

regardless of the extent to which the facility was drawn down when they made their applications.

The Tribunal referred to the decision of Brennan J in *Sibbles v Highfern Pty Ltd* (1987) 164 CLR 214 at 229 cited in *Fawthrop and Repatriation Commission* (1993) 19 AAR 220. Based on the view that the asset is charged at a particular time only to the extent of an existing borrowing or debt, the Tribunal found that the value of the charge on Beecham Road in October 2002 was \$179,253.

Consequently the Tribunal found that the value of Beecham Road for the purpose of the Act in relation to the Nocks claims was \$417,000 less (\$70,000 + \$179,253), an amount of \$167,647. The Tribunal found the relevant value for Graylands Road was \$92,143. As the sum of the value of these assets was \$259,890, it was an amount in excess of the current assets value limit for parenting payment partnered and Austudy, of \$206,500.

Formal decision

The Tribunal affirmed the decision under review

[M.A.N.]

Loan to company: amended financial statements

WOOD and SECRETARY TO THE DFaCS
(No. 2002/1190)

Decided: 25 November 2003 by
N. Isenberg.

Background

Wood and his wife sold their home and business and moved to Coffs Harbour where their son had a company called Coffs Classic Cabinets Pty Ltd ('the company') and was in the process of becoming a licensed builder. Wood was a shareholder and director of the company. Wood purchased two adjoining properties and the left-over funds were 'filtered into' the company. Wood lived in the house on one block and demolished the other and engaged the company to build three villas. Wood managed the company's funds and made progress payments as required, intermingling personal and company finances. The pattern of development continued over several years and

entailed development of at least six properties. Although an arrangement existed for profits to be shared between Wood and the company, on at least two occasions, all settlement monies were paid into the company.

From 1994 and thereafter, the financial accounts recorded loans in varying sums by Wood to the company. The original accountant established 'goodwill' of \$100,000 in 1994 to recognise funds invested in the company and the work of the family in setting it up. The goodwill was ultimately removed and in March 2001, a fresh set of accounts from 1995 to 2000, prepared by a different accountant, were presented to Centrelink. Centrelink did not accept the revised accounts and nor did the SSAT when it affirmed the decision of 21 July 1995 to reduce Wood's age pension.

Issues

The AAT was required to decide whether Wood's age pension was correctly reduced on the basis of deemed income from loans to the company. The AAT needed to resolve whether there was in fact a loan in existence and whether to accept the amended balance sheets from 1995 to 2000.

The law

Section 1077 of the *Social Security Act 1991* ('the Act') deems income on 'financial assets'. Section 9 defines 'financial assets' to include 'financial investments', which included loans. Section 1122 provides that if a person lends an amount after 27 October 1986, the unpaid balance of the loan is included in the value of a person's assets.

Submissions

Wood argued that the loan entry was erroneous. Wood suggested that the loan recorded 'progress payments' and that the company always made a loss which had been concealed by the original accountant. Wood argued that income had been overstated by \$100,000 because of the erroneous goodwill entry.

The Department argued that the first set of accounts ought to be relied upon and inferred that the reconstruction of the books was done with a view to re-writing history in order to gain financial advantage.

Findings

The AAT was satisfied that the arrangement between Wood and the company had been very loose and that the company had been used extensively to fund personal expenditure. The AAT was

satisfied that personal funds had been poured into the company as required and concluded:

It seems to me that it is not unreasonable to assume that the loan amount recorded in the company's books was linked to the funds being contributed by the Woods to the company.

(Reasons, para. 38)

The AAT also held the view that the original accountant had understood the arrangements and accurately reflected Wood's contribution by way of a loan. The AAT observed that the loan shown in the 1997/98 financial statements no longer existed in the 1998/99 statements and that by removing them, Wood had deprived himself of an asset which remained assessable for five years thereafter under the deprivation rules.

The AAT contemplated the amended financial records:

Having come to the view that there was a loan by the Woods to the company I regard it as unnecessary to consider the amended company records. Either there was a loan or there was not, irrespective of what the company's records may say from time to time; and I have decided that there was a loan.

(Reasons, para. 42)

Furthermore, the AAT stated:

I do not accept the change of financial statements. There was no lodgement of these statements with the ATO or ASIC. I do not accept the contention that, because there was no tax advantage in doing so, it was unnecessary for the company to lodge the amended statements. My view is that it is likely they were produced as a matter of expediency.

I also do not accept that the addition of goodwill to the company returns was linked to the increase of the loan in 1994/95. Neither do I accept that this addition of goodwill was an 'accounting error' which was then addressed in amended financial statements

...
(Reasons, paras 46, 47)

Formal decision

The AAT affirmed the decision under review.

[S.L.]