

KEEPING CURRENT

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Defendant required to repay \$96,000 received from married boyfriend

By James R.G. Cook

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Funds transferred from one intimate partner to another during the course of a relationship may be subject to repayment unless the recipient can prove the money was a gift.

In *Walker v. Farsijani*, [2021 ONSC 5571 \(CanLII\)](#), the plaintiff had a relationship with the defendant that lasted approximately five months. It ended when the defendant told the plaintiff—who was married—that she was pregnant and demanded \$1.2 million or she would “cause trouble.”

During their five-month relationship, the plaintiff transferred approximately \$96,000 to the defendant. He claimed that the defendant incessantly asked him for money to pay her creditors, primarily her credit cards. She said she also needed money to fix up her house and to pay for car repairs and cosmetic surgery.

After the relationship ended, the plaintiff sought to recover that amount, claiming it was a loan. The defendant argued that the money was a gift.

At trial in 2021, the court had to assess

the two diametrically opposed versions of events.

The plaintiff did not have any documentation attesting to the fact that the money was intended to be a loan, nor anything referring to repayment terms or interest on the funds during the interim. He claimed that each time he advanced money to the defendant he told her that the money was a loan, and she promised to repay the money when able to do so.

In response, the defendant testified that the plaintiff told her the money was a gift. She admitted that she asked for money for her personal appearance, cosmetic surgery, and household goods. She testified that the plaintiff offered to take her to Milan. He wanted her to take time off work and he offered to support her during this period. She also needed money so that she could provide him with the best cognac, food, and oysters. She said that she would not have accepted the money from the plaintiff unless it was a gift since she couldn't pay him back.

The plaintiff claimed that at the end of their relationship, the defendant told him she was pregnant and demanded that he pay her \$1.2 million. The defendant testified that she took a pregnancy test and it was positive. She claimed that the plaintiff became violent and asked her to have an abortion which led to her demand for \$1.2 million. She testified that she was not serious about the demand but was trying to force him to live with her.

The case turned on the onus of proof. The law of equity presumes a bargain not a gift, which means that where one person transfers money to another in circumstances where the payor is not indebted to the recipient, or where no other presumption of gift arises, the burden falls on the recipient of the money to show that it was not repayable: *Pecore v. Pecore*, [2007 SCC 17](#), [2007] 1 S.C.R. 795, at paras. [24-25](#). Common-law relationships or romantic friendships do not give rise to a presumption of gift: *Zachariadis Estate v. Giannopoulos*, 2019 ONSC 6505, [2019 CanLII 6505 \(Ont. S.C.\)](#), at para. [68](#).

At trial, it was therefore the defendant rather than the plaintiff who had the onus to establish on a balance of probabilities that the money transferred to her was a gift rather than a loan. The trial judge was clear that if the plaintiff bore the burden of proof, the court would have found that the plaintiff had not proven that the money transfers were loans. The plaintiff was a sophisticated businessman and the court did not believe that he was tricked and lured into a relationship by the defendant.

However, the defendant's position was undermined by her evidence on important issues. Regarding her claim that her demand for \$1.2 million wasn't serious, there were text messages in which she gave the plaintiff

a deadline of one month to pay or "I f*uck everything." There was no reference to the plaintiff's alleged physical violence in any of the numerous text messages or a police report. The defendant admitted that texts to the plaintiff about visiting a doctor about her pregnancy were a lie.

Other text messages demonstrated that the defendant lied about the purpose for which she was using the money. While the use of the money did not matter for the determination of whether or not it was a gift, the court noted that the defendant was buying "extremely expensive jewelry" while at the same time claiming that she was in dire straights with her creditors. In the trial judge's view, the defendant was clearly lying to the plaintiff and ultimately made up the pregnancy in the hopes of getting him to live with her, before she tried to extort money from him.

In the result, the plaintiff was successful on the basis that he demonstrated that he had transferred funds to the defendant in circumstances where he was not otherwise indebted to her, and the defendant failed to meet the onus of proving to the court that the funds were a gift. The plaintiff obtained judgment in the amount of \$96,000 against the defendant. Whether he will ever be able to enforce the judgment and recover the funds from the defendant remains to be seen.

Contact us

If you have a litigation matter and are in need of legal advice, please contact [James Cook](#) at 416.865.6628, jcook@grllp.com.

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