SUPREME COURT OF QUEENSLAND

CITATION:	*Re Rentis Pty Ltd* [2023] QSC 252
IN THE MATTER OF:	**An application by RENTIS PTY LTD ACN 070 419 975 as trustee for the ROBERT STANNETT SUPERANNUATION FUND**
PARTIES:	**RENTIS PTY LTD ACN 070 419 975** (applicant)
FILE NO:	12809 of 2023
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	23 October 2023 (ex tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	23 October 2023
JUDGE:	Applegarth J
ORDER:	**The Court declares that:**

1. **The document entitled 'Binding Death Benefit Nomination' executed by Robert John Stannett (Member), a member of the Robert Stannett Superannuation Fund (Fund) by his enduring attorney Peter James Stannett and dated 17 May 2022 (the 2022 BDBN) constitutes an effective binding nomination of the payment of the Member's benefit made in accordance with clause 19.2 of the rules of the Fund as set out in the Deed of Variation executed 24 May 2019 (2019 Deed), notwithstanding that it is executed by the Member by his enduring attorney, and the Applicant must, in accordance with clause 19.3 of the 2019 Deed, pay all death benefits payable in respect of the Member in accordance with the 2022 BDBN.**

The Court orders that:

2. **The Applicant's costs and the costs of Kylie Michelle Stannett of and incidental to this application be paid out of the Fund on an indemnity basis.**

CATCHWORDS:	SUPERANNUATION – BENEFITS – MATTERS AFFECTING ENTITLEMENT TO AND PAYMENT OF –

OTHER - where the member of a self-managed superannuation fund made a binding death benefit nomination ("BDBN") in favour of his wife and children - where the member gave an enduring power of attorney ("EPA") appointing his wife and brother - where the member lost capacity to make personal and financial decisions - where the member's wife died, and the surviving attorney executed a third and fourth BDBN - where the EPA expressly authorised the attorney to renew any BDBN made - whether the attorney had the power to make the BDBN pursuant to powers given in the EPA - whether the later BDBN validly replaced the earlier BDBNs

CONTRACTS – PARTICULAR PARTIES – PRINCIPAL AND AGENT – AUTHORITY OF AGENTS – POWERS OF ATTORNEY – EXTENT OF AUTHORITY UNDER PARTICULAR POWERS - where the member of a self-managed superannuation fund made a binding death benefit nomination ("BDBN") in favour of his wife and children - where the member gave an enduring power of attorney ("EPA") appointing his wife and brother - where the member lost capacity to make personal and financial decisions - where the member's wife died, and the surviving attorney executed a third and fourth BDBN - where the EPA expressly authorised the attorney to renew any BDBN made - whether the attorney had the power to make the BDBN pursuant to powers given in the EPA - whether the later BDBN validly replaced the earlier BDBNs

Powers of Attorney Act 1998 (Qld)

Re Narumon [2019] 2 Qd R 247, cited
Spina v Permanent Custodians Ltd [2008] NSWSC 561, cited
Williams v Turner [2009] 1 Qd R 296, cited

COUNSEL: K L Gaston for the applicant
I Klevansky for Kylie Michelle Stannett

SOLICITORS: Cooper Grace Ward for the applicant
DBL Solicitors for Kylie Michelle Stannett
HWL Ebsworth for the Heart Foundation

HIS HONOUR: For the reasons I am about to give, I find the document entitled Binding Death Benefit Nomination ("BDBN") executed by the member's attorney on 17 May 2022 constitutes the member's last valid binding nomination. The parties can consider what adaptions need to be made to the draft order. First, I will give my reasons.

The applicant is the corporate trustee of the Robert Stannett Superannuation Fund. It seeks a declaration as to the validity of BDBNs in respect of a self-managed superannuation fund. At the risk of informality, I am going to use first names.

Robert John Stannett was the sole member of the fund at his death on 5 December 2022. Peter James Stannett, his brother, is the sole director of the corporate trustee. Robert gave an Enduring Power of Attorney ("EPA") in favour of his wife, Valerie, and Peter. Valerie died on 26 February 2021. Therefore, it fell to Peter to exercise powers given to him as attorney.

In December 2020 Robert fell from a ladder and suffered a brain injury. As a result, he lost capacity to make both personal and financial decisions.

The details of the BDBNs as set out in the parties' submissions, and in the material. Shortly stated, there were four BDBNs. The first on 13 June 2019 gave 100 per cent to Valerie and, if she did not survive, $200,000 to each of Robert's children and Valerie's children, and the balance to Robert's estate. Robert made a second nomination on 23 October 2020. On that occasion Valerie was to receive 50 per cent, and his children, Kylie and Blair were to receive 25 per cent each. The third and fourth were each made pursuant to the Power of Attorney on 9 May and 17 May 2022.

Valerie died on 26 February 2021, therefore, the occasion arose for the attorney to consider what should be done because the earlier nomination of 23 October 2020 gave 50 per cent to her. I use the word "gave" in the loose kind of way, since I am talking about a binding nomination. I mention Valerie's children who may be described as Peter's stepchildren. Their names are Sharyn and Ross.

The third BDBN allocated 40 per cent to each of Kylie and Blair, and 10 per cent to each of Sharyn and Ross. The fourth allocated 25 per cent to each of Kylie and Blair, and the remaining 50 per cent to the Estate.

The issue concerns the validity of the later BDBNs that purported to replace or revoke the earlier BDBNs. There is no issue concerning the formality or effectiveness of those, save for the authority of Peter to exercise a power. If he had the power to make the binding declarations by virtue of the powers given to him by the EPA, then the fourth BDBN would be valid and replace the third, which in turn would have replaced the second.

The authorities, in particular a decision of the Chief Justice, establish that a decision to make a binding nomination is a financial matter within the meaning of the *Powers of Attorney Act* 1998 (Qld), see *Re Narumon* [2019] 2 Qd R 247 at 267 [66] - 269 [69]. The EPA in this case gave an express power to "renew" a BDBN.

An issue arises as to the meaning of the word "renew" in that context. On one view, which has been referred to in submissions as the narrow view, the word renew simply gave the attorney the power to make new or, in effect, repeat the terms of the previous BDBN.

If that were the proper construction, all Peter could have done in May 2022 was to repeat the distribution made by Robert on 23 October 2020, giving Valerie 50 per cent, Kylie 25 per cent and Blair 25 per cent. That would be the case notwithstanding Valerie's death and other changed circumstances. This seems an unappealing construction of an EPA that was intended to empower an attorney like Peter to address changed circumstances that Robert would have addressed had he had the capacity to do so. There does not seem to me to be any obvious commercial

or other purpose why the principal would wish to constrain the attorney, especially in circumstances where a BDBN did not lapse or have to be renewed.

A more sensible and preferable interpretation of the word renew is a dictionary definition, "restore to freshness" or, in other words, to make new in the sense of making a new BDBN that was fresh and addressed fresh circumstances that had arisen since the last BDBN. It would seem inconvenient, to say the least, if the attorney could not address changed circumstances. To deal with purely hypothetical circumstances, changed circumstances could include the death of someone who is the subject of a previous nomination, a divorce, a family fracture, a dependant ceasing to be financially dependant when they came into wealth, or as it were, won the lottery, or a particular dependant falling on hard times through disease, illness or some other reason.

I have been assisted by submissions as to the appropriate approach to interpretation. Because I am due to start another matter, I will not take long to refer to these authorities. They include *Spina v Permanent Custodians Ltd* [2008] NSWSC 561, a decision of Hammerschlag J, where his Honour said at [107]:

> "If the language is open to two constructions, that will be preferred which will avoid consequences which appear to be capricious, unreasonable, inconvenient or unjust."

That states a common principle of interpretation. Professor Dal Pont has said that the aim of the exercise in construing a Power of Attorney is to ascertain the intention of the principal. In a number of cases there has been reference to the need to construe a Power of Attorney strictly and the authorities are many in which they are given a strict construction. *Williams v Turner* [2009] 1 Qd R 296 is such a case, and one well understands why, in a particular context, for example, a mortgagor granting a mortgagee a Power of Attorney to execute a mortgage to secure a debt on such terms as the nominee would set out, one would adopt a strict construction. That is what Wilson J observed in *Williams v Turner* at [23].

In summary, Powers of Attorney are to be construed in the same way as other instruments such as contracts and wills. They are not a bilateral document like a contract where one is looking for an objectively ascertained intention attributed to the parties. When one is looking at the intention of the principal, one has regard to the factual matrix. The EPA contains the following express term:

> "I authorise my attorney/s to renew any binding death benefit nomination made by me for any superannuation benefits or entitlement."

I turn to apply the principles that I have just discussed to that term. A narrow construction would produce capricious, unreasonable and certainly inconvenient results for a principal who became incapacitated and whose circumstances had changed or where other circumstances had changed. One would think that it is precisely the existence of changed circumstances that gave rise to the authority given to the attorney to renew any binding death benefit in the sense of making a fresh BDBN, that is, to make a new BDBN to address those circumstances or to renew the BDBN.

I do not consider that is a particularly strained interpretation of "renew". It accords with the dictionary definition to say that renew means to make like new, that is, the BDBN would be made like new by addressing new and current circumstances as the principal might have done, had he not been incapacitated and in fact had capacity. Renew has the meaning of restore to freshness.

I have regard to the circumstances. They include the fact that the fund rules were updated on 24 May 2019. They provided that, by default, BDBNs were non-lapsing and did not require regular renewal. That was a week before the EPA was executed. Therefore, the power to renew in the EPA was not required to address a fund as it then stood where BDBNs lapsed or required regular renewal. I acknowledge that the word renew may have been included out of an abundance of caution in the event that the fund again changed, necessitating a need for the attorney to renew in circumstances in which a BDBN would otherwise lapse or require regular renewal. Even so, if the fund had made provision that BDBNs were to lapse, then renew still, I think, should be given a purposive construction.

As has been pointed out in the submissions, it is possible to imagine words that would have made the purposive interpretation clearer. But I do not think one should necessarily draw too much from the fact that other instruments use words like vary or amend. The document could have used the word amend but, by the same token, if the narrow construction was to be suggested, the provision might have used words to produce that result, such as confirm or repeat, instead of renew.

I have been taken in submissions to the circumstances of the estate and, as things have developed. I wish to emphasise that I am concerned with a very narrow point of construction.

I have regard to what has been placed before me concerning the will of Robert. He made gifts to Kylie and Blair of certain sale proceeds. It is not for me to determine but there is an argument that that gift failed. There are arguments concerning what kind of BDBN might have best aligned with Robert's testamentary intentions. However, I am not concerned with those issues. It may have been that a BDBN executed by his attorney might have made increased provision in favour of Kylie and Blair to, as it were, compensate them for the fact that they would not be receiving the proceeds of sale of the house.

The respondent's submissions note that clause 3.5 of the will distributes the estate. Clause 3.6 provides that the gifts to the children are not to apply if they receive gifts of $200,000 through BDBNs. The deceased's last BDBN post-dated the will, suggesting an intention to depart from the terms of the will insofar as superannuation was concerned. It is said that Peter, by making the 17 May 2022 BDBN, changed that status quo so that 50 per cent of the deceased's superannuation was distributed to charity, subject to family provision applications, as opposed to dependants. It is submitted that the 17 May 2022 BDBN is at odds with the arrangements made by the deceased.

That is an argument that may be contested. But, if it is correct, it is an argument that the power which I have found to exist should have been exercised in a different way to the way in which it was exercised to better reflect what is said by one party to be Robert's testamentary intentions. It is not an argument about the existence of

a power in the attorney to make a new BDBN. I conclude for the reasons I have sufficiently exposed in these oral reasons, there is such a power.

Therefore, I conclude that the fourth BDBN was within Peter's authority as attorney, and I propose to make declarations for its validity.

This conclusion makes it unnecessary to consider a question that would have arisen had I found in favour of one or other of the earlier BDBNs as to whether Sharyn and Ross was a stepchild for the purpose of the fund. I am not required to decide that point. Therefore, I should not do so, having not been asked to and it being unnecessary for my decision. Therefore, subject to any submissions as to the form of order, I will make an order that declares that the 17 May 2022 BDBN constitutes an effective binding nomination notwithstanding that it is executed by his enduring attorney.