SEPTEMBER 2014

SMSF and family law issues

PRESENTED AT **THE QL**S MASTERCLASS SERIES

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Paper last updated October 2017

Introduction

You simply cannot practice in private client advisory today without an understanding of the self managed superannuation fund (SMSF). Family law is no exception. The ATO quarterly statistics report reveals that as at December 2013, there were 522,328 SMSFs in Australia, with 69.2 percent of those funds or 361,450 SMSFs containing two members. Whilst we can't say with any accuracy how many of these 361, 450 two member SMSFs represent SMSFs where the members are married or in a defacto relationship, it's certainly an indication of the prevalence of SMSFs.

This paper will explore the issues to consider if you are advising clients pre-relationship and the issues to consider at the end of a relationship. This paper is written from the SMSF perspective and is by no means a technical family law paper.

Issues to consider pre-relationship
- Superannuation is property of a marriage or defacto relationship under Part IIIVB of the Family Law Act 1975 (FLA).
- Financial agreements pre-relationship (pre-nup).
- Practical tips.

Issues to consider immediately on separation
- Liability as trustee.
- Binding death benefit nominations.

Issues to consider in property settlement and divorce
- Valuation of SMSF assets.
- Nature of assets.
- Indemnities.
- Third parties in SMSFs.
- Binding death benefit nominations.

Issues to consider pre-relationship

This paper will cover the following issues, however it is fair to say that by far the majority of our work comes from advising people on the issues arising upon separation and in negotiating a property settlement and ultimately divorce.

SUPERANNUATION IS 'PROPERTY' OF A MARRIAGE OR DEFACTO RELATIONSHIP

Pursuant to Part IIIVB of the FLA superannuation is property of a marriage or defacto relationship. There will of course always be the question of contribution, however all superannuation interests of both parties to the marriage or relationship will be included as property.

Certainly if your client is organised enough to be obtaining pre-relationship advice, providing clear advice that superannuation is property and maybe be split between the parties in any subsequent property settlement on the breakdown of the relationship is essential.

Superannuation is property for the purpose of the FLA but it is NOT a personally held asset, it is a trust and the member's access is governed by the Superannuation Industry (Supervision) Act 1993, Superannuation Industry (Supervision) Regulations 1994 and the trust deed of the fund. The FLA provides that the party's superannuation interests will be dealt with as if property and with some limited exclusions provides powers and mechanisms by which superannuation interests of the parties can be split.

FINANCIAL AGREEMENTS PRE-RELATIONSHIP

Pursuant to section 90B of the FLA, parties contemplating marriage can make a written agreement with respect to how all or any of the property of the spouse parties is to be dealt with in the event of the breakdown of the marriage. Such an agreement can deal with superannuation interests of the parties in accordance with section 90MH of the FLA.

A similar provision at section 90UB of the FLA allows parties contemplating entering a defacto relationship to make a written agreement with respect to how all or any of the property of the parties is to be dealt with in the event of the breakdown of the relationship. Such an agreement can deal with superannuation interests of the parties in accordance with section 90MHA.

Financial agreements are intended to be binding with the effect of ousting the jurisdiction of the Court in the event of the breakdown of a relationship. There is a long line of precedents of the Court setting aside these 'binding financial agreements' and if you wish to read more about this HopgoodGanim Partner Geoff Wilson prepared a detailed paper for a webinar entitled 'Financial Agreement: Should I stay or should I go? Professional ethics, professional liability and binding (?) financial agreements' in March 2013 for the Television Education Network.

A financial agreement prepared properly and professionally to be binding upon the parties can be useful in providing protection for a party who has accumulated a substantial superannuation interest pre-relationship.

<u>Case study 1</u>

Bill is 63 years old looking to retire in the next 12 to 18 months and entering a defacto relationship. He has been married and divorced previously and after a property settlement with his former wife he has a house valued at $650,000 encumbered by a bank mortgage owing $100,000 and an SMSF with a value of $1,500,000 of which he is the sole member and director of the trustee company.

What advice can we give Bill in order to protect his home and his retirement income?

- Enter a properly prepared financial agreement to be binding upon the parties. The terms of the agreement would include provision that each party retain their separate property, such separate property being the set out in schedules to the agreement and would include any superannuation interests in existence prior to the agreement and any accumulations to super during the marriage. Although in this example it is more likely that the superannuation will decrease during the relationship because in the short term Bill will retire and commence a pension drawing down on his superannuation. A financial agreement which is binding is going to be the best protection for Bill.
- If Bill decides he does not want a financial agreement the next best option is simply to maintain his SMSF separately and have the assets of his SMSF valued immediately prior to entering the defacto relationship for evidence purposes in the event of a breakdown of the relationship. Maintaining Bill's SMSF separately will not provide any protection against a split of his superannuation interests in the event of a relationship breakdown, however it does provide a practical measure which will make the property settlement process a little easier, i.e., not having remove his defacto partner from his SMSF and restructure not only

the membership but also the corporate trustee.

Whilst it is far more common for a financial agreement pre-relationship to provide that each party retain their own superannuation interests, a financial agreement can include a superannuation agreement which deals with the parties superannuation interests upon separation. Be careful if you are going to draft a superannuation splitting agreement in a pre-relationship financial agreement. I suspect the reasons why superannuation splitting is not commonly drafted into pre-relationship financial agreements include:

- Difficulty in determining value of the split in the future;
- Section 90MQ of the FLA prohibits a split by superannuation agreement within 12 months of separation where the superannuation interest exceeds low rate cap amount (2014/2015 is $185,000).
- Care and skill needs to be taken in drafting the mechanical provisions and giving necessary advice to the client regarding the effect of separation declaration, operative time for the superannuation split and the delay of 12 months if section 90MQ applies.

BINDING DEATH BENEFIT NOMINATIONS

Neither the SIS Act nor the SIS Regulations contain any provisions regarding the effect of divorce or marriage on a binding death benefit nomination, however the SMSF trust deed could have provisions which apply and there is never a substitute for reading the deed when giving advice in relation to an SMSF.

Wooster v Morris [2013] VSC 594

- Mr and Mrs Morris were the only trustees and members of an SMSF.
- Mr Morris made a BDBN on or about 18 March 2008 in favour of his two daughters from his first marriage.
- Mr Morris died on 27 February 2010.
- Mrs Morris appointed Mr Ashman (her son from her first marriage) as a co-trustee in October 2010.
- Mrs Morris and Mr Ashman received legal advice that the BDBN was invalid as it did not meet all of the trust deed's requirements.
- Corporate trustee (of which Mrs Morris was sole director) was subsequently appointed and resolved to pay all benefits to Mrs Morris on the basis that the BDBN was defective and not binding.

FINDINGS

Dispute about validity of BDBN was initially referred to a Special Referee who found it was valid and binding.
The Court declared the BDBN was valid and binding on:

- Mrs Morris and Mr Ashman as former trustees until 18 August 2011; and thereafter
- the corporate trustee.

The Plaintiffs were entitled to interest on the amount due to them (approximately $324,000) from 30 June 2010, calculated pursuant to the Penalty Interest Rate Act 1983.

Costs were awarded against the corporate trustee and against Mrs Morris personally because:

- Mrs Morris was the only person who would gain from the decision to defend the proceeding (a gain of $924,509.37);
- Separate corporate identity of the trustee should not protect Mrs Morris; and
- Mrs Morris "controlled the position in favour of her own personal stake" and, in doing so, "failed to take proper account of the interests of the other beneficiaries".

There was no right of indemnity out of the SMSF because the corporate trustee, with Mrs Morris as its director, failed to act impartially in the administration of the trust and therefore breached their obligations as trustees.

Trustees must be very careful to treat all beneficiaries equally.

Wooster v Morris is a good example of why advising clients pre-relationship to maintain their own separate SMSF makes a great deal of common sense to avoid practical problems. It was a second marriage for the deceased and the parties were the only two members and trustees of an SMSF. The deceased's member account represented two thirds of the total assets of the SMSF. This case turned on whether the binding death benefit nomination left by the deceased was valid. Paragraph 22 of the judgment states:

"On 11 May 2011, ... DLA Piper provided advice to Mrs Morris, Mr Ashman and Mr Pardasani that the BDBN was ineffective as it did not meet all the requirements of the cls 37.5(a) and (b) of the MFSF trust deed. In their letter of advice, DLA Piper referred to their instructions that:

The [BDBN] was prepared by the Deceased who was one of the Trustees of the [MFSF]. However, we are instructed that he never delivered it to Patricia (the co-trustee)..."

The inference in this case is that the deceased knew his current wife, Mrs Morris, would not be happy that he was leaving his superannuation to his two daughters from his first marriage so he made the binding death benefit nomination but did not actually give her notice as co-trustee which was a requirement of the SMSF deed in this case. This would not have been a problem if he had maintained a separate SMSF. Although maintaining separate SMSFs would incur greater compliance costs for a couple.

Issues to consider immediately on separation

TRUSTEE LIABILITY

In light of the new penalty regime, it is important that if your family law client is a director of a corporate trustee or a personal trustee, they understand their obligations. If they 'don't know' and 'just signed whatever was put in front of me' then a quick disclosure process is vital to ensure that any SMSF is a compliant SMSF and does not incur any penalties.

Under the previous penalty regime, the Australian Taxation Office (ATO) had the following limited choices to penalise SMSFs:

- Making an SMSF non-compliant for tax purposes;
- Applying to the Court for civil penalties to be imposed;
- Accepting and relying on an enforceable undertaking in respect of a contravention and its rectification; and
- Disqualifying the trustee.

As a result, the ATO often accepted enforceable undertakings or imposed no penalties at all and very rarely welded the big stick, making an SMSF non-compliant.

The new penalty regime came into effect on 1 July 2014 as a result of the Tax and Superannuation Laws Amendment (2014 Measures No.1) Bill. The new regime for

SMSF related contraventions includes rectification directions (section 159 of SIS Act), education directions (section 160 of SIS Act) and administrative penalties. It is hoped the new regime will give the ATO more flexibility and create a regime where the punishment is appropriate to the breach.

The administrative penalties are a strict liability, meaning if a contravention of a relevant SIS Act provision is reported to the ATO then the relevant penalty will be issued to the trustee no discretion exercised. This is a huge shift from the pre 30 June 2014 regime in which the ATO exercised a great deal of discretion. But it will be a matter of watch this space as the new regime comes into effect.

Administrative Penalties section 166 SIS Act

If a trustee or director of a trustee company contravenes a section of the SIS Act set out in the table at section 166 of the SIS Act, they are liable to pay the administrative penalty. A penalty unit currently equals $170. The following is an extract of the sections specified in the table at section 166 of SIS Act.

Provision of the SIS Act	Administration penalty
Section 34(1) Each trustee must ensure that the superannuation entity complies with the prescribed standards applicable, at all times	20 penalty units = $3,400
Section 35B Each trustee of an SMSF must ensure financial statements for each income year are prepared in accordance with the regulations, signed and retained for 5 years	10 penalty units = $1,700
Section 65(1) A trustee must not lend money or provide financial assistance from the fund to a member or a relative of a member	60 penalty units = $10,200
Section 67(1) A trustee must not borrow money or maintain an existing borrowing	60 penalty units = $10,200
Section 103 Trustees must keep and retain for at least 10 years minutes of all meetings	10 penalty units = $1,700
Section 104(1) Each trustee must ensure that up-to-date records of all changes of trustees, directors of corporate trustees and consents under section 118 are kept and retained for 10 years	10 penalty units = $1,700
Section 104A(2) Each trustee of an SMSF or director of a corporate trustee of an SMSF must sign a declaration in the approved form no later than 21 days after becoming a trustee or director and retain the declaration for as long as relevant but at least 10 years	10 penalty units = $1,700
Section 105(1) Each trustee must ensure that copies of all member or beneficiary reports are kept and retained for at least 10 years	10 penalty units = $1,700
Section 106(1) Trustee must ensure that the regulator is notified in writing of any event having a significant adverse effect on the financial position of the fund	60 penalty units = $10,200
Section 106A(1) A trustee of a superannuation entity must notify the Commissioner of Taxation in writing when a superannuation entity becomes an SMSF or ceases to be an SMSF	20 penalty units = $3,400
Section 124(1) A trustee of a superannuation entity must not make a non-written appointment of an investment manager of the entity	5 penalty units = $850
Section 160(4) A person to whom an education direction is given must comply within the specified period	5 penalty units = $850

__Note:__

The administrative penalties are imposed on each trustee of an SMSF, meaning if you have two individual trustees, each of the trustees are liable for the whole penalty. For example if the SMSF contravenes section 35B,each individual trustee will be liable to pay $1,700, a total of $3,400. Whereas if the same SMSF had a corporate trustee, only one penalty of $1,700 would apply. This demonstrates that for the avoidance of penalty fees alone, a corporate trustee is often the best solution for many clients.

The administrative penalties and any costs necessary to comply with an education direction are to be borne personally by the trustees or directors of the trustee company and cannot be paid or reimbursed from the SMSF.

If you want more information about the ATO's SMSF compliance under the new regime, there is a webinar available on the ATO's website presented by Nathan Burgess, Director at the ATO entitled 'New compliance treatments for SMSF's: June 2014'.

BINDING DEATH BENEFIT NOMINATIONS

Separation does not affect the validity of a BDBN. Every client whose relationship has recently broken down needs to check their most recent BDBN. If their estranged spouse is nominated the client should make a new BDBN. If your client does not have a BDBN at all and for the time being at least remains a joint member and trustee of the same SMSF as the estranged spouse again they should make a new BDBN.

There is no way of setting aside a valid binding death benefit nomination as was seen in the Wooster v Morris case. The Ioppolo & Hesford v Conti case is an example what can happen if parties remain as members and trustees of an SMSF post separation and do not have appropriate BDBNs in place.

IOPPOLO & HESFORD V CONTI [2013] WASC 389

- Husband and wife established an SMSF and were the only members and trustees.
- Fund was an SMSF within the meaning of the SIS Act.
- Wife died on 5 August 2010 and left a Will dated 13 January 2005.
- Will specifically stated that the wife's superannuation entitlements (approximately $648,000) be paid to her four children and that her husband not receive any benefit.
- No binding direction in force at date of death. This meant that under the Trust Deed, the Trustee (the husband and later his company, Augusto Investments Pty Ltd) had absolute discretion to pay the wife's entitlements to a spouse or child of the member, or any other dependant.
- Augusto Investments Pty Ltd determined the monies in the wife's account should be paid to the husband and not to the children, as expressly stated in the wife's Will.
- Claim brought by the four children who were the executors of the wife's estate.

PLAINTIFFS' ARGUMENTS

__Argument 1 (Rejected)__

Augusto Investments Pty Ltd was obliged to appoint one of the executors of the wife's estate (her four children) as a trustee of the Fund.

- Plaintiffs argued the deed required the fund to remain an SMSF and that the only way that could be achieved by reference to section 17A(1)(d)(i) of SIS Act was for the appointment of the executor as trustee.
- Held that section 17A allows for the appointment of an executor as a trustee of the fund, but does not require it.
- Section 17A(4) provides a period of six months for steps to be taken to ensure the Fund remains an SMSF. Augusto Investments Pty Ltd was appointed as a trustee within that period, meaning the fund migrated to a fund under s 17A(2) and remained an SMSF.

__Argument 2 (Rejected)__

Augusto Investments Pty Ltd did not exercise its discretion bona fide as required by the Deed.

- The relevant clause allowed the trustee to exercise its powers or rights, even where certain conflicts of interest existed, provided that the power was exercised bona fide and did not breach relevant legislation under the deed.
- It was found that there was no evidence that the trustee did not exercise its discretion bona fide.
- The husband took advice from his solicitor and a tax specialist and was advised that he was within his rights to have the trustee make the payment to him.
- It was held to be difficult to see how the first or second defendants could be said not to have acted in a bona fide manner when they had taken advice from a specialist.
- The wife had also nominated her husband to receive her benefits upon her death when she applied to become a part of the fund, and had previously made two binding beneficiary nominations (both of which had expired at the date of her death) in favour of him. The trustee was entitled to take those nominations into account when determining to whom the benefit ought to be paid.
- The trustee was entitled to ignore the direction in the wife's Will and the fact that was done did not evidence a lack of bona fides.

__Argument 3 (Rejected)__

The Plaintiffs sought that one of them be appointed as a trustee under s 77 of the Trustees Act 1962 (WA).

- The Court must be satisfied there are reasonable grounds to appoint.
- There were no grounds here as the trustee had not acted without bona fides or in any way improperly.
- The Court also said that to appoint an additional trustee would sow the seeds of disaster because there would then be one corporate trustee aligned with the first defendant and one individual trustee aligned with the beneficiaries under the Will, and there was no mechanism for resolving the inevitable disputes that would arise.

The facts in the written judgment of this case were brief. However, given the clause which appeared in Mrs Conti's Will it is probably the case that although married Mr and Mrs Conti were estranged for several years prior to her death. We don't know if the parties were separated or whether they had undertaken any property settlement in respect of other property of the marriage.

As advisers we need to be very careful because the next step will be the disappointed beneficiaries claiming for loss of benefit as a result of the negligence of the lawyer. There is negligence on the part of the family lawyer who failed to advise the client they needed to make a new BDBN, and of the succession lawyer who prepared the Will and failed to advise that the Will has no power to determine payment of death benefits from an SMSF.

Issues to consider in property settlement and divorce

The parties have separated and we've satisfied ourselves that our client is a member and trustee of an SMSF but has no immediate trustee liability concerns and we've prepared a new BDBN for our client. What are the SMSF issues in negotiating a property settlement?

VALUING SMSF ASSETS

Valuation of the assets of an SMSF can be problematic due to access to SMSF financial statements or the nature of the assets. The majority of SMSFs will have typically investment assets real property, and listed shares and cash which are relatively straight forward to value. Some trustees of SMSFs have acquired some rather unusual assets which might prove hard to value, including collectibles such as antique cars or artwork and unlisted shares or units.

The preparation of SMSF financial statements requires the assets of the SMSF to be valued and the ATO provides valuation guidelines for SMSFs on its website. It may be the case if the financial statements and records keeping of the SMSF are up to date, then for family law negotiation purposes rather than obtaining new valuations you could rely on the SMSF financial statements for valuation. The ATO guidelines include the following checklist:

Event	Valuation required
Preparation of SMSF financial accounts and statements	Based on objective and supportable data
Collectables and personal use assets - acquired on or after 1 July 20111 and transferred or sold to a related party after that date	Qualified independent valuer
Collectables and personal use assets - acquired before 1 July 2011 and transferred or sold to a related party before 1 July 2016	Transfer made at arm's length price that is based on objective and supportable data
Collectables and personal use assets - acquired before 1 July 2011 and transferred or sold to a related party after 30 June 2016	Qualified independent valuer
Acquisition of an asset from a related party of the fund	Acquired at market value that is based on objective and supportable data
Disposal of an asset to a related party of the fund	Sale price should reflect a true market rate of return
Testing whether the market value of the SMSFs in-house assets exceeds 5 percent of the value of its total assets	Based on objective and supportable data
Determining the value of assets that support a super pension or income stream	Based on objective and supportable data

Always check and keep on top of the date of valuations as the assets of an SMSF, as although values appear in the annual financial statements, the values are not always from the same date. Different assets are valued at differentpoints in time and by different methods. For example, with real property the value which appears in the financial statements of the SMSF might already be 12-18 months old depending upon how long the negotiation process takes your client might be signing consent orders relying on a valuation that is now three years old.

NATURE OF ASSETS

This is a common problem we encounter with SMSFs even if parties are retaining their own superannuation entitlements. Certainly in specie, transfer of assets is commonly involved when dealing with SMSFs in relationship breakdowns and provided the valuation stacks up, receiving assets as part of your superannuation entitlement is simply a practical issue.

However, we are increasingly seeing SMSFs investing in real property and in some cases doing so by borrowing (in accordance with SIS Act exception at section 67A) which does not present a problem until one party wants to retain and roll out their superannuation entitlements or you wish to split the entitlements.

<u>Case study 2</u>

Mark and Molly are the only members and directors of a trustee company of an SMSF. The SMSF has a combined value of $500,000 at the point of separation. Mark's member account is $300,000 and Molly's $200,000. The assets of the fund are two properties each purchased (relatively recently) for $300,000, plus cash of $100,000. The SMSF borrowed $100,000 to purchase each property, owing a total of $200,000 to the bank. The Parties agree in principal that each will retain their own superannuation entitlements, but how do we achieve the finality required by section 81 of the FLA if practically neither party can roll out their entitlement? What are the options for Mark and Molly?

- Use the only cash at bank in the SMSF to repay one of the loans, then transfer the unencumbered property in specie to a new SMSF of which Mark is the only member and director of the trustee. Although it separates the entitlements of the parties neither party now has any cash or liquidity in their respective SMSF and for Molly she is left with any potential liability of the existing fund.
- If possible within the contribution caps have Mark contribute at least $100,000 in cash, giving the SMSF $200,000 in cash to enable Molly to roll out her entitlement in cash. This option might suit Molly as she is free to either take her super entitlements to a new SMSF, retail or industry fund of her choice. Mark is left with no liquidity in the SMSF, two lumpy real property assets and borrowings.
- Sell one of the properties, assuming it can be sold for at least the $300,000 purchase price. Having paid out one of the borrowings, the fund should have sufficient cash for Molly to roll out her entitlement. Provided the parties are happy to sell one property and can sell it for an appropriate price, this might be a good outcome for both parties. It enables Molly to receive her entitlement in cash which she can roll out to a new SMSF, retail or industry fund of her choice. It will also leave Mark with some liquidity in the fund given that Mark will retain the existing SMSF with the remaining property and borrowings.
- Although each retains their own superannuation entitlements, the parties agree to jointly remain in the SMSF. You would need to present the Court with compelling reasons why the Court should make the consent orders given the finality required by section 81 of the FLA will not be achieved. Alternatively, the parties could choose to enter a binding financial agreement after separation instead of consent orders. Extreme caution should be exercised before advising clients to remain in an SMSF together and a great deal of care and skill should be exercised in drafting any such consent orders or binding financial agreement. The outcome in the Ioppolo & Hesford v Conti case should serve as a poignant reminder.

INDEMNITIES

If the parties are members and trustees of an SMSF, we all want indemnities for our clients in the consent orders regardless of whether the parties are retaining their own superannuation interests or we are splitting the superannuation entitlements. These indemnities will be particularly important for the client who 'just signed what was put in front of me'.

Negotiations about the extent to which parties are willing to indemnify the other and want to be indemnified can be an obstacle to getting the otherwise in principal agreement finalised. One commercial strategy is to dump the existing SMSF altogether. For example if one party is receiving all assets of the SMSF they establish their own single member SMSF and roll over both their entitlements and the superannuation split amount from the existing SMSF and the existing fund is wound up.

The capital gains tax (CGT) rollover relief extends to allow the above strategy to occur without CGT impost.

THIRD PARTIES IN SMSFS

It will not always be the case that the only members of an SMSF will be the parties to the relationship. Remember that SMSFs can have up to four members and trustees/directors. We have seen all of the following combinations of SMSFs members and trustees in our clients:

- Single member fund – only one party to the relationship member and trustee;
- Two member fund – both parties to the relationship members and trustees;
- Two member fund – one party to the relationship and a third party relative or business partner as members and trustees;
- Three member fund – again one party to the relationship and two third party relatives or business partners as members and trustees;
- Three member fund – both parties to the relationship and a third party relative are members and trustees;
- Four member fund - one party to the relationship and three third party relatives are members and trustees;
- Four member fund – both parties to the relationship and their two children as members and trustees; and
- Four member fund – both parties to the relationship and the business partner and spouse as members and trustees.

Where there is an SMSF with third party members and trustees, be prepared for the valuation process and potentially the negotiations to take a little longer. Also be attune to whether the client is retaining and rolling out their own entitlements or splitting, as the other parties need to take care in ensuring the necessary notices are served on the third parties. The mechanics of splitting orders are deserving of their own paper and there are family lawyers who have prepared papers on this topic.

BINDING DEATH BENEFIT NOMINATIONS

Once a property settlement has been reached and consent orders or binding financial agreement after separation have taken effect, your client must review their BDBN. It is possible that your client has rolled out their entitlement to a new SMSF or perhaps even a retail or industry fund. Any BDBN that your client made as a member of the SMSF will be of no effect once your client ceases to be a member of that SMSF.

Case study 3

Don and Joy were married and eventually separated. They negotiated a property settlement and consent orders were made they each retained their own superannuation entitlements and in accordance with the orders Joy rolled her account balance out of the SMSF they had jointly established during their relationship. Joy resigned as director and transferred all her shares in the trustee company to Don. Although the property settlement was completed, Don and Joy never got divorced and Joy therefore remains a SIS Act dependant.

A couple of years later Don died and on the SMSF register, a non-lapsing BDBN is found in favour of Joy. The BDBN appears to be binding in form although it was signed and dated prior to separation. Although Don had made a new Will following the property settlement appointing someone other than Joy as his executor, it did not matter who gained control of the trustee company because the trustee company had no discretion unless the BDBN could be proven not to be binding due to its form.

No doubt in these circumstances there maybe some clever arguments about the wording of the consent orders, the finality of consent orders and that based on the consent orders neither party can make further claims against the property dealt with in the orders, but I'm not convinced such arguments would be successful.

Conclusion

I will leave you with the issues in case study 3 unanswered and simply repeat my opening comment: you cannot provide private client advice if you do not understand SMSFs. Hopefully this Paper and my presentation have assisted you in gaining some further understanding about SMSFs in relationship breakdowns.

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About HopgoodGanim Lawyers

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We offer highly skilled and agile legal teams across key sectors and areas of practice. In all of our areas of speciality, our lawyers are recognised by legal publications as leaders in their fields.

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