

THG Plc (Respondent) v Zedra Trust Company (Jersey) Ltd (Appellant) [2026] UKSC 6

Judgment came out this morning in this appeal argued in February 2025. By a majority of 4-1 the Supreme Court overturned the Court of Appeal [2024] EWCA Civ 158 and held that there is no limitation period applicable to unfair prejudice petitions under section 994 of the Companies Act 2006.

The majority judgment given by Lord Hodge and Lord Richards (with whom Lord Lloyd-Jones and Lord Briggs agree – at least on most things) involves a huge trawl through cases going back as far as the 13th and early 14th centuries, including a lot of texts written about the law from those times. It might well seem odd that in the 21st century, in order to find the answer to whether a limitation period applies to a form of action introduced for the first time towards the end of the 20th century, one has to go back 700-800 years. Having done that and then gone through a number of the more recent English cases, they considered case law in other common law jurisdictions and looked at analogies in Commonwealth company legislation.

The majority held that in his judgment in *Collin v. The Duke of Westminster* [1985] QB 581, (being the principal case the Court of Appeal had relied on in this matter) Oliver LJ was not proposing the mere existence of a statutory cause of action as sufficient to bring section 8 of the 1980 Act into play, which suggestion was described as the "wider view". The Court of Appeal in this case was wrong to treat the "wider view" as the basis of Oliver LJ's conclusion. Rather the essence of an action upon a specialty is **an action to enforce an obligation created by a statute**. This was despite the wider view in *Collin* having been applied for 40 years and no one (including academics) having previously suggested it had been wrongly reasoned or decided. The majority said that anyone who had relied on the "wider view" suggested in *Collin* was wrong to have done so, but (perhaps somewhat oddly given that reasoning) they expressly did not overrule the decisions in the cases which had done so.

The majority held that section 994 addresses a "state of affairs" that existed, being the internal affairs of the company but does not create or impose any substantive obligations. Sections 994-996 provide relief in respect of the state of affairs which exists as regards a company that results in or constitutes unfair prejudice to one or more members. Accordingly, section 8 did not apply to a petition under section 994 and there is therefore no limitation period applicable to unfair prejudice claims generally.

Lords Hodge and Richards took the view that in the context of sections 8 and 9 of the Limitation Act 1980, the word "specialty" means only a debt provided by statute. It does not extend to anything beyond that, rejecting the suggestion that it did apply to an action to enforce a statutory non-monetary obligation.

Lords Briggs and Lloyd-Jones held that there is a limitation period of 12 years applicable to non-monetary obligations, so that provided a "specialty" created an obligation, section 8 would apply to it. Of course, they had held that section 994 did not create an obligation.

Although Lords Hodge and Richards on the one hand and Lords Briggs and Lloyd-Jones on the other could not agree between themselves on this issue, they produced one judgment, in which they set out their disagreement. The effect is that the Court has expressly not reached a concluded view on this issue and that issue will have to be determined in a case which does create a non-monetary obligation. If Lords Hodge and Richards are right anything caught by section 8 by virtue of a statute would have to be a debt. That would seem immediately to cause everything caught by section 8 where it arises under a statute to fall within section 9 of the Limitation Act, which would appear to make section 8(2) redundant.

As to section 9, of the Limitation Act 1980 the majority held that in English law it extended to include claims under statute for unascertained sums and was not limited to ascertained statutory debts. But they said that a claim under section 994 is not a claim to enforce a liquidated or unliquidated obligation arising under a statute but is a claim that the court should make such order as it thinks fit for giving relief in respect of the matters complained of. They held that although the court could order payment of a specified sum by way of compensation or otherwise, this was not a sum "recoverable by virtue" of sections 994-996. Rather the obligation only arose by virtue of the court's exercise of its very wide discretion.

The majority then went on to disapprove the "look and see" approach, which has been applied for over 65 years, of determining whether a claim falls within section 9. They held that the cases where it had been applied, including *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144, *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496, and *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542; [2007] 1 WLR 2404, had been wrongly decided as regards section 9 of the 1980 Act.

The majority dismissed the other submissions made by the Appellant as to why there was a limitation period, namely (1) this was a claim for equitable relief holding it was not as it was a claim for compensation, and (2) that there was a "settled understanding" that there was no limitation period applicable which bound the courts, holding that there was no such settled understanding even if such a principle applies, which they did not determine.

Lord Burrows dissented, upholding the Court of Appeal in a detailed judgment, considering one by one and dismissing all of the objections raised by the Appellant. He set out why the majority judgments cannot be right. He firmly rejected the submission that unfair prejudice petitions were concerned not with a cause of action but with the regulation by the court of a "state of affairs". He held that an unfair prejudice petition was a specialty within section 8 of the Limitation Act 1980 and further that when the

only claim is for a monetary sum, as here, section 9 of the Limitation Act applies a 6-year limitation period. He expressly endorsed the "look and see" approach. He said that the majority approach would require an overruling of the main cases in the area and there was no justification for an overhaul of the established law on the "look and see" approach which has been applied for over 65 years.

Conclusion

First, the majority has stated that unfair prejudice petitions under section 994 of the Companies Act 2006 are not subject to any limitation period.

Secondly, and of interest to litigators more generally is that the effect of this judgment is that there can be no 6-year limitation period for claims under sections 238, 239, 339, 340 and 423 of the Insolvency Act 1986 (or it would seem indeed any claim where the court is given a discretion as to what relief is appropriate). It must also follow that if Lords Hodge and Richards are right, there is not even a 12-year limitation period for these claims. And probably so if Lords Briggs and Lloyd-Jones are right, as it is difficult on their analysis to see what obligation is created by these sections as opposed to there being a "state of affairs" which gives rise to a discretion in the Court to grant relief. The majority seem to accept this in paragraph 156 of the Judgment.

Thirdly, the judgment leaves unanswered questions as to at least (1) whether section 8 of the Limitation Act 1980 applies to non-monetary obligations under statute, although it is arguable that a combination of the judgment of 2 of the majority with Lord Burrows' dissenting minority judgment means that it does and (2) whether there is any such principle as a "settled understanding".