



## Press Summary

19 February 2025

### Nasir (Appellant) v Zavarco Plc (Respondent)

[2025] UKSC 5

*On appeal from [2021] EWCA Civ 1217*

**Justices:** Lord Hodge (Deputy President), Lord Hamblen, Lord Leggatt, Lord Stephens, Lady Rose

#### Background to the Appeal

The issue in this appeal is whether the doctrine of merger, which provides that a judgment that determines a cause of action extinguishes that cause of action, applies to a declaratory judgment. A cause of action is a factual situation the existence of which entitles one person to obtain from the court a remedy from another person. The purpose of the doctrine of merger is to support the good administration of justice by promoting finality of litigation and preventing duplication of actions both in the public interest and in the interests of the parties.

On the incorporation of the respondent company, Zavarco, the appellant subscribed to the memorandum of association and became the holder of 360 million shares in Zavarco. The appellant then transferred to Zavarco the shares in another company which became Zavarco's subsidiary. A dispute arose as to whether the appellant was obliged to pay for the 360 million shares in cash or whether the transfer of the shares in the subsidiary company amounted to good consideration. In the litigation that followed, a judge granted declarations in Zavarco's favour to the effect that the shares in Zavarco held by the appellant were unpaid and that Zavarco was entitled under its articles of association to forfeit the shares. The appellant did not receive permission to appeal the judge's order.

Zavarco then forfeited the appellant's shares and commenced the proceedings which are the subject of this appeal, seeking payment of the nominal value of the shares (€36 million) as a debt following the judge's declaratory judgment in the first claim. The Chief Master dismissed the claim, holding that Zavarco's cause of action in its second claim had merged with the judge's declarations in the first claim and had therefore been extinguished. Zavarco appealed and the High Court allowed the appeal, holding that although there was no reason in principle why the doctrine of merger could not apply to a declaration, on the facts the doctrine did not operate to extinguish Zavarco's right to payment for the shares. The Court of Appeal then dismissed the appellant's appeal, holding that the doctrine of merger has no application to declarations. The appellant now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously dismisses the appeal. It holds that the doctrine of merger is confined to judgments involving the payment of money or enforcing a right of property by ordering the return of the property (“coercive judgments”) and therefore does not apply to declaratory judgments. Lord Hodge gives the only judgment, with which the other Justices agree.

## **Reasons for the Judgment**

Reviewing the early history of the doctrine of merger, the Court observes that it was designed to make a litigant seek his or her remedies in one action by extinguishing a cause of action when judgment has been given on it [17]. However, the indiscriminate nature of the rule could operate harshly to defeat meritorious claims [24], and the Court observes that it had played a more important role in controlling abusive litigation when the means of control available to the courts were significantly less than they have since become [32].

The Court holds that, in the context of the doctrine of merger, the concept of a cause of action which is extinguished by the obtaining of a judgment involves the right to a remedy in the given factual circumstances. It is the right to claim a further remedy from those factual circumstances, and not the factual circumstances themselves, that the first judgment extinguishes by creating an obligation of a higher nature [37]. The doctrine of merger is therefore confined to coercive judgments that create such an obligation, and thereby excludes declaratory judgments that only confirm obligations which already exist [49]-[50].

The Court identifies several further reasons why the doctrine should not be extended to declaratory judgments.

Firstly, the doctrine was developed and fully formed before the courts adopted the practice of giving purely declaratory relief and it is striking that in the more than a century since the grant of purely declaratory relief became more widespread there is no example in case law of the doctrine of merger being applied to such relief [45].

Secondly, there may be justifiable reasons for a litigant to seek a declaration before pursuing a claim for a coercive remedy. It made good sense for Zavarco to resolve the dispute as to whether it was entitled to forfeit the shares, which the appellant asserted were fully paid, before exercising its right of forfeiture which gave rise to the claim for payment for those shares [51].

Thirdly, the doctrine of merger has often been criticised for its rigidity and its capacity to cause injustice. That possibility of injustice is a relevant consideration against extending the doctrine of merger to circumstances in which it has not been applied and in which it would be incongruous [52].

Fourthly, to allow a claimant to obtain a purely declaratory judgment without excluding its right thereafter to seek a remedy such as damages does not give rise to the mischief of duplicative or vexatious litigation, at least not to the extent of a repetition of a trial on the merits. In this case, the further proceedings entail what ought to be a straightforward claim for the debt which is the unpaid price of the shares [53].

Fifthly, there are currently a range of rules and remedies by which a court can achieve finality of litigation and prevent duplicative and vexatious suits, and the modern powers of case management enable the court to control the conduct of a litigation to promote efficiency and the proportionate use of resources. There is no need to extend the scope of the doctrine of merger to close a gap [29]-[32], [54].

Sixthly, it would not create a mismatch or divergence between the common law doctrine and section 34 of the Civil Jurisdiction and Judgments Act 1982. The Court holds that section 34

is confined to prohibiting a second action in England and Wales or Northern Ireland on a cause of action which has given rise to a relevant coercive judgment elsewhere [55].

Finally, for completeness, the Court considers that there is within the wider common law at least tentative support for the exclusion of declaratory judgments from the scope of the doctrine of merger [56].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**