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Case summary

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## **Case ID**

UKSC/2021/0184

## **Parties**

### **Appellant(s)**

Tan Sri Syed Mohd Yusof Bin Tun Syed Nasir

### **Respondent(s)**

Zavarco Plc

## **Issue**

Was the Court of Appeal wrong: (i) when it determined that the doctrine of merger did not extinguish Zavarco's cause of action in the 2016 Claim and thereby prevent pursuit of the identical cause of action in the 2018 Claim; (ii) to find that the doctrine of merger does not depend on the cause of action asserted, but instead upon the relief obtained; (iii) to find that the doctrine of merger does not apply to any judgment granting a declaration.

## **Facts**

The respondent company, Zavarco issued a large number of shares to the appellant, Nasir. A dispute arose as to whether Nasir was obliged to pay in cash or could pay by transferring shares in another company. Zavarco brought a claim (the "2016 Claim") and the judge found in its favour and granted declarations to the effect that the shares held by Nasir were unpaid and that Zavarco was entitled under its articles of association to forfeit the shares. Zavarco then exercised its right to forfeit the shares. Nasir remained liable under Zavarco's articles of association to pay for the shares and Zavarco brought a second claim (the "2018 Claim") seeking payment. That claim was dismissed, the chief master holding that Zavarco's cause of action in its second claim had merged with the judge's declarations in the first claim and so been extinguished. Zavarco appealed and the judge 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. Nasir appealed to the Court of Appeal. The Court of Appeal dismissed the appeal, holding that there was no obvious purpose in a doctrine that would prevent a party from bringing a claim for an enforceable remedy, such as a judgment for a debt or damages, because it had earlier obtained a declaration as to its rights. Nasir now appeals to the Supreme Court.

## **Date of issue**

2 September 2021

**Judgment appealed** [\[2021\] EWCA Civ 1217](#)

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