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For the avoidance of doubt … no, super is not an estate asset

By Keeli Cambourne, Deputy Editor, SMSF Adviser and Matthew Burgess, Director, View Legal

Superannuation death benefits and the need for a well-drafted will was at the centre of a recent court decision dealing with an SMSF with an estate worth more than $18 million.

Matthew Burgess, director of View Legal, said the case of Lin v Yim & Anor [2026] QSC 57 highlights the confusion that can often arise regarding whether superannuation benefits are an estate asset that can be dealt with under a will, particularly when held via a self managed superannuation fund.

"This is often a point of confusion in holistic estate planning, particularly for advisers that do not specialise in the area," Burgess said.

"While superannuation benefits paid to a former member's legal personal representative do form part of the assets regulated by a will, this outcome is predicated on the trustee of the fund resolving to pay – or being bound to pay, due to a valid binding death benefit nomination – the benefits in this manner."

Burgess said that well-drafted wills will often contain a provision to ensure superannuation benefits are dealt with in accordance with the will maker's wishes, such as "In the event that any superannuation benefits are paid to my executor as a result of my death, then I give …".

In Lin v Yim & Anor [2026] QSC 57, Burgess said the court heard the will included several such clauses including; "I specifically direct that in the event that any potential beneficiary who is also an executor then they are not disqualified from being a beneficiary as a result of the exercise by them of their discretion".

"The will also noted that 'superannuation benefits' means entitlements payable as a result of my membership of a superannuation fund and includes proceeds of any life insurance policies owned by the superannuation fund in respect of a life," he added.

The case involved an estate valued in excess of $18 million including funds of around $5 million that had been withdrawn from an SMSF shortly before the death of the member, on advice from the accountants that by doing so this would ensure the benefits were tax free.

"There seemed to be some question as to whether any of the member's family members would have met the definition of a dependant for tax purposes. If the member had no tax

dependants and retained benefits within the SMSF at the date of death, this would have triggered a tax impost (essentially a form of death duty) on payment," Burgess said.

"One aggrieved beneficiary instituted proceedings founded on an argument that the benefits paid prior to death retained their character as superannuation entitlements and therefore had to be treated in the manner mandated under the will."

However, the court rejected this interpretation, Burgess said, and in its ruling stated that the above-mentioned clauses related to superannuation benefits not already paid out to the deceased which was the plain and ordinary meaning of the words in the will.

"The court stated that the use of the phrase 'in the event', given the word 'event' is ordinarily defined as 'a thing that happens or takes place', meant that the clause clearly contemplated the relevant event as requiring several things to occur before the clause would be engaged," he said.

"These included that the superannuation benefits are paid to the executor as a result of the member's death. On this construction, as a question of fact, it was clear that the disputed moneys were not paid to the executor as a result of the deceased's death, given they were not paid to the executor, and they were paid before the death (see Fagan v Crimes Compensation Tribunal [1982] HCA 49)."

Burgess continued that the definition in the will of "superannuation benefits" was crafted around the concept of "payable as a result of'"the willmaker's death which meant the amount at the date of death must have been presently capable of being paid (see Glass v Defence Force Retirement & Death Benefits Authority [1982] FCA 558).

"Again, here the benefits had been paid prior to the member's death. They were not payable at the time of death. There was nothing left of that character to pay, such that the funds in the personal bank account did not meet the definition of 'superannuation benefits' and in fact had lost that characteristic at the time they were paid to the deceased's personal bank account," he said.

"Given the relevant clause used the words 'such superannuation benefits', as opposed to 'funds' or 'monies' then reference was required to the manner in which the will defined 'superannuation benefits'. This meant the clause would only have been engaged where the deceased at the time of death still held entitlements in a superannuation fund as a member of the fund and the benefits were then paid to the executor by the SMSF as a result of the death – none of which had occurred here."

Furthermore, he said, nothing in the wording in the will supported an argument that the clause was so broad to include funds removed from the SMSF prior to death and held in the deceased's personal account.

"Indeed, even if it could have been said that there was some form of constructive payment to the executors, the two other pre-conditions in the will had clearly not been met," he added.