[2016] UKFTT 380 (TC)

TC05134

Appeal number: TC/2015/4999

CAPITAL GAINS TAX – relief for loans to traders – s 253 TCGA 1992 - whether irrecoverable loan

FIRST-TIER TRIBUNAL
TAX CHAMBER

Mrs CORNELIA SNELL **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: Judge Peter Kempster
Mr Terence Bayliss

Sitting in public at Centre City Tower, Birmingham on 25 April 2016

Mr Michael Collins of counsel, instructed by Hawsons Chartered Accountants, for the Appellant

Mr Simon Bracegirdle (HMRC Appeals Unit) for the Respondents

DECISION

1. The Appellant ("Mrs Snell") appeals against a closure notice issued by the Respondents ("HMRC") on 12 May 2014 pursuant to s 28A TMA 1970, which refused a claim to relief by Mrs Snell in her self-assessment tax return for the tax year 2008-09 for a capital loss of £775,000. Mrs Snell contends that the loss arose on an irrecoverable loan to Printhaus Limited ("Printhaus") and that relief is available pursuant to s 253 TCGA 1992.

2. For completeness, the notice of appeal also covered a disputed negligible value claim on a separate asset but Mr Collins for Mrs Snell confirmed that issue was no longer before the Tribunal.

Law

3. Section 253 Taxation of Chargeable Gains Act 1992 provides relief for losses sustained by lenders for certain qualifying loans to UK traders.

4. Section 253(3) provides:

> "Where a person who has made a qualifying loan makes a claim and at that time —
>
> (a) any outstanding amount of the principal of the loan has become irrecoverable, and
>
> (b) the claimant has not assigned his right to recover that amount, and
>
> (c) the claimant and the borrower were not each other's spouses or civil partners, or companies in the same group, when the loan was made or at any subsequent time,
>
> then, to the extent that that amount is not an amount which, in the case of the claimant, falls to be brought into account as a debit given for the purposes of Part 5 of CTA 2009 (loan relationships), this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant at the time of the claim or (subject to subsection (3A) below) any earlier time specified in the claim.

5. In the current appeal HMRC accept that if an irrecoverable loan of £775,000 was made by Mrs Snell to Printhaus then the technical conditions of s 253 are met.

Evidence

6. As well as a bundle of documents we took oral evidence from the following witnesses for the Appellant: (i) Mrs Snell, who confirmed and adopted a witness statement dated 22 April 2016; (ii) her husband Mr Robert Snell, who confirmed and adopted (with a small correction) a witness statement also dated 22 April 2016; and (iii) Mr Kelly Harris, a former Director of Printhaus, who confirmed and adopted a witness statement also dated 22 April 2016.

7. Before dealing with the contentious issue of the purported irrecoverable loan by Mrs Snell to Printhaus, we set out our findings of fact on matters which are largely uncontroversial.

Preliminary Findings of Fact

8. Prior to 2008 there were two relevant companies: Printhaus and DSR Print Management Limited ("DSR"). Printhaus was a commercial document printer. DSR sourced orders from commercial customers, which were then passed to and satisfied by Printhaus. Both companies were substantial and were built from scratch by Mr & Mrs Snell. Mr Snell was the sole shareholder of Printhaus. The shares of DSR were owned 2/3 by Mr Snell and 1/3 by Mrs Snell; originally the shareholdings had been 50:50 but an external investor (Mr King) later became a one third owner; when Mr King left Mr Snell acquired Mr King's shares, resulting in the 2/3 and 1/3 shareholdings already described.

9. In 2008 a management buyout proposal ("MBO") was made by senior management of DSR. The structure adopted for the MBO was as follows:

(1) The management team set up a new company DSR Holdings Limited ("DSR Holdings").

(2) Mr & Mrs Snell set up a new company Printhaus (Holdings) Limited ("Printhaus Holdings").

(3) On 21 July 2008 Mr & Mrs Snell sold DSR to Printhaus Holdings for a mix of cash and loan note consideration as detailed below. We were not shown a copy of the sale agreement.

	Mr Snell	Mrs Snell	
Cash	£2,500,000	£1,000,000	£3,500,000
Loan Notes	1,166,667	833,333	2,000,000
	3,666,667	1,833,333	5,500,000

(4) On the same day Printhaus Holdings sold DSR to DSR Holdings. We were not shown a copy of the sale agreement. Mr Snell stated that the documentation was technical and complicated, and had been negotiated and prepared by commercial solicitors acting for each party. It appears that the consideration was £5.5 million, part of which was on deferred terms. It appears that the initial cash component of the consideration was £3.5 million; that amount was received by Mr Snell into his bank account on 21 July 2008; presumably, the funds flow (actual or intended) was that DSR Holdings paid Printhaus Holdings, which in turn paid Mr Snell (pursuant to (3) above).

(5) One pertinent term of the sale of DSR was the transfer of a leasehold property from DSR to Printhaus. This necessitated Printhaus providing a security deposit to Nationwide Building Society. That deposit was funded by a loan from Mrs Snell to Printhaus of £225,000. Later, this deposit was forfeited and HMRC have accepted that the £225,000 loan by Mrs Snell to Printhaus

became irrecoverable and s 253 relief has been agreed for a capital loss of that amount.

10. Mr Snell's bank statement shows that the £3.5 million he received on 21 July 2008 was immediately applied as follows:

(1) Around £200,000 to pay professional fees incurred in connection with the MBO.

(2) £225,000 to Mrs Snell, which is the money she lent to Printhaus in relation to the Nationwide deposit described at [9(5)] above.

(3) £775,000 to Mrs Snell as the balance of the £1 million cash due to her from her sale of her DSR shares to Printhaus Holdings – see [9(3)] above.

(4) £2.3 million to Printhaus. Printhaus was heavily indebted and required funds to satisfy its commercial creditors.

11. Mr Snell assigned his DSR loan notes (nominal £1,166,667 - see [9(3)] above) to Printhaus. Mrs Snell retained her DSR loan notes – we understand there may be a dispute as to the quantum of any subsequent capital loss in relation to these loan notes but that is not a matter before the Tribunal.

12. DSR entered administration on 27 October 2008 and was dissolved on 29 June 2011.

13. Printhaus entered administration on 19 January 2009 with two partners of UHY Hacker Young LLP appointed as administrators ("the Administrators"); entered liquidation on 14 January 2010; and was dissolved on 9 August 2014.

The Contentious Issue

14. The dispute is whether Mrs Snell made an irrecoverable loan of £775,000 to Printhaus.

Relevant Documents

15. The following relevant documents were in evidence.

16. "**The Letter**" - A handwritten letter by Mr Snell dated 21 June 2008 stating:

> "Dear Corni,
>
> As we have discussed I have received over £2m in cash, which I need to lend back to Printhaus. Lawyers are drafting documents to this effect.
>
> I recognise you are my life time partner and wife, and it is about time I repaid the loans you have given me over the years of £775,000.00 as such I am now in the position to do out of the monies I have received and can pay you now.
>
> The down side is you need to lend the money to Printhaus Ltd to enable us to cashflow the company that we have to retain.

Yours always

[signature]"

17. "**The August Balance Sheet**" – a spreadsheet headed "Printhaus Limited Draft Pro forma Balance Sheet 31-Aug-08". It appears that this was prepared by a management accountant employed by the Printhaus at that time. It appears to have been prepared to recognise the fact that DSR was about to be placed in administration (there is a footnote "Assumes preference shares can be cancelled as a result of the administration of DSR"). There are manuscript notes on the spreadsheet which were made by Mrs Snell's accountant for the hearing. The document starts with figures per "August [management] accounts" and makes a number of adjustments, which include:

(1) "Intangible assets – DSR loan notes" opens at 2,000,000 and closes at Nil as a result of two adjustments:

(a) "833,333 Correction to Bob Snell's loan note balance" to which there is a manuscript note "ie Corny loan notes not received".

(b) "1,166,667 Write off DSR loan notes assigned by BS" to which there is a footnote "Assumes Bob Snell waives the loan account balance that arose from the loan notes" and a manuscript note "Bob's loan notes".

(2) "Current liabilities – shareholder loan" opens at 4,256,085 and closes at 256,085 as a result of three adjustments:

(a) 8333,333 and 1,166,667 which are clearly the corresponding entries for (1)(a) & (b) above – the latter amount has a manuscript note "Bob's loan?".

(b) "2,000,000 Reassign Bob Snell's loan to 'capital' funding" to which there is a manuscript note "Bob + Corny".

(3) "Current liabilities – DSR" opens at 265,700 and closes at Nil as a result of one adjustment: "Offset amounts owed to DSR re recharges" to which there is a footnote "Assumes right of set off across all DSR Print Management balances" and a manuscript note "Bob's other loan?".

(4) "Funding capital and reserves – Shareholder loan funding" opens at Nil and closes at 2,000,000 as a result of one adjustment which is clearly the corresponding entry for (2)(b) above, and has a manuscript note "Bob + Corny".

18. "**The Administrators' Statement**" – An "Estimated statement of affairs as at 19 January 2009" (ie the date the company entered administration) circulated to creditors of Printhaus by the Administrators on 27 February 2009. This states as a liability "Shareholders Loans 450,000".

19. "**The Email Chain**" – An email chain as follows:

(1) On 16 March 2009 the Administrators sent a "proof of debt as discussed" to Mr Snell, presumably for completion with amounts owed. Mr Snell forwarded that to his accountant, David Cairns of Hawsons.

(2) On 17 March Mr Cairns replied to Mr Snell:

"Dear Bob

As best as I can recall you and Corny are owed the following amounts by Printhaus:

Money lent to repay intercompany balance	2,000,000
Further loan to assist cash flow	350,000
SDLT, legals, expenses etc	256,085
Loan notes transferred to Printhaus	1,166,667
Nationwide guarantee	225,000
TOTAL funds lent to Printhaus	**3,997,752**
Difference	-39,419
Still held in Loan notes	866,667
Corny's cash	675,000
Total proceeds received from DSR sale	5,500,000"

(3) On the same date Mr Snell forwarded the above to the Administrators, who replied "Thank you. … Just to confirm is your debt £3.9m?"

20. "**The Monies Owed Schedule**" – A schedule originally headed "Monies owed to Printhaus by Bob" but subsequently amended in manuscript – we understand by Mrs Snell's accountant in preparation for the hearing – to "Monies owed to Bob by Printhaus at time of completion":

"Loan	£2,300,000.00
Notice of underletting	£117.50
Notice of assignment	£235.00
SDLT	£12,304.00
Land registry assignment fee	£40.00
Completion of SDLT forms	£105.75
Land Registry fee	£150.00
Notice of undeletting	£70.50
Searches	£61.67
Fees – Franklins	£47,000.00
Hawsons	£29,375.00
Nationwide deposit	£225,000
Total	**£2,614,459.42"**

There are various manuscript notes including "Corny 775,000 and 225,000" and "Bob (225,000.00) and 1839459.42".

Mr Snell's evidence on the contentious issue

21. Mr Snell stated:

(1) He and his wife always saw themselves as equal partners in the business. Because the shares in DSM were held 2/3 and 1/3, there was an equalisation of the sales receipts required and as a way of doing that he decided to gift £775,000 of his share of the proceeds to Mrs Snell. This was independent of the £775,000 cash that Mrs Snell received as of right as part of the cash consideration for her shares (see [10(3)] above).

(2) Printhaus needed funds to enable it to pay its trading debts and legal expenses, in particular a liability to DSR of around £2 million that was payable on completion of the MBO. He had discussed with Mrs Snell at the completion meeting his decision to give her the money, and the need for her to then lend that money to Printhaus. There was not time for the legal documents to be amended to reflect the equalisation, so he prepared a simple letter at the completion meeting to note the fact, which was the Letter.

(3) When £2.3 million was transferred from his bank account to Printhaus, that was effectively £775,000 from Mrs Snell and the balance (£1,525,000) from himself. Therefore, both he and Mrs Snell lent money to Printhaus. There was also the £225,000 loan by Mrs Snell to enable Printhaus to fund the Nationwide deposit.

(4) He had not seen the August Balance Sheet until after HMRC had started enquiring into his tax affairs. The document was extracted from Printhaus's records to demonstrate to HMRC the amount of shareholder loans.

(5) He had not seen the Administrators' Statement until after it was issued. He believed the £450,000 shareholder loans figure was a mistake by the Administrators and should be £2,614,459 plus loan notes of £1,166,667. He had taken no action subsequently because he believed there was no prospect of the loans being repaid.

22. In response to questions in cross-examination by Mr Bracegirdle:

(1) *The Letter describes a repayment of loans made over the years but the witness statement describes a gift, which was contradictory?* This was just accountant's terminology; he was not a lawyer and could not follow.

(2) The deal documentation did not describe these loans? Lawyers and accountants had been paid lots to prepare the documents properly. He was not aware of a formal document had been prepared. It was his wife's choice whether to make a loan to Printhaus. The money had passed through his bank account but it would have been in and out again within minutes.

(3) One result of HMRC's enquiry into Mr Snell's tax return for the relevant tax year was that relief was given for loans of £450,000 (ie the figure in the

Administrators' Statement) and no objection had been made by Mr Snell? He relied on his accountant to deal with his tax affairs. He had been made bankrupt on 13 March 2013 and his affairs had been taken over so that after then he did not deal with HMRC.

23. The Tribunal asked why no questions had been asked when the figures provided by Mr Cairns in the Email Chain had not been taken up by the Administrators? Mr Snell stated that once Printhaus had gone bust there was no point as it was clear that he was never going to get any of his money back – as had been the case.

Mrs Snell's evidence on the contentious issue

24. Mrs Snell stated:

(1) She supported Mr Snell's evidence at [21(1 to 3) & (5)] above.

(2) She was not present when Mr Snell wrote the Letter but they had talked about it. She had thought it was unnecessary as it was just a matter between her and her husband.

25. In response to questions in cross-examination by Mr Bracegirdle:

(1) She had always seen herself as an equal partner in the business, so she did not regard the amounts she received from Mr Snell as a "gift". She could not comment on the description in the Letter of repayment of loans; it was not a document drawn up by lawyers. The Letter was to formalise the 50:50 split that had always been the understanding. It was just what was required in order to get money into Printhaus for the company pay its liabilities; that was part of the MBO deal.

(2) She could not comment on why she did not lend the £775,000 cash consideration which she received via Mr Snell's bank account.

(3) She was not sure if she had been contacted by the Administrators as a creditor of Printhaus.

26. The Tribunal asked what had been declared on her tax return and Mrs Snell stated (after consultation with her accountant) that she had returned a disposal of 1/3 of the share capital of Printhaus and had made the capital loss claim on the same return.

Mr Harris's evidence on the contentious issue

27. Mr Harris stated:

(1) He was a director of Printhaus at the time that it entered administration. He had previously worked at the company and had returned as managing director about the time of the MBO. He was experienced in print manufacturing and had no legal or accountancy qualifications.

(2) He did not see the August Balance Sheet, but would have seen the management accounts on which it was based.

(3) He saw the Administrators' Statement before it was issued, as he was required to sign it. At that time his focus was on whether the company could be rescued and carry on trading, not the figure for the shareholder loans. The loan amount only became an issue much later, when HMRC enquired into Mrs Snell's tax affairs.

(4) On reviewing the figures later, he considered that the £450,000 figure in the Administrators' Statement was incorrect and the correct amount should be £3,781,126 – being cash loans of £2,614,459 plus loan notes of £1,166,667. He had previously confirmed this in a formal statutory declaration made on 13 January 2016.

28. In response to questions in cross-examination by Mr Bracegirdle:

(1) His statutory declaration had been based on conversations with the company's auditors at the end of 2015. The source of the figures was the Monies Owed Schedule which had been shown to him by the auditors.

(2) He understood no audited accounts had been prepared after Printhaus entered administration. The Administrators had full access to all the accounting records. He felt the Administrators had wanted to complete their tasks quickly and then move on.

29. The Tribunal asked what assets were represented by the difference between the £450,000 liability recognised by the Administrators and the £3,781,126 liability stated in his statutory declaration? Mr Harris said Printhaus had had a significant negative balance sheet and substantial money had been paid to DSR.

Appellant's case

30. For Mrs Snell, Mr Collins submitted as follows.

31. The Tribunal had to answer two questions. First, did Mr Snell lend at least £775,000 to Printhaus? Secondly, did Mr Snell lend £775,000 on behalf of Mrs Snell?

32. On the first question:

(1) Mr Snell's evidence was that Printhaus required loans from its shareholders to enable it to repay debts due to DSM, and that was an essential term of the MBO arrangements. Mr Snell's bank statement showed £2.3 million paid to Printhaus on the MBO completion date.

(2) The August Balance Sheet showed at least £2 million due to Mr Snell.

(3) Mr Snell's tax return had claimed loss relief on loans of £1,839,459, which was derived from the Monies Owed Schedule, being the total of £2,614,459.42 less the amount due to Mrs Snell of £775,000.

(4) None of the August Balance Sheet, the Email Chain, or the Monies Owed Schedule contained a figure of £450,000 as included in the Administrators'

Statement. The Administrators' Statement was inconsistent and Mr Harris's evidence was that it was incorrect.

33. On the second question:

(1) Both Mr Snell and Mrs Snell were clear that the business was always viewed as a 50:50 venture despite the shareholdings of 2/3:1/3; thus there was an equalisation payment from Mr Snell to his wife. That was discussed on the day of the completion meeting and the Letter was clear as to the intention. The Letter was contemporaneous evidence.

(2) If HMRC were suggesting that Mr Snell and Mrs Snell had not been truthful then there was no support for that suggestion. The explanations provided by Mr & Mrs Snell in these proceedings were entirely in accordance with the description given by Mr Snell in an interview with HMRC in December 2011. Further, it was not correct for HMRC to suggest that the Letter evidenced only an intention to make a loan.

(3) The August Balance Sheet did not distinguish between Mr Snell and Mrs Snell. There was no reference to Mrs Snell on the August Balance Sheet (absent the later manuscript notes) because Mr Snell had made the loan on behalf of Mrs Snell and thus the amount was included in his figures on this document.

(4) HMRC have correctly accepted that the £225,000 payment by Mr Snell to Mrs Snell at completion was lent by her to Printhaus. The same should be accepted for the £775,000 lent by her to Printhaus using money provided to the company by her husband on her behalf.

Respondents' case

34. For HMRC Mr Bracegirdle submitted as follows.

35. In the course of their enquiry into Mrs Snell's tax return HMRC had concluded that she had made an irrecoverable loan to Printhaus of £225,000 but that there was insufficient evidence that there was a further irrecoverable loan of £775,000.

36. Mrs Snell's return declared a disposal of 1/3 of the share capital of Printhaus (with an acquisition cost of £50,000) for consideration of £1,000,000 cash and £833,333 loan notes. The loan note consideration gave rise a deferred gain and the notes were held throughout 2008-09 (the tax year under appeal). Of the £1 million cash proceeds, £225,000 was lent to Printhaus for the Nationwide security deposit; HMRC had seen proof (a letter from Nationwide dated 6 May 2010) that the security had been utilised by Nationwide and s 253 relief had been agreed for that amount. So for the 2008-09 tax year there was consideration of £1 million and a deductible loss of £225,000 – that had been agreed by Mrs Snell's accountant on 11 November 2013.

37. Mrs Snell had received £775,000 cash from Mr Snell's bank account at completion. HMRC did not accept that she had made a loan of an identical amount to Printhaus.

(1) The Letter did not evidence a loan by Mrs Snell to Printhaus. It just stated Mr Snell's wish to repay money to his wife, and his wish that she should lend money to Printhaus. In fact Mr Snell had lent £2.3 million to Printhaus as evidenced by his bank statement.

(2) There was no evidence of any loan agreement to support the purported loan of £775,000.

(3) There was no evidence that Printhaus considered Mrs Snell to be a creditor of the company except in relation to the £225,000.

(4) The only credible evidence of the amount of shareholder loans was the £450,000 figure used by the Administrators.

(5) Other figures had been proposed by the witnesses but all this was after the event and no explanation had been provided as to why the large difference in figures had not been challenged at the time.

(a) Mr Harris had confirmed that the Administrators had full access to the business records but they saw no reason to change their figures. Mr Harris had approved the Administrators' Statement at the time and only raised his doubts after he was approached by Mrs Snell's accountants in 2015.

(b) Mr Cairns had proposed completely different figures in the Email Chain (and had there admitted these were "as best as I can recall") but there was no explanation why those had not been adopted – perhaps the Administrators had compelling evidence that those figures were not reliable. The Administrators had asked for confirmation that £3.9 million was owed but there was no evidence as to what reply (if any) was given.

(c) The Administrators had issued a progress report in January 2010 when they stated:

> "**Non Preferential Creditors**
>
> At the commencement of the administration the unsecured creditors were estimated to total £2,681,013. To date we have received claims totalling £842,219. Please be advised that we are still receiving proof of debts and therefore we are unable to agree the total value of non preferential claims at present."

So it was clear that no recognition had been made of alleged loans of £3.9 million from Mr & Mrs Snell. No evidence had been provided of what debts the shareholders had proved for at the time.

(d) In the August Balance Sheet the starting figure for shareholders' loans was £4,256,085 – which was a figure different from any others used anywhere. There is no reference at all to Mrs Snell (except in the handwritten notes added for the purposes of the hearing).

(e) Following HMRC's closure notice to Mr Snell, Mr Snell had accepted a figure of £450,000 as being his irrecoverable loan to Printhaus. That was the only credible figure as to the amount of shareholder loans outstanding.

Consideration and Conclusions

38. We must determine whether in the tax year 2008-09 Mrs Snell was entitled to £775,000 capital loss relief pursuant to s 253, relating to a loan made to Printhaus.

39. The onus of proof lies on Mrs Snell and the standard of proof is the balance of probabilities. We have concluded, for the reasons set out below, that Mrs Snell has not discharged that burden of proof and so her appeal must fail.

40. The evidence which has been presented to us has been confused and, in some respects, contradictory. Before examining the evidence we did have, we note that there was certain information that we might have expected to have been put before the Tribunal but which was missing.

(1) We had no evidence from the Administrators. The Administrators' Statement figure of £450,000 for shareholders loans was contested by all three witnesses but we had no explanation or retraction of that figure from the Administrators. Nor did we have any explanation of what the Administrators did after the Email Chain; having in February 2009 stated the shareholders loans as £450,000, in March 2009 they asked "Just to confirm is your debt £3.9m?", but by January 2010 the Administrators say they are aware of only £842,219 out of anticipated £2,681,013 creditors. Having been put on notice by the Email Chain that their statement of shareholder loans could be incorrect by an enormous £3.45 million, we would expect the Administrators to have enquired into that apparent discrepancy. Instead, the suggestion made to us is that, apparently, the matter just faded away without any resolution.

(2) We had no evidence from Mrs Snell's accountant, Mr Cairns. Mr Cairns set out the figures in the Email Chain and, we understand, prepared the figures for the tax returns of both Mrs Snell and Mr Snell. We discuss those figures below and point out certain inconsistencies. It would have been helpful to have an explanation of those inconsistencies.

(3) We had no evidence from the management accountant who prepared the August Balance Sheet. This was less important because, for reasons set out below, we have obtained little assistance from that document but, again, there are certain inconsistencies and it would have been helpful to have an explanation of those inconsistencies.

41. In relation to Mr Harris's evidence, we accept that when he signed the Administrators' Statement as managing director he may not, in the circumstances, have focussed closely on the exact amount stated as shareholders loans (being £450,000). However, we do not accept his claim that he can now be sure that the correct figure was (exactly) £3,781,126. That is, we find, simply a figure subsequently put into his mind by sight of the Monies Owed Schedule. He could offer us no explanation of how the purported enormous discrepancy of over £3.3 million could have arisen or been accounted for.

42. In relation to the August Balance Sheet, as we have already stated we have obtained little assistance from this document. One of the proposed adjustments was to

remove the £833,333 loan notes that were issued to Mrs Snell by Printhaus Holdings; that adjustment was necessary because, apparently, the management accounts had assumed that Mrs Snell's loan notes (as well as those issued to Mr Snell) had been assigned to Printhaus. That had never happened (Mrs Snell retained her loan notes throughout) but we had no explanation of why the management accounts at August 2008 contained that error and how that affected their credibility. Also, there appears to be no recognition that (the one figure on which everyone does seem agreed) Mrs Snell loaned £225,000 to Printhaus (for the Nationwide deposit). If (and in the absence of any explanation this is speculation) that amount is supposed to be included in the adjusted £2 million loans figure then that leaves £1,775,000 as other loans from both Mr & Mrs Snell – which does not even meet the £1,839,459 claimed by Mr Snell on his tax return ([32(3)] above) let alone another £775,000 Mrs Snell claims to have loaned.

43. In relation to the Email Chain, we have already discussed the concerns we have about the apparent lack of any follow-up by the Administrators to the alarming suggestion that they have understated shareholder loans by around £3.5 million. In providing the figures Mr Cairns accepts that they are as best as he can recall, and they include an admitted difference of £39,419 – while that amount may be relatively small in the context of these figures, it indicates that he cannot exactly reconcile his figures to the sales proceeds for DSR. It also records "Corny's cash 675,000". We have no explanation of that; Mrs Snell received £1 million cash proceeds of which she loaned £225,000 which is correctly shown as "Nationwide guarantee" - so why is the cash figure not £775,000 rather than £675,000?

44. In relation to the Monies Owed Schedule, we understand this was the basis of Mr Snell's claim for a loss of £1,839,459 on his tax return and that the derivation of that figure was the total of £2,614,459 less £775,000 ([32(3)] above). However, if the suggestion is that the £775,000 deduction was because that was money due to Mrs Snell, then why was the £225,000 "Nationwide deposit" left in as due to Mr Snell? The undisputed evidence is that the £225,000 was lent by Mrs Snell, not Mr Snell.

45. We accept the evidence of both Mr & Mrs Snell that they saw the business as being equally owned between them. However, that does not really assist us in looking at what happened when the business was sold. The sale consideration for DSR was £5.5 million in a mix of cash and loan notes ([9)(3)] above). That values Mrs Snell's purported half share at £2.75 million. Mrs Snell received £1 million in cash and (nominal) £833,333 in loan notes. So, what Mr Collins described as the equalisation payment should be £916,667 – that is different from the £775,000 described in the Letter. Further, the only disposal proceeds for her shares reported by Mrs Snell on her tax return were £1,833,333.

46. The Letter described the £775,000 as being a repayment of loans made to Mr Snell by Mrs Snell over the years. The witness statements of both Mr and Mrs Snell described it as a gift. A third explanation (from both Mr and Mrs Snell) is that it was the equalisation payment.

47. It appears that neither Mr Snell not Mrs Snell submitted proofs of debt to the Administrators – Mrs Snell said she could not even recall being asked to submit one – despite being purportedly owed £3.9 million between them.

48. Taking all the above together we are left with a picture of confusion and contradictions, despite our best efforts to reconcile the information provided to us. We cannot be confident that, on the balance of probabilities, Mrs Snell made an irrecoverable loan of £775,000 to Printhaus. Accordingly, we must dismiss her appeal against the refusal of s 253 capital loss relief.

Decision

49. The appeal is DISMISSED.

50. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

PETER KEMPSTER
TRIBUNAL JUDGE

RELEASE DATE: 27 MAY 2016