



## Case law update – Procedural matters

This update discusses several recent determinations / judgements relating to procedural matters that have an impact on retirement funds and where applicable, sets out the position adopted by the MMI Sponsor Funds.

### A. Executive Summary

#### 1. Sentrachem v Terreblanche (Case number: 237/2016)

- The Supreme Court of Appeal confirmed that the substitution of the plaintiff did not have any effect on the claim as the issuing of summons had already interrupted or stopped the running of prescription.
- The FundsAtWork Umbrella Funds will ensure that any payments made to members are made according to the Fund's rules. If a payment is incorrectly made to a member, the Funds will take all the necessary steps to claim the money back within the timelines set by law.

#### 2. Grant Thornton Capital Umbrella Fund v Egidio Da Silva (Case number: A5066/2012)

- The court ruled that when an incorrect payment is made to a member, it causes a loss that is suffered by other members of the fund as the value of the fund decreases. The fund is then within its rights to claim paid the erroneous payment.
- The FundsAtWork Umbrella Funds will claim back a payment that was made in error, where it is financially viable to do so.

#### 3. Maphoyisa v Municipal Gratuity Fund and Sanlam Life Insurance Limited (Case number: PFA/GP/00029068/2016/MD)

- The PFA found that the complaint against the fund had not lapsed because at the time that the death benefit was distributed the complainant was a minor. A minor's claim only prescribes a year after he reached the age of majority.
- The FundsAtWork Umbrella Funds pay death benefits according to the provisions of section 37C and ensures that all potential beneficiaries are considered.

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## B. Case law

### 1. **Sentrachem v Terreblanche (Case number: 237/2016) – Supreme Court of Appeal: Prescription of claim for unjustified enrichment after substitution of plaintiff.**

Mr Terreblanche was a member of the Sentrachem Group Pension Fund which in 2010 received approval of a surplus scheme. He received two payments of R94 614.99 and R453 872.31. The second payment was made on the incorrect assumption that it was due to him. The fund issued summons against Mr Terreblanche for repayment of the second payment.

The fund underwent voluntary liquidation and was substituted as plaintiff by Sentrachem Limited. Mr Terreblanche argued that the claim against him had prescribed (lapsed) as a result of the substitution which took place after the date on which the claim would have prescribed. The High Court agreed with Mr Terreblanche and dismissed the claim.

On appeal to the Supreme Court of Appeal, the court rejected Mr Terreblanche's argument. It found that the effect of substituting Sentrachem as the plaintiff did not have any effect on the claim as the issuing of summons had already interrupted or stopped the running of prescription. The debt, which was the incorrect payment to Mr Terreblanche, had remained the same. It was merely the identity of the party that was claiming the debt that had changed.

The court granted the appeal and ordered that Mr Terreblanche to repay to Sentrachem the sum of R453 972.31 together with interest at a rate of 15.5% from the date of demand to the date of final payment.

#### **Approach adopted by the FundsAtWork Umbrella Funds**

The FundsAtWork Umbrella Funds ensure that any payments made to members are made according to the Fund's rules. If a payment is incorrectly made to a member, the Funds will take all the necessary steps to claim the money back within the timelines set by law.

### 2. **Grant Thornton Capital Umbrella Fund v Egidio Da Silva (Case number: A5066/2012) – Supreme Court of Appeal: Claim for unjustified enrichment.**

Grant Thornton Capital Umbrella Fund (the Grant Thornton Fund) paid Mr Da Silva an amount of R360 417.97 as a withdrawal benefit which they believed was due and owing to him. In 2004, Mr Da Silva's benefit in the Grant Thornton Fund was transferred to the Corporate Section Retirement Fund No 2 which was administered by Liberty Life (the Liberty Fund). In 2007, Mr Da Silva resigned from employment and submitted a request for a withdrawal from the Liberty Fund. In 2008, Mr Da Silva submitted the same withdrawal request to the Grant Thornton Fund.

When Mr Da Silva resigned from employment, his employer had already given notice in 2004 that they intended to terminate their association with the Grant Thornton Fund. The transfer to the Liberty Fund was then done. When the transfer was done, the Grant Thornton Fund's administration system was not updated to show that the member no longer had a benefit with the Grant Thornton Fund. It should have been updated to show that the transfer had taken place and that there was no benefit that was due and owing to Mr Da Silva.

The court in this case found that the Grant Thornton Fund was the custodian of money earmarked for others. The payment that was made in error was a loss that was suffered by the members of the Grant Thornton Fund. That erroneous payment reduced the value of the assets in the Grant Thornton Fund. Those losses would then be shared amongst all the members in the Grant Thornton Fund. It was not necessary for the Grant Thornton Fund to show anything more than that there was an erroneous payment that was made. The court found that they were able to prove that.

Based on the principles of *condictio indebiti*, Mr Da Silva was in fact enriched by this erroneous payment and was not able to prove otherwise. The court ordered Mr Da Silva to pay the Grant Thornton Fund the

amount paid to him in error, plus interest at a rate of 15.5% from date of the demand to the date of final payment.

### **Approach adopted by the FundsAtWork Umbrella Funds**

The FundsAtWork Umbrella Funds will claim back a payment that was made in error, where it is financially viable to do so.

### **3. Maphoyisa v Municipal Gratuity Fund and Sanlam Life Insurance Limited (Case number: PFA/GP/00029068/2016/MD) – Pension Fund Adjudicator: Prescription of minor's death benefit dependant claim.**

Mr Maphoyisa was the son of Mr Mlungu who passed away on 25 December 2003. At the time of his passing he was employed by the Ekurhuleni Metropolitan Municipality and was a member of the Municipal Gratuity Fund. A death benefit of R235 735.33 was available for distribution. Mr Maphoyisa was 6 years old when his father passed away and did not receive payment of a portion of the distribution. He lodged a complaint with the Pension Fund Adjudicator (PFA) in November 2016, on the basis that he was a dependant of Mr Mlungu and there was a maintenance order in place at the time of Mr Mlungu's passing, which the fund was aware of. The fund on the other hand argued that Mr Maphoyisa's claim had prescribed (lapsed) as payment of the death benefit was made in December 2004, some 12 years ago. The fund relied on section 30I of the Pension Fund Act (the Act) which prevents the PFA from investigating and deciding on a complaint, where acting or failure to act took place more than three years before the written complaint was received (time-bar).

The PFA noted that while the Act did contain a time-bar on complaints, it had to consider whether there were any circumstances as set out in the Prescription Act that interrupted the running of prescription. In terms of that Act, where the creditor is a minor, the claim prescribes one year after the minor reaches the age of majority.

The PFA found that when Mr Maphoyisa's father passed away in December 2003, the Age of Majority Act was in effect and in terms of that Act the age of majority was 21 years. This meant that Mr Maphoyisa's complaint would have prescribed one year after he turned 21. The PFA ruled that Mr Maphoyisa's complaint had not lapsed and the PFA could make a determination on the matter.

The PFA found that the fund failed to exercise its discretion reasonably when deciding on an equitable distribution. The fund failed to conduct a proper investigation and failed to apply its mind when it made its decision. It failed to take into account that Mr Maphoyisa qualified as a dependant as he was Mr Mlungu's child. The PFA set aside the fund's decision to exclude Mr Maphoyisa in the distribution of the death benefit and referred the matter back to the fund to exercise its discretion.

### **Approach adopted by the FundsAtWork Umbrella Funds**

When there is a death benefit payable, the FundsAtWork Umbrella Funds will pay such benefit in line with the provisions of section 37C of the Pension Funds Act. The Funds will conduct a thorough investigation to identify all of the deceased member's dependants before paying the benefit.

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