Press Summary

7 May 2025

Bilta (UK) Ltd (in liquidation) and others (Respondents) v Tradition Financial Services Ltd (Appellant); Nathanael Eurl Ltd (in liquidation) and another (Appellants) v Tradition Financial Services Ltd (Respondent)

[2025] UKSC 18

On appeal from: [2023] EWCA Civ 112

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Hamblen, Lord Burrows and Lord Richards

Background to the Appeal

This case concerns two points of law arising in the context of corporate insolvency. The insolvent companies in this case – Bilta (UK) Ltd, Weston Trading UK Ltd, Nathanael Eurl Ltd ("**Nathanael**"), Vehement Solutions Ltd, and Inline Trading Ltd ("**Inline**") – acquired huge tax liabilities as a consequence of engaging in a form of VAT fraud known as 'missing trader intra-community fraud'. The fraud was carried out via the trading of EU carbon credits. VAT payments received were paid away to third parties when they should have been passed on to the tax authorities.

In the course of their liquidation, the insolvent companies began proceedings against Tradition Financial Services Ltd ("**Tradition**"), arguing that Tradition (i) had knowingly participated in the fraudulent scheme and should therefore be required to contribute to the liquidation under section 213 of the Insolvency Act 1986, and (ii) was liable for having dishonestly assisted the directors of the fraudulent companies in breaching their duties as directors by engaging in the fraud.

The dispute was partially settled by agreement between the parties, leaving two issues of law to be decided by the courts on the basis of assumed facts. In particular, it was to be assumed that Tradition, being involved in the fraud as a broker – introducing counterparties and negotiating the terms on which carbon credits were bought and sold – knew that that the trades in which it was involved were suspicious, that Inline and Nathanael were unlikely to be legitimate trading concerns, and that such companies were likely fronts for illegitimate activities.

The issues to be decided were:

(A) whether Tradition fell within the scope of s. 213; and
(B) whether the dishonest assistance claim was time-barred.

The judge in the High Court held that Tradition was, in principle, within the scope of s. 213, but that the dishonest assistance claims were out of time. The Court of Appeal agreed. Both sides appealed to the Supreme Court.

On (A), Tradition argued that it fell outside s. 213 because that provision in fact only applied to those involved in the management or control of the fraudulent business.

As to (B), Nathanael and Inline argued that section 32 of the Limitation Act 1980, which postpones the running of time until a fraud could reasonably have been discovered, meant that the dishonest assistance claim was not time-barred (as it otherwise would have been) since the companies could not have discovered the fraud orchestrated by their directors before the liquidators were appointed. That argument was complicated by the fact that Nathanael and Inline were each struck off and dissolved before later being restored to the register of companies, and that section 1032 of the Companies Act 2006 deems a restored company to have always been in existence.

Judgment

The Supreme Court unanimously dismisses each appeal. Lord Hodge and Lord Briggs (with whom the other Justices agree) give the judgment. Applying ordinary principles of statutory interpretation, Tradition was within the scope of s. 213 (on the assumed facts). The deemed existence of Nathanael and Inline during the period in which they were in fact in dissolution did not necessitate assuming that they lacked directors or other officers during that time. That was a question of probability to be determined on the evidence: the burden of proof was on the claimant companies and they had failed to discharge it. Accordingly, the dishonest assistance claim remained time-barred.

Reasons for the Judgment

Issue (A): Whether Tradition was within the scope of s. 213

Section 213 of the Insolvency Act 1986 provides, under the heading "Fraudulent Trading" **[16]**:

> *"(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.*
>
> *(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper."*

The court takes a well-established approach to statutory interpretation: in essence, the meaning of a legislative provision is derived from the words Parliament used in the context of the statute as a whole and the historical background against which it was enacted (as this may illuminate its purpose) **[20]**.

Applying that approach, the wording of s. 213 indicates that a person can only be liable if they were actively involved in the carrying on of the fraudulent business (and not eg merely a party to a one-off fraudulent transaction). But there is nothing in the language of s. 213(2) to restrict its scope to directors or managers. On the contrary, it could very well apply to someone

routinely transacting with the company in the knowledge that the company was carrying on a fraudulent business **[25]–[27]**.

As to the statutory context, other sections of Part IV, Chapter X of the Insolvency Act 1986, use strikingly different language to identify their targets **[28]**. They do not suggest that the natural meaning of s. 213 should be departed from **[29]**.

The historical context is of limited assistance, not least because it is an important principle of statutory interpretation that the courts must be wary of doing anything that would frustrate the ability of the ordinary citizen to ascertain what a provision means by reading it. To take committee discussions as radically qualifying the meaning of s. 213 (as Tradition argued for) would be to do just that **[30]–[33]**. There was nothing in the legislative history to justify departing from the natural meaning of the words **[35]**, nor in the analogous criminal law provision (s. 993 of the Companies Act 2006) **[39]**. That natural meaning is also consistent with a long line of both civil and criminal cases **[39], [54]**.

Accordingly, third parties who know that a company's business is being carried on for a fraudulent purpose and then participate in, facilitate, or assist with fraudulent transactions are within the scope of s. 213 **[58]**.

Issue (B): Whether the dishonest assistance claim was time-barred

Tradition is alleged to have assisted in breaches of duty by the directors of Nathanael and Inline. Those breaches of duty occurred between May and July 2009. But the directors then abandoned their companies, and those companies were each struck off and dissolved before later being restored to the register and having liquidators appointed. Nathanael was struck off in 2011 and restored in 2012; Inline was struck off in 2010 and restored in 2015. The claim against Tradition was only commenced in November 2017, after the standard six-year time limit for bringing a dishonest assistance claim had expired **[64]–[65]**.

However, section 32 of the Limitation Act 1980 delays the beginning of the limitation period where the claimant can show – the burden is on them – that they did not discover, and could not reasonably have discovered, the fraud **[65]**. Additionally, section 1032(1) of the Companies Act 2006 provides that **[67]**:

> "*The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register."*

Nobody suggests that Nathanael or Inline had discovered the fraud by November 2011 (ie six years before the claim was brought). Once abandoned by their directors, neither company had officers able to uncover the fraud until the liquidators were appointed. The question is therefore whether the companies could reasonably have discovered the fraud – or are deemed to have been able to do so – during the period of their dissolution **[69]–[70].**

The key question is whether the deemed existence of the companies in the period in which they were struck off involved it being assumed that they had no directors or liquidators during that period **[78]**. That answer to that question was "no" **[79]**.

It is a settled legal principle that deeming provisions are to be interpreted as creating a fiction going no further than necessary. Applying that to s. 1032(1), all that needs to be deemed is that the restored company had been in existence during the period of its dissolution. Nothing more and nothing less **[80]**. Whether the company is to be deemed to have had directors or other officers does not flow from s. 1032 alone but has to be answered on the balance of probabilities on the evidence before the court **[80]–[81]**.

That is also the conclusion required by a proper interpretation of s. 32 of the Limitation Act, bearing in mind its purpose. Otherwise, struck-off companies would always be able to benefit

from the exception, even where they had been struck off and dissolved through their own fault **[82]**.

Accordingly, it was open to the claimant companies (Nathanael and Inline) to establish the factual basis for postponing the running of time, but the onus was on them to do this and they had adduced no evidence on the point. Accordingly, they had failed to discharge the burden of proof and so the dishonest assistance claim was time barred **[83]–[85]**.

References in square brackets are to paragraphs in the judgment.