of Appeal affirmed similar principles in the context of a transfer of \$700,000 from an elderly man to a woman who was alleged to have taken advantage of him: *Zachariadis Estate v. Giannopoulos Estate*, 2021 ONCA 158.

The appeal involved the estate of Dr. George Zachariadis who in 1996 began a romantic relationship with Despina Giannopoulos. At the time, Dr. Zachariadis was divorced from his former spouse and was estranged from his two daughters. He was not invited to their weddings and never met his grandchildren. Their estrangement continued until his death.

In July 2014, Dr. Zachariadis moved into Ms. Giannopoulos's apartment. They had plans to get married. Dr. Zachariadis also acted as a father figure to Ms. Giannopoulos's son and transferred his medical practice to him.

In November 2014, Dr. Zachariadis gave Ms. Giannopoulos a bank draft for \$700,000, which she deposited into her bank account. The only notations on the bank draft were the words "Payment to Despina" inscribed on the "Re" line.

Dr. Zachariadis passed away in February 2015, after being diagnosed with cancer a few months earlier. Dr. Zachariadis died without a will. As a result, his estate passed on intestacy to his two daughters, who were appointed co-estate trustees in December 2015.

On December 29, 2017, the daughters commenced an action on behalf of their father's estate to recover the \$700,000 payment for the estate. They alleged breach of trust, fraud, conversion, and unjust enrichment.

In November 2019, the Honourable Markus Koehnen of the Ontario Superior Court of Justice [dismissed](#) the estate's action in its entirety.

Koehnen J. determined, firstly, that the estate's action was commenced outside the strict two-year limitation period set out at s. 38 (3) of the *Trustee Act*. In that regard, the applicable limitation period commenced at the time of Dr. Zachariadis's death and not, as argued by the estate, when the claim was discovered by the estate trustees. Koehnen noted that while the rule may seem harsh, it was a specific policy choice in the legislation since, at common law, any claim by the deceased would have been extinguished entirely on death. As a compromise, the legislature provided a two-year limitation period which is not subject to a discoverability principle: *Giroux Estate v. Trillium Health Centre*, 2005 CanLII 1488 (ON CA) at para. 28.

Secondly, even more importantly, Koehnen J. found that Ms. Giannopoulos had established that the \$700,000 payment was a valid gift and that, as a result, the claim could not succeed regardless of any limitation period issues. In dismissing the action, Justice Koehnen [awarded](#) costs of \$199,602.46 on a substantial indemnity basis, due in part to the unsupported fraud claims made by the estate against Ms. Giannopoulos.

The Ontario Court of Appeal agreed with Justice Koehnen's assessment that the payment of \$700,000 from Dr. Zachariadis to Ms. Giannopoulos was a valid gift in law.

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The Court of Appeal noted that Koehnen J. had carefully assessed the evidence with “healthy skepticism” and that the onus was on Ms. Giannopoulos to prove that the payment was a gift.

There was sufficient evidence to support Ms. Giannopoulos's position. The couple had been in a relationship for 19 years and planned to marry. Dr. Zachariadis had given Ms. Giannopoulos a cheque for \$500,000 in 2014 (which she had never cashed). Further, Ms. Giannopoulos testified that he told her the \$700,000 bank draft was a gift, and that there were no restrictions on the use of the money. Koehnen J. observed a videotaped examination and cross-examination of Ms. Giannopoulos, and found her to be a credible witness.

There was also no evidence that Ms. Giannopoulos attempted to actively conceal the transfer of the \$700,000, and the estate could not point to any conduct that made it more difficult for them to discover their alleged cause of action, apart from the fact that Ms. Giannopoulos did not actively volunteer the receipt of a payment, which she was under no obligation to do.

The Court of Appeal found Justice Koehnen's [reasons](#) in determining that the transfer was a gift to be “comprehensive and cogent” and that his findings were owed deference. The cost award was similarly upheld as being within the discretion of a motion judge. The appeal was accordingly dismissed and an additional \$40,000 in costs was awarded in costs of the appeal.

One can appreciate the estate's motivation in challenging the transfer from Dr. Zachariadis to Ms. Giannopoulos as there were some potentially suspicious circumstances present. However, given the daughters' estrangement from their father, one could just as easily find suspicion in their own financial motivations in challenging the legitimacy of a romantic relationship that they had little knowledge about while their father was alive. With little documentation to go by in which Dr. Zachariadis had expressly stated his intentions in giving the \$700,000 to Ms. Giannopoulos, the court ultimately had to make a credibility assessment of the person who received the gift.

Whenever possible, preparing contemporaneous documentation demonstrating the parties' intentions at the time of a transfer of property or money will be of crucial assistance to confirm the purpose of a transaction, whether a subsequent challenge is made by someone who has changed their mind or by suspicious trustees of an estate. A PDF version is available to download [here](#).

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