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Asset-Stripping and Direct Creditor Claims: The Significance of *Sevilleja v Marex Financial Limited* for Nigerian Companies and Creditors

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Introduction

Banks and other institutional lenders are all too familiar with a recurring commercial reality. A company incurs substantial indebtedness, or judgment is entered against it, only for its assets to disappear shortly thereafter. Bank accounts are emptied, receivables diverted, valuable assets transferred to related entities, and corporate value systematically stripped by those controlling the company. By the time creditors seek to enforce their rights, there is often nothing left to execute against. The company has become little more than a shell, while any ensuing insolvency process is frequently protracted, underfunded or, in some instances, influenced by the very persons responsible for the dissipation. Asset-stripping of this nature presents one of the greatest threats to effective creditor protection and the integrity of modern insolvency regimes. It also raises a fundamental question at the intersection of company law, insolvency law and the law of obligations:

where the same misconduct gives rise to both a corporate cause of action and a personal loss to a creditor, does the existence of the company's claim extinguish or bar the creditor's independent cause of action?

Traditionally, company law has approached this question through two well-established principles. First, the rule in *Foss v Harbottle*[1] recognises the company as the proper claimant in respect of wrongs done to it. Secondly, the doctrine of reflective loss precludes shareholders from recovering losses suffered in their capacity as shareholders where those losses merely reflect the company's own loss. Together, these principles preserve separate corporate personality, prevent double recovery and maintain the distinction between corporate rights and personal rights. Yet their application has often produced difficult, and sometimes unjust, outcomes where those controlling the company are themselves the alleged wrongdoers.

It was this tension that culminated in the landmark decision of the United Kingdom Supreme Court in *Sevilleja v Marex Financial Ltd*,[2] which fundamentally recalibrated the reflective loss doctrine by confining it to shareholder claims and recognising that ordinary creditors may pursue independent causes of action arising from duties owed directly to them.

Although an English decision, *Marex* has considerable significance for Nigerian company and insolvency law. Asset-stripping remains a familiar feature of the Nigerian commercial landscape, while the Companies and Allied Matters Act (CAMA), 2020 has introduced a modern insolvency framework founded on creditor protection, director accountability and corporate rescue. This article argues that *Marex* represents more than a refinement of the reflective loss doctrine. Properly understood, it restores the doctrine to its principled limits and provides a persuasive framework for distinguishing between corporate causes of action and independent creditor claims. It further contends that this approach is consistent with the statutory architecture of CAMA 2020 and offers valuable guidance for Nigerian courts confronted with asset-stripping, corporate abuse and the evolving realities of commercial insolvency.

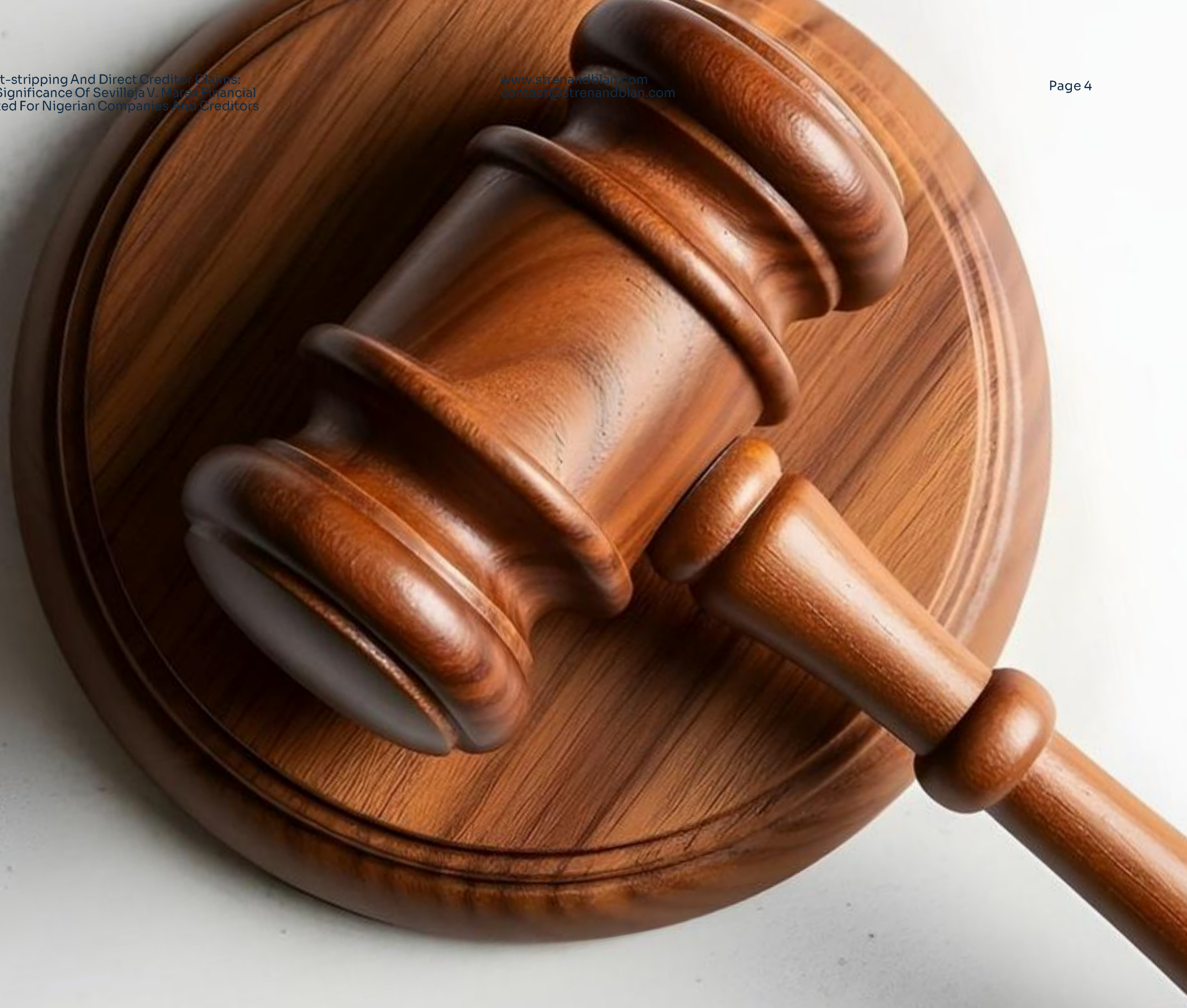
[1] (1843) 2 Hare 461; 67 ER 189
[2] [2020] UKSC 31; [2021] AC 39

Background and Facts of the Case

Marex Financial Ltd ("Marex"), a foreign exchange broker, had entered into foreign exchange trading transactions with two British Virgin Islands companies, Creative Finance Ltd and Cosmorex Ltd (collectively, "the Companies"). Both companies were wholly owned and controlled by Mr Carlos Sevilleja, who exercised complete control over their management and financial affairs. Following a trial before Field J in the English Commercial Court in April 2013, Marex obtained judgment against the Companies for more than US$5.5 million, together with agreed costs of approximately £1.65 million.

On 19 July 2013, Field J circulated a confidential draft of his judgment to the parties, with formal judgment scheduled to be handed down on 25 July 2013. Shortly after receiving advance notice of the impending decision, Mr Sevilleja allegedly procured the transfer of more than US$9.5 million from the Companies' London bank accounts to offshore accounts under his personal control. By the end of August 2013, the Companies' disclosed assets had dwindled to a mere US$4,329.48. Marex alleged that these transfers were deliberately orchestrated to prevent the satisfaction of the judgment debt and constituted breaches of fiduciary duties owed by Mr Sevilleja to the Companies.

In December 2013, Mr Sevilleja caused the Companies to enter insolvent voluntary liquidation in the British Virgin Islands ("BVI"). The Companies allegedly owed more than US$30 million to Mr Sevilleja and entities associated with or controlled by him, leaving Marex as the only non-insider creditor. According to Marex, the liquidator's retainer and indemnity were funded by entities connected with Mr Sevilleja, the liquidation remained effectively dormant, no meaningful investigations were undertaken into the disappearance of the Companies' assets, and no proceedings were commenced against Mr Sevilleja notwithstanding the apparent breaches of duty. These allegations were reinforced by the decision of the United States Bankruptcy Court for the Southern District of New York, which refused to recognise the BVI liquidation as a foreign main proceeding, describing it as "the most blatant effort to hinder, delay and defraud a creditor" that it had encountered and criticising both Mr Sevilleja's conduct and the liquidator's failure to act.



Unable to enforce its judgment against the Companies that are now without assets, Marex commenced proceedings directly against Mr Sevilleja. It did not seek to enforce the Companies' rights but instead advanced personal claims in tort for

(i) inducing or procuring the violation of its rights under the judgment of 25 July 2013, and

(ii) intentionally causing it loss by unlawful means. Mr Sevilleja contended that the claims were barred by the doctrine of reflective loss because the Companies themselves possessed concurrent causes of action against him arising from the same asset dissipation. It must however be noted that the liquidation was, on the facts alleged, effectively dormant: the liquidator was unfunded, no investigation was being pursued, and no recovery action had been taken against Mr Sevilleja.

In response, Mr Sevilleja raised a technical defence. He argued that the loss claimed by Marex merely reflected the loss suffered by the companies, whose assets he was alleged to have misappropriated. He argued that since the companies had their own claims against him for the same misconduct, Marex's claim was said to be barred by the reflective loss principle. The Court of Appeal accepted that argument, holding that the principle extended to claims by creditors. Marex appealed to the Supreme Court. The appeal presented the Supreme Court with a question of considerable importance: whether an ordinary creditor may maintain an independent claim against a company's controller where the same wrongful conduct also gives the company its own cause of action.

The Reflective Loss Principle and the Issue Before the Supreme Court

The reflective loss principle originated in the decision of the English Court of Appeal in *Prudential Assurance Co Ltd v Newman Industries Ltd (No. 2),*[3] where it was held that a shareholder cannot recover damages for a diminution in the value of his shares or a reduction in dividends where such loss merely reflects the loss suffered by the company as a consequence of a wrong done to it. The rationale was not simply to avoid double recovery but to give effect to the rule in *Foss v Harbottle*[4] and the principle of separate corporate personality. Since the company's cause of action belongs exclusively to the company, any consequential loss suffered by shareholders in that capacity is not recognised as legally distinct from the company's loss. Recovery by the company would ordinarily restore the value of the shareholders' investment, making a separate claim unnecessary.[5]

The doctrine, however, gradually expanded beyond those principled limits. In *Johnson v Gore Wood & Co,*[6] while the House of Lords affirmed Prudential, Lord Millett's influential speech recast the doctrine as a broader rule aimed principally at preventing double recovery and protecting corporate creditors. That reasoning shifted the focus away from the nature of the shareholder's loss and towards the mere existence of concurrent causes of action. Subsequent decisions, particularly *Giles v Rhind*[7] and *Gardner v Parker,*[8] extended the doctrine beyond shareholder claims and applied it to creditors and other claimants asserting independent causes of action. As Courts struggled to soften the resulting hardship by recognising exceptions, such as where the wrongdoer's own conduct prevented the company from pursuing its claim,[9] the law became increasingly uncertain and incoherent. Academic commentators criticised the doctrine for expanding far beyond its original corporate law foundations and threatening to distort the ordinary law governing contractual and tortious obligations.

Against this backdrop, *Sevilleja v Marex Financial Ltd* presented the United Kingdom Supreme Court with an issue of fundamental importance. The immediate question was whether the reflective loss principle could bar a claim brought by an ordinary creditor who was not a shareholder of the company. More fundamentally, however, the Court was invited to determine the true juridical basis of the doctrine itself: whether reflective loss remained a narrow rule of company law derived from Prudential and *Foss v Harbottle* or had evolved into a general principle capable of excluding otherwise valid personal claims whenever the company possessed a concurrent cause of action. Lord Reed described the issue as one of the most important and difficult questions of company law to come before the Supreme Court in recent times. The Court's answer would not only determine Marex's claim but also redefine the proper relationship between corporate personality, concurrent claims and creditor protection in English, and by extension Nigerian company law.

[3] [1982] Ch 204 (CA)
[4] Foss v Harbottle (1843) 2 Hare 461, which established the proper plaintiff rule that a company, as a separate legal person, is the proper claimant in respect of wrongs done to it. The rule underpins the principles of corporate personality, internal management and majority rule, and is reflected in section 341 of the Companies and Allied Matters Act 2020. See also Shekari & Anor v Akagwu (2022) LPELR-57789(CA), where the Court of Appeal in Nigeria reaffirmed that only the company has the requisite standing to sue for a wrong done to it.
[5] The shareholder's investment necessarily "follows the fortunes of the company", and any diminution in share value caused by injury to the company is therefore not recognised as a separate legal loss
[6] [2002] 2 AC 1 (HL)
[7] [2002] EWCA Civ 1428; [2003] Ch 618
[8] EWCA Civ 781; [2004] 2 BCLC 554, where the principle was applied to bar a claim brought by a shareholder in its distinct capacity as a creditor of the company.
[9] See Perry v Day [2004] EWHC 3372 (Ch)

The Decision of the Supreme Court

The seven-member panel of the UK Supreme Court unanimously allowed Marex's appeal, holding that the reflective loss principle does not extend to claims brought by ordinary creditors. While all seven Justices agreed on the outcome, they differed as to the continued existence of the doctrine itself. The majority, led by Lord Reed, held that the doctrine should be retained but confined to its original limits, whereas the minority, led by Lord Sales, considered that it should be abandoned altogether.

Delivering the leading judgment, Lord Reed approached the appeal by first examining the ordinary principles governing concurrent causes of action.[10] His Lordship observed that where the wrongful conduct of a defendant infringes duties owed to different persons, each ordinarily acquires an independent cause of action. The law does not deny one claimant a remedy merely because another person has suffered related loss arising from the same conduct. Rather, the risk of double recovery is managed through established principles of damages, insolvency and procedural law. Against this backdrop, Lord Reed undertook a comprehensive review of the authorities beginning with *Prudential Assurance Co Ltd v Newman Industries Ltd (No. 2).*[11] He concluded that Prudential established a narrow rule of company law,[12] not a general principle of damages. Properly understood, the rule applies only where a shareholder seeks to recover a diminution in the value of shares or distributions that merely reflects loss suffered by the company. In such circumstances, the shareholder suffers no legally distinct loss because the company, consistent with the rule in *Foss v Harbottle,*[13] remains the proper claimant.

The Supreme Court rejected the broader interpretation that had developed following *Johnson v Gore Wood & Co.*[14] Lord Reed considered that subsequent decisions, particularly the influential reasoning of Lord Millett,[15] had transformed a limited rule of company law into a broad exclusionary principle founded primarily on the avoidance of double recovery. This expansion shifted the focus from the nature of the claimant's loss to the mere existence of concurrent causes of action and ultimately extended the doctrine beyond shareholders to creditors and other claimants. The Court held that this development lacked doctrinal justification and was inconsistent with ordinary principles governing concurrent claims.

[10] Lord Reed began by observing that the ordinary law recognises concurrent claims where different persons suffer loss arising from the same wrongful conduct. The existence of overlapping claims ordinarily raises questions of double recovery rather than the existence of a cause of action. Marex [2020] UKSC 31 at [2] – [13].
[11] Supra
[12] Lord Reed explained that the rule is founded on the rule in Foss v Harbottle and the constitutional relationship between the company and its shareholders, not merely the avoidance of double recovery. Marex at [23] – [39]
[13] Supra
[14] [2002] 2 AC 1
[15] Lord Reed identified Lord Millett's speech in Johnson as the principal source of the subsequent expansion of the doctrine by treating avoidance of double recovery as its underlying rationale. Marex at [49] – [57]

Accordingly, the Supreme Court restored the doctrine to its original scope and held that it has no application to ordinary creditors. Marex was not asserting a loss suffered as a shareholder but seeking to recover damages arising from independent duties allegedly owed directly to it. The fact that the Companies also possessed causes of action against Mr Sevilleja did not extinguish Marex's personal rights. Any concern regarding overlapping recovery was to be addressed through the ordinary law rather than by denying the existence of the creditor's cause of action. In reaching this conclusion, the Court departed from the reasoning in Johnson (save for Lord Bingham's speech) and held that *Giles v Rhind, Perry v Day* and *Gardner v Parker* had been wrongly decided.[16]

Although the minority agreed that Marex should succeed, Lord Sales[17] adopted a more radical position. In his view, the reflective loss doctrine itself lacked any principled foundation and should be discarded entirely. Concerns regarding double recovery, prejudice to creditors and overlapping claims could, in his opinion, be adequately addressed through conventional principles of damages, case management, and equitable subrogation, without maintaining a separate doctrine of reflective loss.

The significance of *Marex* therefore extends beyond permitting creditors to sue. The decision restored doctrinal coherence by reaffirming that reflective loss is a limited principle of company law,[18] derived from Foss v Harbottle and applicable only to shareholders suing in that capacity. By rejecting its extension to creditors, the Supreme Court reinforced the distinction between corporate causes of action and independent personal rights, while ensuring that the doctrine could no longer operate as an unintended shield for controllers who deliberately strip companies of assets to defeat legitimate creditors.

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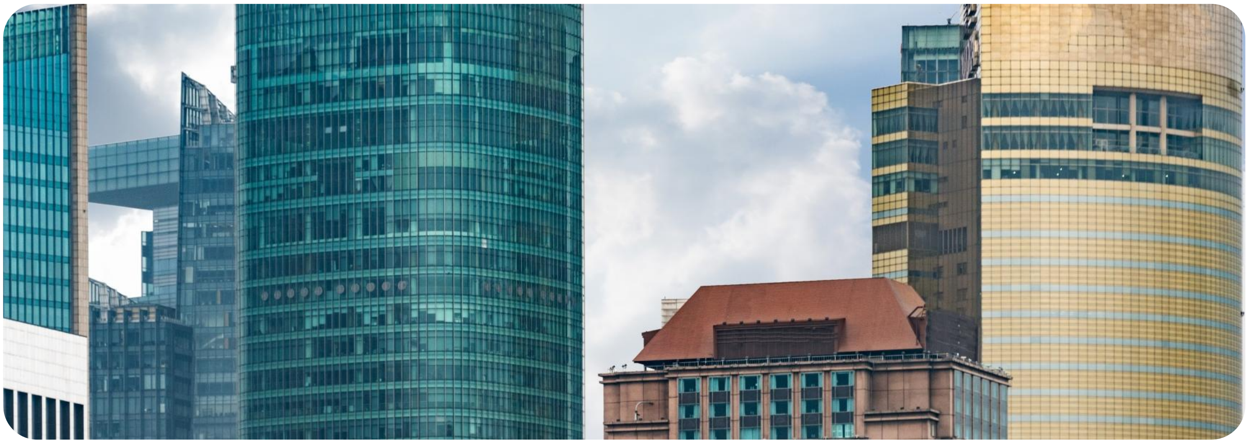
[16] The Court expressly disapproved Giles v Rhind [2003] Ch 618, Perry v Day [2004] EWHC 3372 (Ch), and Gardner v Parker [2004] EWCA Civ 781 insofar as those authorities extended the reflective loss principle beyond its proper limits.
[17] Lord Sales proposed that concerns about double recovery could be managed through established doctrines such as subrogation, equitable accounting and ordinary procedural mechanisms rather than a separate reflective loss rule. Marex at [197] – [203]
[18] Notably, although the Supreme Court was divided on whether the reflective loss doctrine should survive in any form, all seven Justices were unanimous that it has no application to claims brought by ordinary creditors. The decision has since been consistently followed in the common law world. In Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd [2021] UKPC 22, the Judicial Committee of the Privy Council affirmed Lord Reed's restatement of the doctrine and clarified that the applicability of the reflective loss principle falls to be determined at the time the claimant suffers the relevant loss, rather than by reference to subsequent events.

The Nigerian Position under CAMA 2020

The decision in *Marex* does not operate within a legislative vacuum when considered from a Nigerian perspective. Although the CAMA 2020 ("the Act") does not expressly recognise or reject the doctrine of reflective loss, one can argue that it establishes a balanced statutory framework governing corporate personality, shareholder remedies, directors' liability and corporate insolvency. Read as a whole, the Act preserves the proper plaintiff principle while simultaneously creating a number of statutory exceptions designed to prevent corporate personality from becoming an instrument of injustice. Properly analysed, these provisions neither undermine nor exclude direct creditor claims. Rather, they demonstrate that Nigerian company law already recognises circumstances in which liability may extend beyond the corporate entity itself.

The starting point is section 341,[19] which codifies the rule in *Foss v Harbottle*[20] by providing that where a wrong is done to a company, the company alone is the proper claimant,[21] subject to the statutory exceptions created by the Act. The provision preserves corporate personality and ensures that corporate causes of action remain vested in the company. However, nothing in section 341[22] suggests that a creditor is precluded from enforcing an independent personal cause of action merely because the same facts also give rise to a claim vested in the company. Properly construed, the section regulates who may enforce the company's rights; it does not extinguish rights belonging personally to creditors. This interpretation is reinforced by sections 343 to 347,[23] which create minority protection, personal actions, representative actions and derivative proceedings. Where the legislature had intended to permit shareholders to litigate in place of the company, it did so expressly and subject to judicial supervision. Equally significant is what the Act does not do. It does not provide that the existence of a corporate cause of action bars an otherwise valid claim brought by a creditor in respect of an independent duty owed directly to that creditor. This silence in the statute is very much consistent with Lord Reed's reasoning in Marex that the proper plaintiff rule governs corporate claims, not personal claims.



[19] CAMA 2020
[20] Supra
[21] Yalaju-Amayev A.R.E.C. Ltd. (1990) 4 NWLR (Pt. 145) 422, where the Supreme Court reaffirmed the proper plaintiff rule and recognised that wrongs done to a company are ordinarily enforceable only by the company itself.
[22] CAMA 2020
[23] CAMA 2020

Similarly, the unfair prejudice jurisdiction under sections 353 to 355[24] provides relief to members whose interests have been unfairly prejudiced by the affairs of the company. The remedy is confined to shareholders and reflects the legislature's recognition that different stakeholders possess different legal interests requiring different remedies. Creditors are deliberately excluded, not because they lack remedies, but because their rights ordinarily arise outside the shareholder relationship.

The Act also recognises numerous circumstances in which directors and officers may incur personal liability notwithstanding the separate legal personality of the company. Section 316[25] imposes personal liability on directors and officers who receive or apply money for specified purposes with intent to defraud, while the insolvency provisions impose liability for fraudulent trading[26], wrongful trading,[27] and misfeasance.[28] These provisions demonstrate a clear statutory framework that corporate personality[29] should not shield those who deliberately misuse the corporate form to prejudice creditors.

The same philosophy underpins Nigeria's modern rescue and insolvency regime. The administration provisions contained in sections 444 to 549[30] seek to preserve businesses and maximise returns for creditors through collective insolvency procedures, while sections 658 to 660[31] empower the court to unwind antecedent transactions, including fraudulent preferences and transactions at an undervalue. These are powerful collective remedies. Their limitation, however, is equally apparent. They depend upon the commencement of formal insolvency proceedings and the willingness, independence and financial ability of an administrator or liquidator to pursue recovery actions. Consequently, the Act should not be understood as exhausting the remedies available to creditors. Rather, it creates complementary mechanisms. Corporate causes of action remain vested in the company; statutory insolvency remedies protect the collective body of creditors; and personal causes of action remain available where duties are owed directly to individual creditors. It is within this statutory landscape that the reasoning in Marex assumes particular significance. Far from conflicting with the Act, the decision provides a framework for distinguishing between claims belonging to the company and claims belonging personally to creditors, a distinction already implicit in the architecture of the Act.

[24] CAMA 2020
[25] CAMA 2020
[26] Section 672, CAMA 2020. An application may be brought by the Official Receiver, the liquidator, or any creditor or contributory of the company.
[27] Section 673, CAMA 2020
[28] Section 674, CAMA 2020
[29] Salomon v A Salomon & Co Ltd [1897] AC 22.
[30] CAMA 2020
[31] Section 658(6), CAMA 2020, as amended by section 20 of the Business Facilitation (Miscellaneous Provisions) Act 2023, fixes the relevant vulnerability period at two years preceding the onset of insolvency.

Conclusion

One important distinction should be made. Marex is not a veil-piercing decision. Nigerian courts have long recognised that the corporate veil may be lifted where a company is used as an instrument of fraud or as the alter ego of its controllers, as illustrated in *Alade v Alic (Nig.) Ltd* and *Public Finance Securities Ltd v Jefia*.[32] Veil-piercing attributes the company's liability to those behind it by disregarding the separate corporate personality in exceptional circumstances. *Marex*, however, leaves the corporate veil intact. Its concern is whether a creditor possesses an independent cause of action against a controller who has personally wronged it. The two doctrines therefore address different legal questions: veil-piercing determines who bears the company's liability, while *Marex* determines whether the creditor has a personal claim of its own.

Ultimately, *Sevilleja v Marex Financial Ltd* restores the reflective loss doctrine to its proper limits and confirms that separate corporate personality should not become an unintended shield for those who deliberately strip companies of assets to defeat legitimate creditors. For Nigeria, the decision offers a persuasive framework that complements the objectives of CAMA 2020 by preserving corporate personality while recognising the independent rights of creditors. Properly applied, *Marex* strengthens both company law and insolvency law by ensuring that the corporate form remains a vehicle for legitimate commerce rather than an instrument of abuse.

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[32] See *Alade v Alic (Nig.) Ltd* (2010) 19 NWLR (Pt. 1226) 111; *Public Finance Securities Ltd v Jefia* (1998) 2 NWLR (Pt. 537) 362. These authorities concern the exceptional circumstances in which the corporate veil may be lifted to impose the company's liability on its controllers, a doctrine conceptually distinct from the recognition of an independent cause of action by a creditor affirmed in *Marex*.

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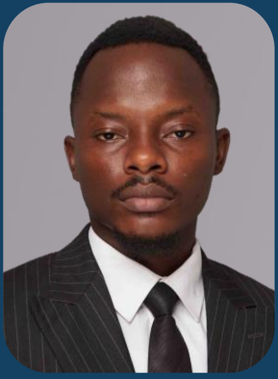

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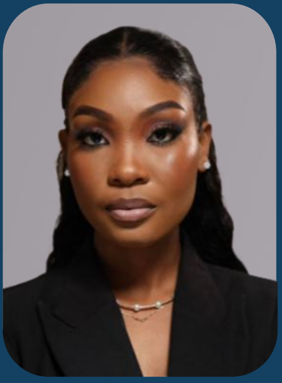

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