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Court ruling highlights member benefits and disputes in intergenerational wealth transfer

The Federal Court has approved the wind-up of a family SMSF after finding there was no loss to the fund and no breach of superannuation law arising from a disputed intergenerational wealth transfer strategy.

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

In Topp, in the matter of McLennan Holdings Pty Limited (In Liq) [2026] FCA 1259, Justice Yaseen Shariff backed a court-appointed receiver's decision not to pursue legal action against family members or a financial adviser over transactions that shifted millions of dollars from the retirement benefits of elderly fund members to younger family members.

The facts of the case state that the receiver was appointed to the fund by orders made by the Court on 21 December 2023 following a family dispute.

The initial members of the fund were Malcolm John McLennan (John) and Susan Karen Jeannine McLennan (Karen). John and Karen were husband and wife. Karen passed away on or about 2 March 2022. John and Karen remained the sole members of the fund until 2018. From in or about 2018, their son, Ruskin Dudley McLennan (Ruskin), and his partner, Jodie Elizabeth Ryan (Jodie) also became members of the fund. John and Karen have another child, Susannah McLean (Susannah), who has never been a member of the Fund.

The facts continued that in or about 2018, John and Karen sought financial planning and related advice from a financial adviser. At that time, they had both passed retirement age and were retired. Under the terms of the fund, they were entitled to receive lump sum payments in the nature of a pension payment, if they so desired.

At the relevant time, the assets of the fund were at least $7.5 million. John and Karen had sought advice in part to manage the succession of their estate, including the assets of the fund, in favour of Ruskin and Jodie, and to protect those assets from any claim that Susannah may bring against their respective estates in the future. This occurred in the context that at that time, Susannah was estranged from her parents.

The adviser gave John and Karen advice and the strategy was discussed over the course of several discussions and emails, which also included Ruskin. The elements of the strategy were also recorded in various documents.

The strategy was to involve John and Karen authorising the company (as trustee of the fund) to make lump-sum payments to them to be paid into a joint bank account held in the name of John and Karen (Joint Bank Account), the appointment of Ruskin as having power of attorney including over the joint bank account, and for Ruskin and Jodie to have the benefit of the lump-sum payments by becoming members of the fund and investing those sums back into the fund or otherwise using the money for their own purposes.

The facts continued that during 2018, Ruskin and Jodie became members of the fund and during the period from 2018 to 2020, a total amount of $900,000 was withdrawn from John and Karen's member balances which were deposited into the joint bank account.

Ruskin then caused the $900,000 to be transferred from the joint bank accounts to the fund, as a contribution made by Ruskin or Jodie into the fund. There were further withdrawals from the fund of approximately $1.4 million from John and Karen's member balances into the joint bank account and it was not in dispute that these monies were then made available to Ruskin and Jodie and were not invested back into the fund.

The effect of these transactions was to decrease the member balances of John and Karen, and to increase the member balances of Ruskin and Jodie and to otherwise give them money for their own use.

Having examined the terms of the fund, the receiver concluded that as John and Karen were of pension age and a condition of release had been satisfied (being that they were of retirement age), it was permissible for them to seek lump sum payments to be paid out of the fund.

The receiver also concluded that as John and Karen made voluntary decisions within the terms of the fund to seek lump sum payouts and provide those monies to Ruskin and Jodie, there was no loss to the fund or any breach of the SIS Act.

In his ruling, Justice Shariff said he agreed with the receiver's assessment John and Karen were at liberty to seek out financial advice and seek to implement an intergenerational planning strategy.

"Ultimately, the amounts in the fund were their money and so long as they were entitled to seek payments out of the fund, what they chose to do with that money was a matter for them," he said.

"The fact that they favoured the interests of Ruskin and Jodie over Susannah is not a matter that affects the management of the affairs of the fund. It may give rise to other claims Susannah has, which on the evidence before me have been agitated in the Supreme Court of NSW. However, those matters do not affect the receiver's correct assessment that there has been no loss to the fund or any relevant contravention of the SIS Act."

The decision reinforces a key SMSF principle that once benefits are validly paid to members who have met a condition of release, what they subsequently do with that money is generally outside the scope of SMSF regulation. The court drew a clear distinction between family and estate disputes on one hand, and whether an SMSF itself has suffered a loss or SIS Act contravention on the other.

Why the case matters for advisers

Matthew Burgess, director of View Legal, said the decision in Topp, in the matter of McLennan Holdings Pty Limited (In Liq) [2026] FCA 1259 provides an important reminder for advisers involved in SMSF succession planning, intergenerational wealth transfers and estate litigation.

"The Court's decision highlights an important analytical framework for SMSF members and their advisers. In particular, a dispute involving SMSF assets does not automatically involve a breach of the SIS Act," he said.

"Whenever a fund member withdraws funds the first question should be whether the SMSF itself suffered loss or whether there was non-compliance within the superannuation environment. If valid benefit payments have been made to a member who has satisfied a condition of release, subsequent dealings with those funds become an estate planning, succession, capacity or family provision application issue; rather than a SIS Act issue."

Burgess added, however, if benefits are accessed prematurely, or the requirements of an SMSF trust deed are not satisfied, the outcome may be different.

“In the factual matrix here, the receiver’s mandate was not to adjudicate family grievances or determine whether succession objectives were fair. Rather, the task was to determine whether the SMSF had suffered loss and whether legal proceedings should be commenced for the benefit of the fund. This distinction will often be relevant where advisers are faced with competing narratives from family members following controversial wealth transfers.

He continued that in terms of practical implications for SMSFs, the case serves as a useful reminder that once benefits are validly paid to a member, the money generally ceases to be an SMSF asset.

“Also, subsequent disputes will fall within estate law, equity, capacity law or family provision application legislation rather than the SIS Act and Court-appointed receivers and trustees are likely to focus on whether there has been actual loss to the SMSF rather than allegations from family members who regard transactions as unfair,” he said.

“Advisers should also ensure they have comprehensive documentation supporting retirement status, payment requests, withdrawal decisions and succession planning objectives, as part of a holistic estate plan, and the distinction between a transfer out of an SMSF and a subsequent personal transfer of wealth will generally be crucial.”