Legal Update

Succession Law

The role of a trustee can be surprisingly complicated, especially where conflict arises between the personal interests of a trustee, and the interests of the beneficiaries which the trustee is expected to favour above all others.

For the majority of people, the most likely exposure to trusteeship in their lifetimes is as the executor (or 'administrator') of a deceased estate. This is also the most common instance for a conflict of interest to arise, as administrators are usually close relatives of the deceased and tend to be among the primary beneficiaries.

The critical aspect of trusteeship is a trustee's 'fiduciary duties', which can generally be understood as a strict obligation to act in the best interests of the beneficiaries of the trust, through loyalty, care and skill, and the avoidance of conflicting interests. Trustees take on an immense responsibility as custodian of the interests of beneficiaries. In recognition of this, the Courts rigidly enforce the duties of trustees, even where the outcome may seem unfair.

The Supreme Court of Western Australia recently had the opportunity to remind us of the strict nature of the no-conflict rule in *Burgess v Burgess*.[1] Mr Burgess died intestate (without a Will), and his widow was appointed administrator of his estate. The deceased left four retail superannuation fund accounts. Mrs Burgess sought to have the super fund death benefits paid directly to her: a reasonable proposition as a dependant spouse. However, once Mrs Burgess was appointed administrator, she took on the role of trustee, and her request to have death benefits paid to her personally put her in a position of conflict, where the trustee was required to seek that the proceeds be paid to the estate.

[1] [2018] WASC 279.

In the end, Mrs Burgess was permitted to retain the death benefits which were paid by one of the funds to her personally before she was appointed administrator, but had to pay the benefits received after taking on the trusteeship back to the estate, and apply for benefits of the remaining fund to be directed to the estate. As administrator, Mrs Burgess would then be required to distribute the monies in the estate to the beneficiaries entitled to them according to the rules of intestacy.

For the Burgess family, matters would have been greatly simplified – and the assets of the estate saved from dissipation in Court proceedings – if Mr Burgess had an appropriate estate plan in place, including a Will and Binding Death Benefit Nominations.

Given the strict statutory regulation of superannuation funds, it is even more important to seek guidance to ensure your intentions for the proceeds of your superannuation fund and associated death benefits are given effect on your death. It is possible to deal with superannuation funds within the terms of your Will, if a proper nomination is made by Binding Death Benefit Nomination. Even those who do not think that they have significant assets to warrant an estate plan will have insurance policies attached to their superannuation funds which can be substantial.

The Burgess matter also highlights the gravity of the role of estate administrator. There was no suggestion that Mrs Burgess acted with ill intent. In fact, she appeared to have believed that she was doing the best she could for her young children. Unfortunately, her fiduciary duties were paramount, and she had breached them.

For a person facing the responsibility of trusteeship, seeking legal advice to confirm and guide their actions in estate administration can be very reassuring, not to mention preventing unpleasant surprises down the track.

If you have any questions about the *Burgess* decision or would like to discuss estate planning matters, feel free to contact Paul McHugh by email at paulm@tml.com.au, or call 07 5443 1566.

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