

## Alert | Litigation



April 2022

### **Greenberg Traurig Succeeds in Limitation Trial for Client Tradition Financial Services Ltd**

Tradition Financial Services Limited (TFS) was a defendant in proceedings brought by five English companies (all in liquidation), together with the liquidators of these companies. The claim was brought by the liquidators of the companies used as vehicles for VAT fraud in the European Union Allowances market during 2009. The liquidators (and the companies under their direction) alleged that TFS had dishonestly assisted the former directors in breaches of their fiduciary duty by acting as a broker in relation to carbon credit trades carried out to further the directors' fraud. The issues before the court were whether the claims were time-barred and whether the liquidators' claims for fraudulent trading under Section 213 of the Insolvency Act 1986 were valid.

In a **judgment** handed down by Marcus Smith J, the Court held that the Claimants' claims brought against TFS in dishonest assistance and certain of the Section 213 claims were time-barred. In relation to the dishonest assistance claims, the Judge rejected the Claimants' argument that the liquidators could not with reasonable diligence have discovered the claims before November 2011 (which is the period falling six years before the claim against TFS was issued). Instead, the Court considered that the liquidators had not discharged the burden of proof and, in any event, the evidence showed that the claim against TFS could have been pleaded at some point in 2009 or 2010. The judgment also contains an excellent summary of the law relating to Section 32 of the Limitation Act 1980 and its application.

In relation to the remaining Section 213 claims, the Judge noted that it would require existing policy (which has given a wide interpretation to the principle that powers in relation to Section 213 could be exercised only against someone who was an “insider” to the insolvent company) to be changed, which is something for the Court of Appeal. However, the Judge concluded that he would be minded to give permission to appeal on this issue.

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