HIGH COURT OF AUSTRALIA

15 June 2022

HILL v ZUDA PTY LTD AS TRUSTEE FOR THE HOLLY SUPERANNUATION FUND & ORS
[2022] HCA 21

Today, the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia concerning the operation of reg 6.17A of the *Superannuation Industry (Supervision) Regulations 1994* (Cth). That regulation relevantly prescribed standards for how a member of a regulated superannuation fund is to give notice requiring the trustee of the fund to pay the member's benefits to a nominated person on or after the member's death. The primary issue in the appeal was whether reg 6.17A applied to a self managed superannuation fund ("SMSF").

Zuda Pty Ltd ("Zuda") was the trustee of an SMSF known as the Holly Superannuation Fund ("the Fund"). Mr Sodhy and Ms Murray were each a member of the Fund and a director of Zuda. The relevant trust deed for the Fund was amended in 2011 to insert a clause described as a "binding death benefit nomination", according to which, if either member of the Fund died, Zuda was required to distribute the whole of the deceased member's balance in the Fund to the surviving member. Mr Sodhy died on 22 November 2016. Ms Hill, the only child of Mr Sodhy, commenced a proceeding in the Supreme Court of Western Australia, arguing that the binding death benefit nomination clause was of no force and effect on the basis that it did not comply with the standards prescribed by reg 6.17A.

The Supreme Court summarily dismissed the proceeding on the basis that reg 6.17A did not apply to the Fund as an SMSF. The Court of Appeal concluded that there was no error in that holding and so dismissed an appeal from the order for summary dismissal. In reaching that conclusion, the Court of Appeal adopted a construction of reg 6.17A expressed by the Full Court of the Supreme Court of South Australia, on the basis that it was bound to follow the "seriously considered dicta" of an intermediate appellate court unless convinced that the other court's reasoning was "plainly wrong".

The High Court held that reg 6.17A, properly construed, did not apply to an SMSF. That construction was consistent with the extrinsic materials and the purposes of reg 6.17A. The Court of Appeal was therefore correct in its conclusion, although it ought to have reached that conclusion by construing reg 6.17A for itself. Intermediate appellate courts and trial judges are not bound to follow obiter dicta of other intermediate appellate courts, although they would ordinarily be expected to give great weight to them.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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