



THE EMERGING “MAREX TORT”: A POTENTIAL NEW FRONTIER IN COMBATING ASSET-STRIPPING, JUDGMENT EVASION AND ENFORCEMENT FRAUD

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EXECUTIVE SUMMARY

One of the greatest frustrations in commercial litigation, arbitration, insolvency, and debt recovery proceedings is the phenomenon of the “paper judgment”—a situation where a successful litigant obtains a valid judgment, decree, or arbitral award, only to discover that the judgment debtor has transferred, dissipated, concealed, or otherwise placed assets beyond the reach of enforcement.

Recent developments in English common law, particularly the principles emerging from *Sevilleja v Marex Financial Ltd [2020] UKSC 31* and subsequent English authorities, have generated significant interest among litigators, insolvency practitioners, asset recovery specialists, and judgment creditors.

The case is significant because it confirms that a judgment creditor’s claim against a third party is not necessarily barred merely because the judgment debtor company may also have suffered loss. The case raises the possibility that individuals who knowingly interfere with or frustrate a judgment creditor’s rights through deliberate asset-stripping schemes may themselves face personal liability.

While the so-called “Marex Tort” has not yet been definitively recognised as a standalone tort under English law, the reasoning underpinning the decision reflects an important and growing judicial concern: ensuring that court judgments, decrees, arbitral awards, and other legally enforceable obligations are not rendered unenforceable and/or ineffective through



deliberate asset-stripping, dissipation, concealment, or other obstructive misconduct

For creditors, financial institutions, investors, arbitral award holders, insolvency practitioners, government agencies, and commercial litigants, the Marex doctrine represents a noteworthy development in the continuing evolution of enforcement and asset recovery jurisprudence.

THE GROWING GLOBAL CHALLENGE OF JUDGMENT EVASION

Modern commercial disputes increasingly involve complex corporate structures, cross-border asset holdings, nominee arrangements, and sophisticated wealth preservation mechanisms. While many of these structures serve legitimate commercial purposes, they may also be exploited to frustrate creditors and defeat the enforcement of lawful judgments.

Common enforcement challenges include:

- Dissipation of assets during pending litigation;
- Transfers of property to related entities or insiders;
- Use of nominee shareholders, directors, and beneficial ownership structures;
- Artificial corporate restructurings;
- Related-party transactions lacking genuine commercial substance;
- Concealment of assets through trusts and layered corporate vehicles;
- Strategic insolvency proceedings designed to delay or frustrate recovery;
- Cross-border movement of funds and assets; and
- Deliberate efforts to place assets beyond the reach of execution.

Such conduct undermines not only the interests of individual creditors but also public confidence in the administration of justice. A legal system in which judgments cannot be effectively enforced risks diminishing the value of judicial determinations and commercial certainty.

As Lord Denning famously observed: “A person who has obtained a judgment is entitled to every remedy which the law allows to make it effective.”

The Marex line of authority can be viewed as part of a broader effort to ensure that this principle remains meaningful in an increasingly sophisticated commercial environment.

THE MAREX DECISION

The concept originates from the English High Court decision in: *Marex Financial Ltd v Sevilleja [2017] EWHC 918 (Comm)*.

Marex Financial Limited obtained judgment in excess of **US\$5 million** against two British Virgin Islands companies beneficially owned and controlled by Mr. Sevilleja.

Evidence before the Court indicated that shortly before judgment was entered, substantial sums were transferred from the companies, leaving them effectively assetless and unable to satisfy the judgment debt.

Marex subsequently pursued claims against the beneficial owner personally.

In a significant judgment, **Robin Knowles J** held that there was a serious and arguable basis for recognising liability where a person knowingly induces, procures, or participates in conduct designed to violate or frustrate a judgment creditor's rights.

The Court observed that if the common law recognises liability for intentionally interfering with contractual rights, there is a compelling argument that rights crystallised through a court judgment should receive comparable, if not greater, protection.

The decision has since become a major point of reference in discussions concerning post-judgment asset dissipation, enforcement fraud, and creditor protection.

THE UK SUPREME COURT'S SUBSEQUENT CONSIDERATION

The litigation ultimately reached the United Kingdom Supreme Court in: *Marex Financial Ltd v Sevilleja [2020] UKSC 31*

The Supreme Court principally addressed the doctrine of **reflective loss**, substantially limiting



its application and allowing Marex's claim to proceed.

Importantly, however, the Court did not conclusively determine whether English law recognises a standalone tort of interference with judgment rights.

As a result, the "Marex Tort" remains an evolving common law concept rather than a settled and universally recognised cause of action.

Nonetheless, the reasoning advanced in Marex continues to influence legal discourse concerning creditor protection, fraud recovery, insolvency, enforcement strategy, and the development of common law remedies.

CORE PRINCIPLES EMERGING FROM THE MAREX DECISION

Although the precise formulation of the proposed tort remains unsettled, the following elements are generally associated with the Marex principle:

1. Existence of a Valid Judgment or Enforceable Obligation

The claimant must possess an enforceable judgment, decree, court order, or other legally recognised obligation.

2. Deliberate Interference

The defendant must actively induce, procure, facilitate, assist, or participate in conduct designed to undermine enforcement.

3. Knowledge

The defendant must know of the judgment or obligation and appreciate that the conduct will interfere with the creditor's rights.

4. Intentional Conduct

The interference must be deliberate and intentional rather than merely negligent or inadvertent.

5. Resulting Loss

The claimant must demonstrate that enforcement was frustrated, delayed, impaired, or defeated, resulting in loss.

WHY THE MAREX PRINCIPLE MATTERS

The significance of Marex extends beyond the recognition of a new tort.

At its core lies a fundamental proposition: Rights recognised and declared by a court should not be capable of being defeated through deliberate asset-stripping, concealment, fraud, or abuse of corporate structures.

The doctrine seeks to address a longstanding challenge in enforcement law by focusing not only on the judgment debtor but also on those who knowingly orchestrate or facilitate schemes intended to defeat recovery.

In appropriate circumstances, the reasoning could potentially support claims against:

- Directors and shadow directors;
- Beneficial owners;
- Controlling shareholders;
- Parent companies and affiliates;
- Nominees and trustees;
- Related entities;
- Professional facilitators involved in fraudulent schemes;
- Other third parties who knowingly participate in enforcement evasion.

The broader policy objective is the preservation of the integrity of judicial and arbitral processes by ensuring that legal rights remain practically enforceable.

POTENTIAL RELEVANCE TO KENYA AND EAST AFRICA

Although Kenyan courts have not expressly adopted a Marex-style tort, the principles underlying the decision are broadly consistent with several established doctrines within Kenyan jurisprudence.

Kenyan courts have repeatedly affirmed the importance of:

- Upholding the rule of law;
- Protecting the integrity and authority of court orders;



- Preventing abuse of the corporate form;
- Safeguarding creditors' rights;
- Promoting accountability and good faith in commercial dealings;
- Ensuring the effective administration of justice.

Furthermore, Article 159 of the Constitution of Kenya emphasises the administration of justice without undue regard to procedural technicalities, while Article 10 reinforces the national values of good governance, integrity, transparency, and accountability.

In an appropriate case involving deliberate post-judgment asset dissipation, a Kenyan court may find persuasive guidance in the Marex reasoning when considering the development of common law remedies aimed at preventing abuse of the judicial process.

The principles may be particularly relevant in matters involving:

- Post-judgment asset stripping;
- Fraudulent conveyances and transfers;
- Concealment of beneficial ownership;
- Abuse of corporate personality;
- Cross-border asset dissipation;
- Complex commercial fraud;
- Insolvency-related asset recovery;
- Enforcement of domestic and foreign arbitral awards;
- Enforcement of foreign judgments.

EXISTING LEGAL TOOLS AVAILABLE TO CREDITORS

Even without a formal Marex tort, creditors already possess a range of legal mechanisms that may be deployed to challenge asset dissipation and enforcement avoidance strategies.

These include:

- Piercing or lifting the corporate veil;
- Fraudulent transfer claims;
- Constructive trust remedies;
- Civil conspiracy claims;
- Insolvency and bankruptcy proceedings;
- Derivative and equitable remedies;
- Tracing claims;
- Freezing and preservation orders;

- Contempt proceedings;
- Director liability actions;
- Recognition and enforcement proceedings in multiple jurisdictions.

The Marex principle does not necessarily replace these remedies. Rather, it contributes to a growing body of jurisprudence aimed at ensuring that individuals cannot deliberately exploit corporate structures or legal technicalities to defeat legitimate creditor claims.

CONCLUSION

The emerging Marex doctrine represents an important development in the ongoing evolution of enforcement law. Although its precise status within English common law continues to develop, the principles articulated in Marex reflect a broader judicial commitment to protecting the effectiveness of judgments, preserving the integrity of the legal process, and preventing the deliberate frustration of creditor rights.

As commercial transactions become increasingly sophisticated and cross-border in nature, courts and practitioners are likely to continue exploring innovative legal responses to asset dissipation and enforcement avoidance.

For businesses, lenders, investors, arbitral award holders, insolvency practitioners, and litigants, the message is clear: securing a judgment is a critical milestone, but effective recovery remains the ultimate objective.

ABOUT THE GLOBAL ENFORCEMENT & ASSET RECOVERY CENTRE (GEARC)

The **Global Enforcement & Asset Recovery Centre (GEARC)** is the specialised enforcement, asset recovery, and judgment realization platform within the **Dispute Resolution & Appellate Practice Department of CM Advocates LLP**. Established to bridge the gap between legal success and financial recovery, the Centre brings together expertise in enforcement litigation, debt recovery, insolvency, civil fraud, asset tracing, and cross-border recovery to assist clients in transforming judgments, decrees, arbitral awards, and settlement obligations into tangible results.



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GEARC supports financial institutions, corporates, investors, government agencies, insolvency practitioners, and international law firms in navigating complex recovery challenges across Kenya, East Africa, and beyond. Our work encompasses judgment and decree enforcement, recognition and enforcement of foreign judgments, recognition and enforcement of arbitral awards, asset tracing and recovery, civil fraud investigations, freezing and preservation orders, insolvency-related recovery strategies,

director and shareholder liability claims, fraudulent transfer litigation, cross-border enforcement, and strategic recovery planning in high-value and complex disputes.

By combining legal expertise, asset intelligence, financial investigations, and enforcement strategy, GEARC contributes to the development of effective and sophisticated recovery solutions in an increasingly interconnected commercial environment.

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"Turning Judgments, Awards and Decrees into Recoveries."

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