COLLAS CRILL

# Case provides clarity: Reflective loss forms part of Guernsey law

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A recent judgment of *Pilatus (PTC) Limited v RBC Trustees (Guernsey) Limited* [2021] GRC012 in the Royal Court of Guernsey **(the Royal Court)** has confirmed that the legal principle of reflective loss does form part of Guernsey law. However, it is only applicable on the limited basis as confirmed by the Supreme Court of England and Wales (**the Supreme Court**) in its judgment in *Marex Financial v Sevilleja* [2020] UKSC 31.

## Background

The Plaintiff, as trustee of a trust, brought a claim against the Defendant, the former trustee of the trust.

The assets of the trust were one ordinary share in Shallon Group Holdings Limited, registered in the Defendant's name as trustee, and one ordinary share in that company, registered in the name of RBC Corporate Services (CI) Limited as nominee for the Defendant as trustee.

The Trust owned a structure with a joint venture interest in various trading companies.

During its years as sole trustee of the Trust, the Defendant provided corporate services, including directors, to the underlying companies within the joint venture structure.

The Plaintiff alleged that the Defendant instructed various related group entities to resign from directorships and other roles in the joint venture structure without ensuring that the intended new directors (and others) were validly appointed. This allowed the other joint venture party to seize control of the joint venture and plunder it for the Defendant's sole benefit, which led to the Trust's interests diminishing in value.

Related proceedings for unfair prejudice have also been brought in the BVI against entities within the joint venture structure, the other joint venture party and their appointed director, for the way they have conducted the joint venture since they seized control.

The Defendant pleaded an *exception de fond* that the Plaintiff's claim for loss as pleaded is not recoverable from the Defendant because of the legal principle known as '*the rule against recovery of reflective loss*'.

Reflective loss is a principle of company law and will only apply when:

1. a shareholder's claim is for loss suffered in their capacity as shareholder, in the form of a diminution in share value or in distributions; and

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2. that loss is a consequence of loss sustained by the company, in respect of which the company has a cause of action against the same wrongdoer.

The Royal Court considered that the *exception de fond* should be determined as a preliminary issue.

## Decision

Reflective loss does form part of Guernsey law, in the form stated by the majority in *Marex Financial v Sevilleja [2020] UKSC 31.*

The rule on reflective loss did not apply in the circumstances of this case because it is not a claim by the Plaintiff as shareholder, but instead as trustee, against a previous trustee for breach of trust.

Double recovery should be avoided by taking into account the result of the related proceedings in the BVI arising out of the same facts between entities in the underlying structure.

## Conclusion

The judgment offers clarity to the law of Guernsey on whether or not the principle of reflective loss applies in this jurisdiction. It had previously been questioned by the Royal Court whether this principle formed part of Guernsey law.

By adopting the more narrow approach of the Supreme Court in the *Marex* judgment, the scope of reflective loss carves out shareholder claims in respect of a fall in the value of shares (or distributions) where the loss to the company is caused by a wrong by the defendant.

Claims made by individuals acting in other capacities, such as creditors, will likely now be considered outside the scope of the principle. This is of importance in the current climate where companies are facing financial pressures because the decision reinstates creditors' ability to bring claims against wrongdoers whose actions have diminished a company's financial position.

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