SUPREME COURT OF QUEENSLAND

CITATION:	*Munro & Anor v Munro & Anor* [2015] QSC 61
PARTIES:	**VANESSA MARGARET MUNRO AND ELKE MUNRO-STEWART** **(applicants)** **v** **PATRICIA SUZANNE MUNRO AND ANGELA POOLEY AS TRUSTEES FOR THE BARRIE AND SUZIE SUPER FUND** (**respondents**)
FILE NO:	BS1402 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	25 March 2015
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2015
JUDGE:	Mullins J
ORDER:	**1. It is declared that the binding death benefit nomination form signed by Barrie John Munro and dated 22 September 2009 is not a binding nomination for the purpose of clause 31.2 of The Barrie and Suzie Super Fund established by deed dated 19 July 2004.** **2. Paragraph 1 of the orders of the court made on 11 February 2015 is discharged.**
CATCHWORDS:	SUPERANNUATION – BENEFITS – MATTERS AFFECTING ENTITLEMENT TO AND PAYMENT OF – OTHER MATTERS – where deceased was member of self managed superannuation fund – where deceased purported to nominate trustee of his deceased estate as a binding death benefit nomination for the purpose of the trust deed – whether trust deed imported requirements of reg 6.17A *Superannuation Industry (Supervision) Regulations* 1994 (Cth) – whether nomination by the deceased of the trustee of his deceased estate satisfied reg 6.22 and the relevant clause of the trust deed as the nomination of his legal personal representative – whether death benefit nomination form signed by deceased is binding on the trustee of the fund *Superannuation Industry (Supervision) Act* 1993 (Cth), s 10, s 31, s 55A, s 59 *Superannuation Industry (Supervision) Regulations* 1994

(Cth), reg 6.17A, reg 6.22

Commissioner of Stamp Duties (Q) v Livingston (1964) 112 CLR 12, followed
Donovan v Donovan [2009] QSC 26, distinguished

COUNSEL: S J Lee for the applicants
R D Williams for the respondents

SOLICITORS: Bernard Knapp Lawyers for the applicants
Butler McDermott Lawyers for the respondents

[1] Mr Barrie John Munro who practised as a solicitor during his working life died in August 2011 at age 66 years. He was survived by Mrs Patricia Suzanne Munro and his two daughters from his previous marriage, Ms Vanessa Munro and Ms Elke Munro-Stewart who are the applicants. For ease of reference, I will refer to the daughters by their given names. Mr Munro's last will was made on 25 May 2006 (the will). Mr Munro's two daughters and Mrs Munro are named as the executors of the will. No grant of probate has been applied for in respect of the will.

[2] A dispute has arisen between Mrs Munro and the two daughters over what should happen to Mr Munro's benefits under a self managed superannuation fund established by deed dated 19 July 2004 and entitled "The Barrie and Suzie Super Fund" (the fund).

The fund

[3] In 2004 Mr Munro consulted his financial planner, Mr Buhk, at his accountants who organised for the trust deed that was executed by Mr and Mrs Munro to establish the fund. Mr and Mrs Munro were named in the deed as the trustees of the fund. When Mr Munro applied for membership of the fund on 19 July 2004, he inserted in the part of the form for nominating dependants the description "Trustee of my Estate".

[4] Clause 31 of the deed deals with payment of benefits on death. Under clause 31.1 (which is subject to clauses 28 and 31.2) the trustee is given the option on the death of a member who leaves dependants of paying or applying any benefit to or for the benefit of the relevant Nominated Dependant either as a lump sum or a pension or a combination and the trustee is also conferred a discretion, if the trustee considers it inappropriate or inequitable to pay the Nominated Dependant, to pay or apply the benefit to the legal personal representative of the deceased or to the benefit of any of the deceased's dependants in whatever proportions the trustee may determine. Clause 31.2 requires the trustee to pay a benefit payable on the death of the member in accordance with a binding nomination (subject to specified exceptions which are not relevant to this matter) where the nomination is signed by the nominator, specifies that a benefit is to be paid to one or more Nominated Dependants or the legal personal representative of the member, states the nomination is binding on the trustee and complies with the Relevant Requirements.

[5] Clause 4 of the deed defines "Dependant" in relation to a member or former member as including a dependant as defined in s 10 of the SIS Act. That definition of "dependant"

in relation to a person "includes the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship". Clause 4 of the deed then defines "Nominated Dependant" to mean "a person nominated by a Member as the Nominated Dependant".

[6] "Relevant Requirements" is defined in clause 4 of the deed as:

> " 'Relevant Requirements' means any requirements (including the provisions of the SIS Act) which the Trustee or the Deed must comply with to avoid a contravention of the requirements or in order for the Fund to qualify for concessional Taxation treatment as a Complying Superannuation Fund, and includes Part VIIIA of the Family Law Act 1975 and the Family Law (Superannuation) Regulation 2001;"

[7] "SIS Act" is also defined in clause 4 of the deed as the *Superannuation Industry (Supervision) Act* 1993 (Cth) and any Regulations pursuant to it.

[8] Mr Munro signed the document entitled "Binding Nomination" on 25 May 2006 (the same day he executed the will) that purported to direct the fund to pay his death benefits on his death "to my estate". The signed binding nomination was forwarded by Mr Munro's solicitors to his accountants with instructions to note when the binding nomination had to be renewed and inform Mr Munro accordingly. Mr Buhk had not prepared this so-called binding nomination.

[9] By 2009 the firm at which Mr Buhk worked had become DBSN Accountants and that firm continued to provide accounting and financial planning services for Mr Munro until March 2010.

[10] An employee from DBSN sent a letter dated 8 July 2009 to Mr and Mrs Munro giving general advice on the need to review key matters with regard to the fund including death benefit nominations. The letter referred to the non-binding nominations made on 19 July 2004 (overlooking the nomination signed by Mr Munro on 25 May 2006) and recommended that any non-binding nominations be updated to binding nominations to guarantee that their wishes would be carried out upon death. Mr Munro sent a letter to DBSN dated 10 September 2009 objecting to having to pay for a review of the trust deed when it should have been familiar to DBSN and instructing DBSN to provide the paperwork to give effect to the binding nomination of Mr Munro in favour of "Trustee of Deceased Estate".

[11] On 22 September 2009 Mr Munro signed a printed form entitled "Binding death benefit nomination" that had his name and particulars written on the form, but in the section of the form that allowed for the specification of the nominated beneficiary, the name of the beneficiary had been typed in as "Trustee of Deceased Estate" and the percentage of benefit to be received was designated as "100%". The relationship of the nominated beneficiary was shown as "Trustee". The section of the form that contained the details of the nominated beneficiary contained this instruction:

> "Each nominated beneficiary must be your spouse (legal or de facto), child (including adopted or step-children), financial dependant, interdependent or

> the executor of your estate (as stated in your will). When you nominate your executor you should enter legal personal representative in the relation column."

[12] In the next part of the form that preceded Mr Munro's signature, there was set out what purported to be the member's understanding about the nomination, including that:

> "My beneficiary(ies) must be my spouse, child, financial dependant, interdependent or a legal personal representative of my estate at the date of my death …
>
> This declaration must be signed by me in the presence of two witnesses (who are not a nominee on this form) both of whom are over the age of 18."

[13] Mr Munro's signature was witnessed by Mrs Munro and Mrs Munro's daughter, Ms Moorecroft.

[14] Although Mr Buhk had not prepared the binding death benefit nomination form that Mr Munro signed on 22 September 2009, I infer from Mr Munro's letter to DBSN dated 10 September 2009, that some person at DBSN prepared the form Mr Munro signed.

[15] Following Mr Munro's death, he was replaced in February 2012 as trustee by another daughter of Mrs Munro, Ms Pooley, who is a respondent to this application with Mrs Munro.

[16] The respondents by their solicitors' letter dated 4 February 2015 gave notice to the applicants of their intention to exercise their discretion as the trustees of the fund by paying Mr Munro's entitlement, on the basis they considered the nomination dated 22 September 2009 to be invalid for the purpose of clause 31.2 of the deed.

[17] At the hearing on 11 February 2015 the parties consented to an interlocutory order that restrained the respondents from making any decision to distribute the death benefit of Mr Munro under the fund to anyone other than the applicants.

[18] The applicants in their second supplementary outline of submissions dated 26 February 2015 object to paragraphs 4-7, 14 and 22 of Mrs Munro's affidavit filed on 25 February 2015. As to paragraph 4 which deals with the funds of the estate, Mrs Munro is one of the executors of Mr Munro's estate and is an appropriate person to provide information about the assets in the estate. To the extent that Mrs Munro is relying on the information supplied by the solicitors for the estate, there was no objection to solicitor Mr Thompson's affidavit in which he deals with being informed by Mrs Munro that the assets of the estate are minimal. Elke in her affidavit filed on 25 February 2015 confirms that there is the debt outstanding of $7,924.47 to the solicitors for the estate. The material filed after the decision was reserved raised an issue about the ownership of the Range Rover motor vehicle that was insured in the name of Mr and Mrs Munro as trustees of the fund and was registered in their joint names. The subject matter of this application is the validity of the purported binding death benefit nomination dated 22 September 2009 and is not an opportunity to air all disputes between the parties. It is not satisfactory to deal with this issue merely on the papers.

[19] There is also an issue between the parties about the validity of the loan agreement that is referred to in clause 9 of the will. It is not appropriate on this application to express any view about the validity of that agreement. It is therefore unnecessary to deal with the objections to paragraphs 5-7 and 14 of Mrs Munro's affidavit.

[20] As set out above, I have relied on the documents exhibited to Mrs Munro's affidavit to draw the inference that a person at DBSN prepared the binding death benefit nomination form that Mr Munro signed on 22 September 2009. I did not have regard to paragraph 22 of Mrs Munro's affidavit.

The will

[21] Clause 2 of the will provides:

> "The executors of this Will are to be as follows:
>
> 2.1 I appoint my wife **PATRICIA SUZANNE MUNRO** ('Suzie') and my daughters **VANESSA MARGARET MUNRO** ('Nessie') and **ELKE MUNRO-STEWART** ('Elke') to be executors of this my Will ('my executors');
>
> 2.2 Subject to the provisions of clauses 10.1 and 12 my executors will be the trustees of each trust under this Will unless or until another trustee is appointed pursuant to this Will."

[22] Clause 7 of the will provides:

> "My executors will hold my estate on trust and, subject to the powers set out in this Will, after the selling, calling in or converting into money any part of my estate and the payment of all or any debts and testamentary expenses associated with my death or the administration of my estate, will hold and dispose of the balance of my estate as provided hereafter."

[23] Clause 8 of the will sets out a direction about adjusting entitlements under the will:

> "Notwithstanding any other clause of this Will, it is my intention to ensure that the division of the balance of my estate under the succeeding clauses of this Will be from the aggregate of:
>
> 8.1 The balance of my estate; and
>
> 8.2 Any entitlements to superannuation or insurance proceeds payable or paid in consequence of my death and to or for the benefit of any of the beneficiaries nominated in the succeeding clauses. So for example, if Suzie receives or is allocated the amount of Suzie's Gift directly from the proceeds of any superannuation funds on my death, the gift in clause 9, hereof shall lapse."

[24] Clause 9 of the will provides for the gift to Mrs Munro in these terms:

> "9.1 I give to Suzie the sum described in this clause as "Suzie's Gift' for her sole use and benefit absolutely subject to her surviving me for

thirty (30) days, and in the event that superannuation, allocated pensions or other superannuation related pension death benefits ('death benefits') are paid to my estate in consequence of my death, I direct that my executors distribute Suzie's Gift directly from such death benefits.

9.2 In this Will, Suzie's Gift means the sum of $350,000.00 less any monies which remain owing to me by Suzie at my death pursuant to an agreement between me and Suzie dated 1 November 2004."

[25] Under clause 10 of the will, two beneficiary testamentary trusts are created, one which is intended to benefit Vanessa and the other Elke. Clause 10 commences:

> "My executors will divide the balance of my estate into one or more equal parts and will dispose of such parts to the following trusts:
>
> 10.1 Each of my children who survive me by thirty (30) days will be the initial trustee and the primary beneficiary of a trust for one such part (ie Nessie will be the initial trustee and the primary beneficiary of 'the Nessie Trust' and Elke with (*sic*) be the initial trustee and the primary beneficiary of 'the Elke Trust')."

[26] The terms of the trusts established under clause 10.1 of the will are specified in clause 12 of the will.

The legislation

[27] The fund is a regulated superannuation fund for the purpose of the SIS Act. Section 55A(1) of the SIS Act provides that the governing rules of a regulated superannuation fund must not permit a fund member's benefits to be cashed after the member's death otherwise than in accordance with standards prescribed for the purposes of s 31. Section 31 of the SIS Act provides the regulations may prescribe standards applicable to the operation of regulated superannuation funds. The relevant provisions of reg 6.22 of the *Superannuation Industry (Supervision) Regulations* 1994 (Cth) (SIS Regulations) provide:

> "**6.22 Limitation on cashing of benefits in regulated superannuation funds in favour of persons other than members or their legal personal representatives**
>
> **(1) [Limitation]** Subject to subregulation (6) and regulations 6.22B, 7A.13, 7A.17 and 7A.18, a member's benefits in a regulated superannuation fund must not be cashed in favour of a person other than the member or the member's legal personal representative:
>
> (a) unless
>
> (i) the member has died; and
>
> (ii) the conditions of subregulation (2) or (3) are satisfied; or
>
> (b) unless the conditions of subregulation (4) or (5) are satisfied.

(2) [Conditions regarding benefits to be cashed to persons other than member] The conditions of this subregulation are satisfied if the benefits are cashed in favour of either or both of the following:

(a) the member's legal personal representative;

(b) one or more of the member's dependants."

[28] As arguments were addressed on reg 6.17A of the SIS Regulations which regulates payment of benefit on or after death of a member for the purpose of s 59(1A) of the SIS Act, it is relevant to set out s 6.17A(6) that prescribes the notice that must be given by the member to the trustee to take advantage of s 59(1A):

"**(6)** For paragraphs (4)(c) and (5)(b), the notice:

(a) must be in writing; and

(b) must be signed, and dated, by the member in the presence of 2 witnesses, being persons:

(i) each of whom has turned 18; and

(ii) neither of whom is a person mentioned in the notice; and

(c) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the member in their presence."

The issues

[29] The issues identified during the hearing of the application on 11 February 2015 changed, as a result of the further evidence and submissions filed by both parties since the hearing.

[30] The issues that now have to be decided are:

(1) in order be to a binding death benefit nomination for the purpose of the fund, did Mr Munro's death benefit nomination have to comply with the requirements of reg 6.17A of the SIS Regulations?

(2) what did Mr Munro mean by nominating the trustee of his deceased estate?

(3) what is the effect of the death benefit nomination form signed by Mr Munro on 22 September 2009?

The estate

[31] Mr and Mrs Munro had held joint bank accounts to which Mrs Munro succeeded on Mr Munro's death. It appears the estate has minimal funds. A debt of $7,924.47 is owed to the estate's lawyers. Putting the dispute about the ownership of the Range Rover to one side, there are not otherwise sufficient funds to pay that debt and there has been no

payment of any legacy under clause 9 of the will, (although the parties also disagree about the effect of that clause).

The parties' contentions

[32] The applicants contend that s 59(1A) of the SIS Act does not apply to the fund as it is a self managed superannuation fund and that means reg 6.17A of the SIS Regulations does not apply. The applicants rely on support found in the ruling of the Commissioner of Taxation: Self Managed Super Funds Determination 2008/3 (SMSFD 2008/3). The applicants argue that the definition of Relevant Requirements in the trust deed does not import reg 6.17A, but does import reg 6.22. Regulation 6.22 requires that the death benefit may be paid only to a legal personal representative or a dependant. The applicants argue the nomination dated 22 September 2009 made by Mr Munro in favour of the "Trustee of Deceased Estate" was intended to be operative as a binding death benefit nomination and should be given effect as such on the basis that "Trustee of Deceased Estate" is another way of referring either to the executors or, on an alternative argument, to the testamentary trustees as dependants. In support of the first argument, the applicants rely on the broad meaning given to "trustee of a deceased estate" in the *Income Tax Assessment Act* 1997 (Cth) (ITAA), and particularly s 302.10 dealing with the taxation of superannuation death benefits paid to the trustee of a deceased estate.

[33] The respondents submit, in reliance on *Donovan v Donovan* [2009] QSC 26, that the effect of SMSFD 2008/3 is displaced, as the definition of Relevant Requirements under the trust deed imports the requirements of reg 6.17A of the SIS Regulation in respect of the form of the binding death benefit nomination. The nomination dated 22 September 2009 does not comply with reg 6.17A. Alternatively, the respondents argue that in any case, the nomination does not comply with reg 6.22 as it is not a nomination in favour of either Mr Munro's legal personal representative or a dependant or dependants. The definition of legal personal representative in s 10 of the SIS Act means, in relation to Mr Munro, the executors of his will and does not extend to the trustee of his estate.

[34] The applicants submit that the respondents in their first outline conceded that, if the nomination dated 22 September 2009 were valid, it was a nomination of the executors of the estate. As the summary of the respondents' arguments set out above shows, that is not the ultimate submission of the respondents. The applicants' characterisation of the respondents' submission in their first outline overstates the effect of the submission by taking it out of context.

Did Mr Munro's death benefit nomination have to comply with reg 6.17A?

[35] Although SMSFD 2008/3 is not binding on the court (or the Commissioner of Taxation) it sets out a logical approach to the construction of s 59 of the SIS Act which I consider correct and adopt for the purpose of determining the applicability of reg 6.17A of the SIS Regulations to the fund.

[36] As s 59(1) of the SIS Act does not apply to a self managed superannuation fund, the exception to the application of s 59(1) found in s 59(1A) also does not apply to a self managed superannuation fund. Regulation 6.17A sets out the conditions for the purpose

of s 59(1A) for the payment of a death benefit after the death of a member, but in view of the exclusion of a self managed superannuation fund from the operation of s 59(1), those conditions do not apply by virtue of either the SIS Act or the SIS Regulations to a self managed superannuation fund.

[37] To the extent that the respondents rely on *Donovan* (which also concerned a self managed superannuation fund) to construe the subject trust deed as importing the requirements of reg 6.17A of the SIS Regulations, that case can be distinguished. It was not necessary for the decision in *Donovan*, but Fryberg J expressed the view that, as the rules of the relevant fund required a binding nomination to be in the form required to satisfy the "Statutory Requirements" as defined in the relevant trust deed, the trust deed required compliance with reg 6.17A of the SIS Regulations. The definition of "Statutory Requirements" in the relevant trust deed was:

> " 'Statutory Requirements' means the requirements imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund in order to qualify for income tax concessions provided that where the Member's Application indicates that the pension is taken out to comply with the requirements of the Social Security Act 1991 of the Veteran's Entitlements Act 1986, the term shall include those acts."

[38] Fryberg J held that the definition did not refer to requirements which must be satisfied by the particular superannuation fund in order to qualify for income tax concessions and that, as the only requirements arguably capable of satisfying that definition were those in reg 6.17A, the intent of the deed was to require the nomination to be in the form described in reg 6.17A(6).

[39] In contrast, the definition of "Relevant Requirements" for the purpose of the fund is limited to any requirement the trustee of the fund or the subject trust deed must comply with in order to avoid a contravention of the requirements or in order for the fund to qualify for concessional taxation treatment as a complying super fund. The "Relevant Requirements" are defined as requirements only if they apply to the fund and therefore do not import reg 6.17A which does not apply to the fund.

What was meant by Trustee of Deceased Estate?

[40] Clause 31.2(b) of the trust deed permits the trustee of the fund to pay a benefit on the death of a member in accordance with a binding nomination of dependants only if the benefit is specified to be paid to one or more nominated dependants or the legal personal representative of the member. This is consistent with reg 6.22 of the SIS Regulations which applies to the fund. The definition of "legal personal representative" is found in s 10 of the SIS Act and relevantly means the executor of the will of a deceased person.

[41] Although colloquially the term "executor" may be used interchangeably with the term "trustee", the roles are distinct: *Commissioner of Stamp Duties (Q) v Livingston* (1964) 112 CLR 12, 17-18. An executor holds the property of a deceased for the purpose of carrying out the functions and duties of the administration of the estate, but upon the completion of those administration duties the assets then may be applied to the trusts

under the will. The same person who was executor may become the trustee of the deceased estate, when the administration duties of collecting in the assets, paying the debts of the deceased and the administration expenses and setting the assets aside to give effect to the gifts in the will have been completed.

[42] Under clause 7 of the will, Mrs Munro and the two daughters were to become trustees of Mr Munro's estate after completing the administration duties. It does not appear that stage has been reached, as the administration duties have not yet been completed.

[43] It may be that Mr Munro intended by instructing the form be completed with "Trustee of Deceased Estate" to mean his executors, but it is difficult to reach that conclusion when the form itself provided for the option of specifying a legal personal representative and advised how to complete the form accordingly. The terms of the ITAA cannot be used to construe the expression "Trustee of Deceased Estate" when there is no apparent connection between Mr Munro's choice of description for the purpose of clause 31 of the trust deed for the fund and any provisions of the ITAA.

[44] The nomination form must be construed on its face and having regard to its purpose. The applicants relied on the terms of the will to assist in construing the nomination. It is not appropriate to construe the nomination form by reference to the will when the nomination is for the purpose of payment of the death benefit from the fund. In any case, the terms of the will are equivocal, as to whether Mr Munro anticipated his executors would be paid the death benefit from the fund or take the receipt of the death benefit into account when making the distributions under the will.

[45] The payment of the death benefit from the fund on account of Mr Munro is regulated by clause 31.1 of the trust deed, unless the conditions as to the provision of a binding death benefit nomination to the trustees were met. The trustees of the fund must be able to ascertain whether or not they have to act under clause 31.1 of the deed in paying the death benefit. It is only when there is a binding nomination of dependants or the legal personal representative of the deceased member that complies with clause 31.2 of the trust deed that the potential exercise of the discretion by the trustees under clause 31.1 is avoided. Clause 31.2 regulates both the form and substance of the nomination. There is no power given to the trustees under the trust deed or otherwise to dispense with compliance with the conditions set in clause 31.2 for a binding death benefit nomination. It is only a nomination for the purpose of clause 31.2, if all the conditions set out in that clause are met by the nomination. If it is intended to nominate the legal personal representative of the member who has since died, it must specify that it is nominating the legal personal representative or the executor of the will or name the executor of the will (if that coincides with the executor named in the last will), but identify that the named person is the legal personal representative.

[46] The applicants' alternative argument that the reference to "Trustee of Deceased Estate" was a reference to the respective trustees of the testamentary trusts to be created under the will who are to be the primary beneficiaries under the respective trusts and also Mr Munro's dependants, so that "Trustee of Deceased Estate" is another way of saying dependants cannot be sustained. That is such an indirect route. The plain meaning of "Trustee of Deceased Estate" does not equate to a reference to the two daughters as

dependants. This is also an attempt to construe the nomination form by reference to the terms of the will which is not appropriate.

[47] The nomination by Mr Munro dated 22 September 2009 must mean what it says which is that it was the Trustee of Deceased Estate that was nominated by Mr Munro.

What is the effect of the nomination form signed by Mr Munro on 22 September 2009?

[48] For the purpose of the SIS Act, the reference to "legal personal representative" has the specific meaning of the executor of the will of the deceased person (where there is a will). Even if that definition did not apply, in the case of Mr Munro, the only meaning of legal personal representative must be to the executor of his will. Regulation 6.22 of the SIS Act Regulations is prescriptive as to when a member's benefits can be cashed to persons other than the member and limit the circumstances in the case of the member's death to the member's legal personal representative and one or more of the member's dependants. That is replicated by clause 31.2(b) of the trust deed for the fund.

[49] The form dated 22 September 2009 did not comply with either clause 31.2 of the trust deed or reg 6.22 of the SIS Regulations, as the nomination was of neither Mr Munro's executors under his will or one or more of his Nominated Dependants.

[50] The nomination form signed by Mr Munro on 22 September 2009 is therefore not a binding nomination for the purpose of clause 31.2 of the trust deed.

Orders

[51] It follows that the applicants cannot succeed in obtaining a declaration to the effect the nomination form signed by Mr Munro on 22 September 2009 was a binding death benefit nomination under clause 31.2 of the trust deed. Although the issue between the parties could be disposed of by the dismissal of the originating application, there was a controversy between them that has been addressed by the submissions and resolved by this decision. The respondents therefore seek a declaration that the nomination form signed by Mr Munro and dated 22 September 2009 was not a binding nomination for the purpose of clause 31.2 of the trust deed for the fund. As that is consistent with the conclusion that I have reached in dealing with the parties' contentions, I propose to make that order. The interlocutory injunction should also be discharged.

[52] I make the following orders:

1. It is declared that the binding death benefit nomination form signed by Barrie John Munro and dated 22 September 2009 is not a binding nomination for the purpose of clause 31.2 of The Barrie and Suzie Super Fund established by deed dated 19 July 2004.

2. Paragraph 1 of the orders of the court made on 11 February 2015 is discharged.

[53] I will give the parties an opportunity to make submissions on costs after considering these reasons. As the matter arose from the failure of Mr Munro to make a binding death benefits nomination when it was his intention to do so, I would have been inclined to order costs of both parties from the estate. As there does not appear presently to be any significant funds in the estate, but subject to the parties' submissions, I propose that there be no order as to costs.