

COMPANY LAW: The limits of the rule against reflective loss

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Does the rule against reflective loss apply to claims by unsecured creditors who are not shareholders of the relevant company? No, said the Supreme Court in *Sevilleja v Marex Financial Ltd* [2020] UKSC 31, overruling the Court of Appeal.

The Supreme Court (by a majority) held that the rule against reflective loss is that where a company suffers actionable loss, and that loss results in a fall in the value of its shares (or in its distributions), the fall in share value (or in distributions) is not a loss which the law recognises as being separate and distinct from the loss sustained by the company. Therefore, a shareholder whose shares have decreased in value due to a loss suffered by the company cannot sue for his or her personal loss. To the extent that the speeches of Lord Millet and other members of the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 AC 1 departed from this, they should not be followed.

However, the rule against reflective loss is not concerned with other losses suffered by a shareholder, or with situations where the company had not suffered any actionable loss. In either circumstance, the shareholder can bring a claim for its losses.

The rule against reflective loss is restricted to shareholders and does not apply to creditors of the company. In so concluding, the Supreme Court overruled the decision of the Court of Appeal. It also held (overruling *Giles v Rhind* [2003] Ch 618) that there is no exception to the rule which would allow a shareholder to claim its own losses where the company had a cause of action but failed to pursue it.

The Court of Appeal was therefore wrong to strike out the majority of the appellant creditor's claim. The appellant would be permitted to pursue its entire claim.

The Supreme Court decision has provided clarity as to when the rule against reflective loss applies. It has also narrowed its scope to claims by shareholders, thereby cutting short a gradual expansion of its scope via various decisions since its inception in *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] Ch 204.