

CITATION: Balkisson v. Sandy, 2025 ONSC 856
COURT FILE NO.: CV-24-00722045-0000
DATE: 20250206

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: VERONICA ANN BALKISSON, Applicant

AND:

STEFAN APOLLO MARCELLE SANDY and ANDREA WILLIAMS SANDY,
Respondents

BEFORE: L. Brownstone J.

COUNSEL: *Derrick M. Fulton*, for the Applicant

Nikolay Tenev, for the Respondents

HEARD: January 14, 2025

ENDORSEMENT

Introduction

[1] The applicant, Veronica, is the mother of four living children and one deceased child. The respondent Stefan Sandy is Veronica’s eldest child. The respondent Andrea Sandy is Stefan’s wife. Veronica funded the purchase of a property at 78 Lambeth Street in Brampton that is held in Stefan’s name.

[2] Veronica says that Stefan took title to the Lambeth property as a trustee and that the property is subject to a resulting trust in her favour. She applies for a declaration that Stefan holds title as a bare trustee for Veronica, and for an order that title to the Lambeth property be transferred to her. Veronica also seeks an order for possession and various ancillary orders.

[3] Stefan says Veronica gifted the Lambeth property to him and his youngest sister, Heaven. Veronica decided to give Stefan and Heaven their planned inheritance money when she was alive, so they could buy the Lambeth property. The property had to be in Stefan’s name alone because Heaven was not yet eighteen at the time the property was purchased. Stefan’s position is that he and Heaven are the equal beneficial owners of the property. Stefan’s position is that Veronica wishes, but legally is not entitled, to change her mind because her relationship with Andrea deteriorated after the gift was made. Stefan and Andrea ask the court to dismiss Veronica’s application.

[4] For the reasons that follow, I agree with Stefan. I find that he has established that Veronica intended to, and did, make a gift to him and Heaven, and that she tried to change her mind after the fact.

Governing law

[5] The parties agree that all the funds for the property came from Veronica. They agree the case is governed by the law as set out in *Pecore v Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795 and subsequent cases that apply *Pecore*. That is, where there has been a gratuitous transfer of property from a parent to an adult child, there is a presumption that a resulting trust applies. The child has the burden of rebutting that presumption. In determining whether the presumption is rebutted, the court is to weigh the evidence to determine, on a balance of probabilities, the transferor's actual intention at the time of the transfer. The burden is on the child to prove, on a balance of probabilities, that the transferor intended the transfer to be a gift.

[6] The type of evidence the trial judge can or should consider in ascertaining intent will depend on the facts of the case (*Pecore* at para. 55). Evidence that arises after the transfer is not necessarily excluded, but it must be relevant to the intention of the transferor at the time of the transfer. The Court in *Pecore* stated: "The trial judge must assess the reliability of this evidence and determine what weight it should be given, guarding against evidence that is self-serving or that tends to reflect a change in intention." (para. 59).

[7] To establish that a transfer is a gift, three elements must be established: 1) the transferor's intention to make a gift, acceptance of the gift by the transferee, and a sufficient act of transfer: *Pandke Estate v. Lauzon*, 2021 ONSC 123 at para. 10 citing *McNamee v. McNamee* (2011), 106 O.R. (3d) 401, [2011] O.J. No. 3396, 2011 ONCA 533. Here, there is no question that there was an acceptance of the transfer, nor is there a question that a sufficient act of transfer occurred. The sole question is Veronica's intention.

Facts and Analysis

[8] Because a determination of Veronica's intention is the central question in the dispute, and because the parties have very different version of the events in question, I ordered *viva voce* cross-examinations on the affidavits of Veronica, Heaven, and Stefan.

Chronology

[9] The history leading up to the purchase of the property is important. In addition to her residence, Veronica owned two properties that were close to one another, which I shall refer to as the Wheatley property and the Thamesville property. The Wheatley property was in a gas blast evacuation zone and was expropriated, with an agreement of purchase and sale entered into on December 20, 2023, for \$1,268,400. The transaction closed in early March 2024, and Veronica received \$1,267,931.32, which she deposited into her bank account on March 12, 2024. In July 2024, Veronica sold the Thamesville property.

[10] Between the time Veronica learned of the Wheatley property expropriation, including the amount she would receive, and the time she received the funds, Veronica wrote and signed a handwritten will. The will appointed Heaven as its executor and provided instructions to Heaven to divide up Veronica's property. The will states in part as follows:

I am dividing the Wheatley money into two \$420k portions and the rest of money I will add money onto to make it a third \$420k portion so that after I die Ricky Damien [*Veronica's second child*], Mary [*the fiancée of Veronica's deceased son Roman*], Stef can each get a property as about 80K has to go to taxes. If anything happens to me 37 Glebe Crescent [*Veronica's residence*] will be sold and you Heaven, get \$420k out of it. Christian's [*Veronica's son, who has personal and health problems*] \$420k will be put into a locked account.

[11] The contents of the will were also contained in a text message from Veronica to Heaven.

[12] Veronica deposed that it was always her intention that no one would get a share of her estate, or any funds from her, until after her death.

[13] After she signed the February 12 will, Veronica and some of her children started talking about purchasing a property or properties. Veronica's evidence is that Heaven, who was a new and young mother, was having housing issues. In addition, Veronica expressed concern about Stefan and his wife and three young children living in a two-bedroom apartment. Veronica's evidence was that she also had concerns about Christian, and about the living arrangements of Mary and Mary's children. Veronica deposed that she wanted a family home where any members of the family would be welcome to stay.

[14] Veronica states that she and her children discussed paying for such a place with her funds from the Wheatley sale. She says that she told the children the home would be in Heaven's name in trust for the whole family. Veronica deposed that she was "exploring the issues of properties in trust, their trustee, gifting and other such estate planning issues. I did not consult with a lawyer about these things. But what was central to my thinking was to take care of all my family and to provide for them as equally as possible."

[15] Heaven swore an affidavit in support of her mother's position. Heaven deposed that Veronica intended that a property the family was interested in, the Lambeth property, would be a family home. Veronica had asked Heaven to take title to the prospective Lambeth property in her name and hold it in trust as Veronica would direct. According to Heaven, when that turned out to be impossible because of her age, Stefan agreed to take title in his name and hold the property in trust as Veronica would direct. Heaven denies that she was to be the sole owner or a 50% owner, or that Stefan was to be the sole owner. Lambeth was to be for the entire family's use and subject to Veronica's control.

[16] Stefan's evidence was that Veronica had decided to advance the above-noted \$420,000 inheritance gifts to him, Heaven, and Ricky if Ricky wished, while Veronica was alive. They were to use the funds to purchase a property to better their own living arrangements. In March 2024,

Stefan and Heaven decided to combine their promised gift money (which they had not yet received) to purchase the Lambeth property. The plan was for them to own the property mortgage-free for a few years to save money, allow the house to appreciate, sell the house, and use their respective proceeds to each buy their own property.

[17] In addition to oral communications, the parties corresponded heavily by text. Both parties place strong reliance on the text messages. I agree those contemporaneous messages are important to determining Veronica's intention at the time the property was purchased. I review the text messages and the sequence of events below.

[18] According to Stefan, Veronica first talked about gifting to Stefan and Ricky \$420,000 each in early February 2024 when they went together to the Wheatley property to prepare it for the pending sale. Beginning in late February 2024, Veronica began to express this intention by text messages.

[19] On February 29, 2024, Veronica wrote, "all I can afford is \$420k. This is the same money all of your brothers and sister gets for my inheritance." Veronica also referred to the budget as \$420,000.

[20] On March 7, 2024, Stefan and Veronica exchanged the following text messages:

Veronica: So what's going on with your new place?

Stefan: Idk yet mom good question. Will continue looking tomorrow

Veronica: Hev mentioned something to me. she said she doesn't mind collaborating together with you if you can find a house with flats perhaps and she join in her money

Stefan: Sounds like a great idea! I'm down! think it would be smart for all of us to get a huge place, me ricky and heav from the will that you give us and we all put in to a bigger place rent out apartments etc.

[21] That same day, Heaven wrote Stefan referring to Veronica having said she would give Heaven her \$425,000 [*sic*] "early".

[22] Veronica testified that she wanted the Lambeth property to be in Heaven's name, as bare trustee. The real estate agent advised this was not possible because Heaven was a minor. Veronica did not want the property to be in her own name because of concerns about capital gains and her ex-boyfriend. According to Veronica, she spoke to Stefan about having the offer to purchase in his name on the understanding that he would buy the property as bare trustee for her beneficiaries under her will. Veronica says she also discussed this with Heaven.

[23] Stefan testified that he and his mother and Heaven had multiple conversations to the effect that he would hold Heaven's share in trust for her until she turned 18. He stated, "It was verbally understood by all of us that it was a gift inheritance, 50 percent me and 50 percent Heaven" and

that when Heaven turned 18, the paperwork would be amended to reflect the transfer of her interest to her.

[24] On March 13, 2024, Veronica sent Stefan a text advising:

... the house will be in your name as Hev is too young and I already have house so to avoid capital gains tax it is going in your name as an inheritance gift for you and Heaven.”

[25] Veronica acknowledged on cross-examination that on March 13, 2024, it was her intention to gift money to Heaven and Stefan so they could buy a property. She then qualified that answer by stating that it wasn't to be just for them, but they would live there.

[26] Other text messages from Veronica referred to Heaven as “partners halfway” and as Stefan’s “financial partner.” On March 15, 2024, Veronica wrote to Stefan that he and Heaven “will be living together for about four years then you each get a loan from the bank, divide your money in half and get your own places.”

[27] The text messages that follow illustrate that Veronica was involved in advising on negotiations and plans for the Lambeth property, including with respect to various upgrades. One of the texts on March 18 says, “if you guys get the house you should immediately plant 2 grape vines and fruit trees and fruit bushes.”

[28] According to Veronica, there were also discussions about having the property registered in the names of Stefan and Heaven equally, with conditions.

[29] On March 21, 2024, the offer to purchase the Lambeth property for \$905,000 was accepted. That day, the following exchange occurred between Veronica and Stefan:

Veronica: We need to go see a lawyer by May 1 stating the money I'm giving is an inheritance gift to Stefan sandy and heaven Balkisson only 50/50 split and the monthly payment plan to recoup the over budget of \$65,000 plus whatever money needs to be paid extra for the completion of the sale, OK?”

Stefan: OK

Veronica: How does it feel to be the owner of \$1,000,000 home son?

Stefan: Feels great mom thank you so much! We gotta do a couple renovations but will make this place look better than it really is right now

[30] In cross examination, Veronica acknowledged that this message indicates that on March 21, her intention was to gift money to Stefan and Heaven. Veronica stated that the idea was never formalized and remained just an idea. They intentionally did not go to a lawyer to formalize it. On March 22, 2024, Veronica paid the \$35,000 deposit for the purchase of the Lambeth property.

[31] Veronica acknowledged in cross examination that there are no text messages indicating she changed her mind, as expressed in the March 13 and 21 text messages, that her intention was to make a gift. Veronica testified in cross examination that she did not feel it was possible to hand the house over as a gift without “legal documents”.

[32] Veronica also stated that things changed because on March 26, 2024, she was assaulted by her boyfriend and was in fear for her life. She testified that “it was a great urgency for me to move”. She stated she intended to sell her residence and move to the Lambeth property.

[33] Stefan states that the reference to the “payment plan to recoup the over budget of \$65,000” in Veronica’s March 21 text message, set out in paragraph 29 above, confirms the gift. It was a reference to the fact that they had spent \$905,000 on the home, when he and Heaven had each received \$420,000 as their early inheritance gift. Therefore, they had spent \$65,000 more than their gift and she wanted them to enter into a payment plan to repay Veronica the extra \$65,000. There was no payment plan with respect to the \$840,000, because it was a gift.

[34] Text messages from Veronica to each of Stefan and Heaven on May 8, 2024, support Stefan’s position. Veronica wrote to each of them, “House + Lawyer came up to \$919k overspent \$79k divided by 2 = you owe \$39,500 for Ricky. This works out to \$600.00 per month for 12 months x 5.5 year, 0% interest beginning May, 2024 to Oct, 2029 + 500 dollars Nov, 2029.” Veronica was funding the overage from Ricky’s \$420,000 allotment.

[35] Similarly, on March 21, 2024, when Stefan and Veronica were discussing the offer at \$906,000, Veronica had stated “you are both 66k over” to which Stefan replied, “yea I know, we def will have to owe back.”

[36] On May 16, two weeks after closing, Stefan advised that if he and Heaven had known Veronica was funding the overage “from Ricky’s portion” they would have declined it. Veronica responded, “Yes it's Ricky’s money u guys were given \$420k each u overspend do your math”.

[37] The parties’ evidence about whether Stefan and Heaven made the payments toward the overage amount differs. The parties acknowledge, and the text messages support, that some funds were paid, at least by Stefan. It appears that after a few months, Veronica stopped asking for the payments.

[38] Unfortunately, relations between Veronica and Andrea (Stefan’s wife) deteriorated after Stefan, Andrea, Heaven, and their children moved into the Lambeth property in early May. This culminated in a significant argument between Veronica and Andrea on May 23, 2024, at which time the police were called to the Lambeth property. Veronica deposes that she is not allowed on the property, and not able to see her grandchildren.

[39] Veronica included a series of text messages from her to Stefan in which she complains about how Andrea is treating her. On May 26, 2024, Veronica wrote: “I was brainstorming this family matter through I came to a decision and we will hold a family meeting for me to change things to reflect more fairness amongst ALL my children alive and deceased.”

[40] Veronica took steps to amend her February 12, 2024, handwritten will. She met with her children on May 29, 2024, and gave them each a copy of her new will. Veronica states that she told the children that she was giving them equal shares in her estate. She asked Stefan to attend at the lawyer's office to sign over the Lambeth property as he was not complying with his obligations as trustee, "mostly due to his wife." He was not allowing the family access to the property.

[41] Stefan deposed that he was shocked when he saw that in her new will, Veronica had listed the Lambeth property as one of her assets.

[42] On May 29, 2024, and in the days following, Veronica wrote to Stefan telling him that things are not working out and he must move. Veronica told Stefan that he should be ashamed of himself stealing her hard-earned money. Veronica told Stefan that she would give him no inheritance in the end. Stefan texted Veronica her that she was not going to bully him out of his home just because she was mad at Andrea, and that she cannot take back the inheritance.

Positions of the Parties

[43] Stefan relies on the text messages above, including the references to the inheritance gift, the request for repayment of only the amount over the gift, the concordance between the amount of the gift and the amounts set out in Veronica's February 12 will, as well as his affidavit *and viva voce* evidence in support of his argument.

[44] Veronica relies on the following evidence.

[45] First, in support of her contention that she planned to live at the property, she points to a message to the real estate agent on May 1, asking, "hi can we move in yet?". She states that the "we" indicates that she intended to move in. Veronica notes that she moved furniture into the Lambeth property.

[46] Second, Veronica states she needed to live in a new home, in which her boyfriend would be unaware of her address. She points to the text and photograph she sent Stefan during the course of the negotiations on the Lambeth property, advising that her boyfriend attacked her, and she had called the police. Veronica states that this accounts for her change of mind and that the Lambeth property was no longer to be a gift.

[47] Third, Veronica relies on the after-the-fact evidence of her May 29, 2024, will. She argues that the will makes it clear she never intended to make an *inter vivos* gift to any of her children.

[48] Fourth, Veronica points to an endorsement of Myers J. in Civil Practice Court, which refers to Stefan's position as being that the house was 100% his. She argues that Stefan had at all times embellished that he was an owner, to the point of not even acknowledging Heaven's half interest.

Credibility and adverse inferences

[49] In order to explain the conclusion I have reached and the findings I have made, I wish to comment on the witness's credibility and address counsel's arguments asking that I draw adverse inferences.

[50] I found Stefan to be a credible witness. Veronica's counsel made much of the fact that Stefan would not agree that Veronica was generous to him. Given the troubles that have arisen between them, I do not view that disagreement as detracting from Stefan's credibility. I find that Stefan was straightforward in his responses, was not argumentative, and was consistent in his evidence. I also find his evidence accords with the available documentation. With respect to the Civil Practice Court attendance, Stefan explained that counsel had recently been retained and that he and his counsel had not discussed the case in detail at that time. I do not view the endorsement of Myers J. as having any effect on Stefan's credibility. Stefan has never changed his fundamental position that the property was a gift.

[51] In contrast, I have grave concerns about the evidence of both Veronica and Heaven and I reject their version of events. I find that Veronica's evidence was internally inconsistent. It was inconsistent with the text message evidence. Veronica as argumentative and evasive at times. I do not accept that Veronica changed her mind about the inheritance gift when her boyfriend was physically abusive. While I do not in any way minimize the gravity of the violence she faced, her responses to why she had not moved were not credible. She said her situation was urgent given the assault, and that she feared for her life. Yet her explanation was that it was winter, and she had many belongings at her residence that she could not simply pack up and move. The Lambeth property closed on May 1, 2024, about six weeks after the assault and well after winter. Veronica still has not moved from her residence, even though she and Heaven both testified that her boyfriend is looking for her and knows her address. I do not discount her fear of violence at the hands of her ex-boyfriend. But I find that her safety concerns did not alter her settled intention to provide a gift for her children.

[52] Additionally, I find Veronica's evidence that she did not believe it was possible to give such a large gift without seeing a lawyer lacking all credibility. It defies logic and common sense that Veronica was unwilling to give a gift, a concept with which most people are familiar, without a lawyer involved, but was willing to have Stefan be a bare trustee (she used those words), a much less common and more legalistic concept, without any lawyers involved.

[53] Similarly, I do not accept Heaven's evidence. Heaven is obviously very close to and reliant upon Veronica. She had no independent legal advice in this proceeding. She attended at examinations with Veronica's counsel. Even accounting for her age, I found Heaven's answers to questions in cross-examination to be cagey and indirect. For example, when faced with an email indicating her mother was giving her a gift, she said, "it's worded poorly" and stated it was meant to be a budget, not a gift. When asked to confirm that answer, she stated, "in a way, sort of". Unlike Veronica's position that she had intended a gift but changed her mind, Heaven's evidence was that her mother never intended there to be a gift. When it was put to Heaven that there was no room allocated in the house for family members other than her, Stefan, Andrea, and their children, she answered, "not *per se*". When counsel put to her in cross-examination the text message that

required her to pay back half of the amount over the \$840,000, but not the \$840,000, she stated “I guess so. I am not very good at math.” This was not a mathematical question.

[54] Both counsel made much of the fact that neither party had a written document that fully and clearly supported its position. Both parties explained the absence of written documentation in their own case as being a result of the family relying on oral conversations. I do not find this argument helps either party.

[55] Similarly, both parties refused to provide various evidence at their out-of-court examinations. Both parties argued that adverse inferences should be drawn against the other for this failure.

[56] Veronica argues that Stefan’s refusal to waive solicitor-client privilege and disclose his file with his real estate lawyer on the Lambeth purchase should lead the court to draw an inference that the file would not have supported Stefan’s position. Veronica also argues that Andrea should have been called to testify about her conversations with Stefan about the transfer. At Andrea’s cross-examination, she refused to answer questions unrelated to the transfer or to her argument with Veronica.

[57] Stefan asks that an adverse inference be drawn from Heaven’s refusal to provide banking documents and email correspondence between Heaven and Veronica.

[58] It is unclear to me what admissible evidence Andrea would have to give, other than about the argument with Veronica. There is no suggestion she was involved in any direct discussions with Veronica about the transfer.

[59] I decline to draw any of the adverse inferences sought by counsel. In my view, the parties’ *viva voce* evidence and the contemporaneous messages between the parties, on which they were examined, were sufficient for me to make the necessary findings of fact. In the context of the factual evidence available in the case, I do not find any adverse inferences to be necessary or appropriate.

Conclusion

[60] I find Stefan has discharged his burden of rebutting the presumption of a resulting trust, and has established, on a balance of probabilities, that the property was gifted to him as legal owner, and to him and Heaven as equal beneficial owners. I find Veronica intended to make, and did make, a gift to Stefan and Heaven in the form of the Lambeth property. I make this finding for the following reasons.

- a. Veronica repeatedly referred to the “inheritance” gift in text messages. There is no text message that she changed her mind until the end of May, well after the gift had been made. As explained above, I have rejected her evidence that she changed her mind after she was assaulted.

- b. Veronica advised Stefan, after the fight with Andrea and before presenting her new will, that she had been thinking about the family situation and wanted to “change things”. This was the first indication of Veronica changing her mind. It happened after the gift was made and after her fight with Andrea.
- c. The amounts advanced for the purchase support Veronica’s intention, set out in her February will and again in text messages, to give each child \$420,000. Veronica asked that Heaven and Stefan repay the amounts above \$840,000, as this overage amount was part of “Ricky’s [future “inheritance”] share”. The overage amount was intended to be a loan, as distinct from the \$840,000. There were no repayment plans made with respect to the \$840,000, only with respect to the overage amount of \$79,000. Heaven and Stefan were to bear that loan equally. Stefan made payments in respect of his share of the overage amount for some months. As the Court of Appeal has noted, “[a] gift is a transfer in which the absence of an expectation of repayment tends to be reflected in the absence of security, recording, payments or efforts to collect payments.”: *Barber v. Magee*, 2017 ONCA 558, 139 O.R. (3d) 78, at para. 4. This is applicable to the \$840,000, which had no repayment plan, as distinct from the repayment plan made for the “overage” amount.
- d. In communication with Stefan, Veronica referred to the proceeds of the Wheatley sale as her children’s money, not hers.
- e. As set out above, I reject Veronica’s evidence that she had any intention of living at the Lambeth property. She did not leave her own residence. I reject Veronica’s evidence that the fact that she moved furniture into Lambeth evidenced her intention to live there. I note that there is evidence, including many text messages, indicating that Veronica needed to move furniture out of storage and asking if Stefan could use it or if she could store some of her objects at Lambeth “until she rehomes them”. Indeed, Andrea deposed that the fight between her and Veronica on May 23, 2024, related to Veronica moving her furniture into Lambeth without anyone’s permission. I find that Veronica wanted to move her furniture out of out of storage, stop paying storage fees, and store it at Lambeth.
- f. There was no bedroom for Veronica or any other family members, aside from Heaven and Stefan’s families, at Lambeth.
- g. The text messages indicate a plan for Heaven and Stefan to live together for a few years, then take the proceeds of sale and each purchase a larger house. This is inconsistent with a trust for Veronica and consistent with a gift to Stefan and Heaven.
- h. Veronica referred to Heaven as Stefan’s financial partner “half way”;
- i. Heaven wrote Stefan on August 1, 2024, as follows: “Stefan i need purchase and sale documents copy and gate key. When we got the house I was supposed to

receive that as it's half mine too and the gate key whenever my friends come I don't want them walking through the house a bunch of times.”

- j. I reject the evidence of Heaven and Veronica that the \$420,000 was just a ‘budget’. There is no point to a budget without funds.
- k. I find the May 29, 2024, will to be of no probative value in relation to Veronica’s intentions at the time she made the transfer to Stefan. While post-transfer conduct can be evidence of intention at the time of transfer, I find it was not so in this case. Here, after the transfer, Veronica indicated she wanted to change her will, and this arose after her fight with Andrea, which got to her to “brainstorming this family matter”. I find the May 29, 2024, will reflects a change in Veronica’s intention and was an attempt to retract her gift after it was made and the relationship soured. As stated by the Court of Appeal, “a valid gift, once made, cannot be revoked or retracted and the failure of a donee to fulfill a donor’s expectations does not vitiate a valid gift”: *Abdollahpour v. Banifatemi*, 2015 ONCA 834 at para. 36.

[61] I find that Veronica changed her mind about the gift she had made after she had a fight with her daughter-in-law. Veronica chose to provide for her family by way of a gift. Things did not unfold as she had hoped. The family stopped getting along. Relations became more than frayed. She would like to undo the gift, but she is not entitled to do so. She intended to make the gift. Stefan accepted the gift. The gift was transferred when Veronica paid the funds for the purchase of the Lambeth property. Stefan has rebutted the presumption of resulting trust.

Disposition

[62] Veronica's application is dismissed.

[63] The parties are encouraged to agree upon costs. If they are unable to agree, the respondents may make costs submissions of no more than three double-spaced pages plus any offers to settle within 7 days. The applicant may respond with the same page limits within 7 days thereafter. There shall be no reply submissions without leave. Submissions may be sent to my judicial assistant at linda.bunoza@ontario.ca.

L. Brownstone J.

Date: February 6, 2025