

Article Information

Authors: Donna Bengé, Rod Jones

Service: Estate & Succession Planning

Sector: Private Clients

The costly iPhone Will

In our December 2013 issue of Wills Watch, we reviewed the Queensland case of Yu

Yu v Yu & Ors [2015] QSC 373

*In our December 2013 issue of Wills Watch, we reviewed the Queensland case of Yu. In that case, the Supreme Court found that an electronic document created by Mr Karter Yu on his iPhone shortly prior to him taking his own life was intended by Mr Yu to be his last Will and testament. **Partner Donna Bengé** and **Rod Jones** discuss below.*

Probate of Mr Yu's Will was then granted to his brother, Mr Jason Yu. However, Jason then required the assistance of the Court to determine the true construction of Mr Yu's Will.

Verbatim, Mr Yu's Will stated:

"After all debt has been paid off including hotel bills, credit card bills etc. as well as expenditure required to execute my will from my savings account at both Westpac and Ubank, as well to cover my share of rent at 22/121 Thynne street Bruce ACT until the conclusion of the lease in late December, I would like the remainder of my cash [our emphasis] equally apportioned between five parties: Jason Yu, Kinson Yu, Steffen Aufsatz and Dominic Clarke."

The Court needed to consider what Mr Yu had intended to be incorporated into the term "cash".

At the date of his death he had the following assets:

- Westpac bank account \$3,600.00
- UBank bank account \$58,077.41
- Superannuation \$23,761.70
- Superannuation and life insurance policy \$274,366.71
- Employment entitlements \$8,853.00

The Court had to determine whether the superannuation, life insurance policy and employment entitlements should be included as "cash", which would then be divided between the named beneficiaries of Mr Yu's Will. As a side observation, although it does not appear to be discussed in the judgment, the deceased mentioned that the remainder of his cash was to be divided between "five parties" however it appears that only four names were written in the Will!

The Court found that the deceased intended the word "cash" to comprise the amounts held in his bank accounts with Westpac and Ubank. However, the Court was not satisfied that Mr Yu intended his superannuation, life insurance or employment benefits to be included in the term "cash".

In particular, the Court said that Mr Yu was a young man in his twenties and it was unlikely that he would have been aware that on his death there could be an amount in the sum of \$259,000 paid to his estate as an (insured) death benefit. Interestingly, the Court said that if Mr Yu was aware of these assets he would have made specific reference to them in his Will.

The Court also considered the question of costs of the application and an order was made that all of Jason's costs as the administrator of Mr Yu's estate be paid out of the estate.

This case illustrates the pitfalls of not having a Will professionally prepared. Although the Courts may be willing to admit

electronic informal Wills to Probate in certain circumstances, they invariably cause delay and increase legal costs for the estate which can all be easily avoided by having a Will prepared by an experienced solicitor. The Private Client Services team at Piper Alderman have recently been involved in a similar case which once again highlighted these issues.