

Article Information

Authors: Donna Benge, Rod Jones

Service: Estate & Succession Planning

Sector: Private Clients

Competing Superannuation Claims

Justice Blue of the Supreme Court of South Australia recently considered the fiduciary duties and obligations of an Executor when the benefits of a deceased's superannuation are being claimed. Partner Donna Benge and Rod Jones explore further.

Brine v Carter [2015] SASC 205

*Justice Blue of the Supreme Court of South Australia recently considered the fiduciary duties and obligations of an Executor when the benefits of a deceased's superannuation are being claimed. **Partner Donna Benge and Rod Jones** explore further.*

Justice Blue of the Supreme Court of South Australia recently considered the fiduciary duties and obligations of an Executor when the benefits of a deceased's superannuation are being claimed.

In *Brine v Carter*, Professor Francis John Brine (Professor Brine) died on 14 December 2012. Pursuant to the terms of Professor Brine's last Will, he appointed his de facto partner, Ms Norma Annie Carter (Ms Carter) and his three sons from a prior marriage as the Executors of his estate.

At the date of his death, Professor Brine held two superannuation accounts with UniSuper, namely:

- an Index Pension Annuity Benefit; and
- a Flexi Pension Lump Sum Benefit.

It appears from the judgment that the Indexed Pension Annuity Benefit could only be paid to a surviving spouse, dependant or disabled child. However, the Flexi Pension Lump Sum Benefit could be paid to a spouse (including a de facto partner), a child (whom did not have to be dependant) or Professor Brine's estate. The Flexi Pension Lump Sum Benefit had a value of approximately \$542,000 at the time of Professor Brine's death.

During Professor Brine's lifetime he had written on a Unisuper application form that he preferred Ms Carter to receive the Index Pension Annuity Benefit and his estate to receive the Flexi Pension Lump Sum. Neither was in the form of a binding death benefit nomination.

After Professor Brine's death, Ms Carter made enquires with UniSuper about each benefit and proceeded to lodge a claim in her personal capacity with UniSuper for both benefits as Professor Brine's de facto partner. When Professor Brine's other Executors, (his sons) became aware of Ms Carter's personal claim, they then lodged a competing claim with UniSuper on behalf of Professor Brine's estate in respect of the Flexi Pension Lump Sum Benefit. Eventually, the Trustee of UniSuper made a determination to pay the entire lump sum directly to Ms Carter, not Professor Brine's estate.

The sons then sued Ms Carter in her capacity as a co-Executor of Professor Brine's estate, on the basis that she had failed to disclose to them:

- Professor Brine's benefits with UniSuper;
- the amount of the Flexi Pension Lump Sum Benefit; and
- the fact that the Flexi Pension Lump Sum Benefit could be paid to adult children of Professor Brine or Professor Brine's estate.

They also alleged that Ms Carter had breached her fiduciary duties by pursuing her personal interest in conflict with her

duties as an executor and should now account to the estate for the benefit that she had received from UniSuper. Ms Carter denied all claims made against her.

After careful review of the material facts, the Court found that at the date that the sons lodged a competing claim to UniSuper they were aware of all relevant facts and circumstances. By their conduct they had thereby consented to Ms Carter pursuing her own interests in claiming payment of the benefit in her personal capacity, without being obliged to resign as an executor of Professor Brine's estate.

Accordingly, Justice Blue held that Ms Carter was not liable to account as an executor to Professor Brine's estate for the benefit that she had received in her personal capacity from UniSuper.

However, Justice Blue did state:

"The position would have been different if the other Executors had not learnt the true position and UniSuper decided to pay the superannuation to Ms Carter in the absence of any competing contention on behalf or in favour of the estate."

This case highlights the importance that careful consideration must be given to who should claim the benefit of a superannuation policy to avoid a conflict of interest arising that could result in a breach of fiduciary duties and obligations. Alternatively, this dispute could have been avoided if Professor Brine had executed a valid binding death benefit nomination as part of his estate planning to ensure that he had made a direction to his trustee as to whom he wanted his superannuation to be paid.