Direct harm due to de facto expulsion: Article 241 of the Companies Act

(Supreme Court Judgment, First Chamber, 22 October 2025)

This paper analyses the subject matter scope of application of a 'director liability to shareholder claim' (claim for payment of damages filed by a shareholder against a company director). Although, as a general rule, shareholders cannot claim compensation for the harm caused to their share in a company's estate, compensation for de facto expulsions or harm to liquidating dividends may be awarded through a director liability to shareholder claim.

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1. Introduction

1.1. *The facts*

The Supreme Court judgment of 22 October 2025 concerns a claim for payment of damages filed by a shareholder holding 50% and 5.60% of the capital of two private limited companies against their sole directors (also shareholders of both companies).

The unlawfulness of the directors' - conduct lies in the fact that, in a context of shareholder conflict, they facilitated the transfer of clients and other assets- from the two companies - without consideration - to a third company in which the defendants had a stake. Given the nature of the companies' operations, it appears that this would have led to the cessation of business of both companies in a kind of 'de facto' liquidation (in the statement of facts: 'decapitalisation').

The following are the characteristic features of the claim: *a*) compensation is not sought through a 'director liability to company claim' (claim for payment of damages filed by a company against a director) for the harm caused to the company's estate corresponding to the value of the 'diverted' portfolio, but rather a ruling is sought ordering directors to compensate the claimant shareholder for the loss caused to him or for an amount equivalent to the value of 50% and 5.60% (percentages corresponding to the shareholder's stake in the aggrieved companies), and *b*) the claim is filed not only against the directors, but also against the aggrieved companies themselves, against the portfolio transferee company and against the director of the latter.

1.2. *The issue in dispute*

The technical issue at stake is to determine: *a*) whether shareholders can claim from the directors of a company their 'share' of the harm caused to the company's estate (so-called 'indirect' or 'reflective' losses or harm) and, *b*) if the answer is negative, whether there is any exception to the above and the basis for such exception (*i.e.*, harm to the liquidation residue, de facto expulsion, etc.).

Both issues can be resolved by interpreting the scope of application of the director liability to shareholder claim (claim for payment of damages filed by a shareholder against a company director) regulated in Article 241 of the Companies Act (LSC).

As we shall see below, the claim was dismissed, probably because it lacked a certain 'argumentative effort', as the Supreme Court likes to say when it comes to these liability claims.

2. The court rulings

2.1. *The appellate judgment*

The Companies Act recognises that shareholders or third parties may claim damages from company directors for losses caused to them 'directly' (Art. 241 LSC). This refers to losses that are not 'indirect' or 'reflective' of harm to the company's estate, for which compensation is payable through a director liability to company claim (Art. 238 LSC).

The appellate court considered that the director liability to shareholder claim should succeed because the existence of a 'direct [causal] relationship' between the director's conduct and the losses had been proven (essentially in an expert report):

> We disagree, however, with the argument in the judgment that it cannot be concluded that there is a direct relationship between the losses caused to the companies and that caused to the shareholder in proportion to his shareholding in them: just as if a single shareholder company suffers a loss of €600,482,

> there would be no hesitation in stating that its owner has suffered a loss of €600,482, and there should be no hesitation in stating that if the claimant owns 55.68%, his loss will be equivalent to that proportion, or at least anyone who holds the contrary will have to prove it.

The argument is not admissible. It is not admissible because it confuses the meaning of the adverb "directly" in Article 241 LSC, whose function in the law is to delimit the scope of application of a claim for payment of damages filed by a shareholder against a company director as opposed to one filed by a company against a director according to the criterion of 'the estate affected by the harm' caused by the directors. Proof of direct losses is a prerequisite for a director liability to shareholder claim: both shareholders and third parties can only claim damages for losses that have been caused to them directly and not losses resulting from harm to the company's estate. Harm to the company's estate cannot in any way be identified with direct losses to the shareholder in the sense required by the provision applied.

2.2. *The Supreme Court judgment*

The Supreme Court addresses this issue correctly and upholds the 'cassation' appeal lodged by the defendant directors:

> For Article 241 of the Companies Act to apply, there must be direct harm to the shareholders or third parties. If the harm to the shareholder is a reflection of the harm to the company's estate, only a director liability to company claim lies. In such a case, the damages awarded will repair the company's estate and, by extension, that of the shareholders or third parties.

The reasoning is summarised in these paragraphs:

> The divestment of a company through the transfer of a client portfolio from one company to another without consideration can be classified as director unlawfulness that causes direct harm to the company, but with regard to the shareholder, we are dealing with reflective harm that does not justify a director liability to company claim.
>
> The Provincial Court makes a mathematical or arithmetic translation of the direct harm caused to the company and identifies it with direct harm caused to the shareholder in proportion to his stake in the companies that carried out the transfer of clients.
>
> This equation is not correct. Direct harm to the company may cause reflective harm to the shareholder, but not direct harm, nor is there a perfect equation that translates the harm to the company into

> harm to the shareholder in the amount of his share in the share capital.

It is important that the Supreme Court be clear on this point. A director liability to company claim only lies in the case of harm caused 'directly', which means that the harm suffered by the shareholder must be direct and not indirect or reflective or derivative harm to the company's estate (*e.g.*, the shareholder is deceived into participating in a round of financing). It would have been sufficient to make this clear, and the only objection that can be made to the ruling is that it uses the expression *direct harm "to the company"* and/or *direct harm "to the shareholder*". This confuses rather than clarifies: the "direct" nature of the harm is only claimed under the law of harm to the shareholder or third party, and there is no need to refer to "direct" harm to the company.

A second issue resolved by the judgment under discussion concerns the lack of standing to be sued of the two managed companies that were harmed by the transfer of clients and of the company that benefited from the transfer of customers and its director.

It is true that all acts performed by directors in the discharge of their duties are attached to the company, but it does not seem to make sense to sue the managed company, especially when it is the one harmed by the diversion of the client portfolio and, therefore, the party with standing to sue. It therefore makes sense that, in its reading of the claim, the Supreme Court should hold that the aggrieved company lacks standing to be sued.

As regards the transferee company (and its director), the issue is different. If the claimant had brought an action for restoration of the company's estate, perhaps based on a breach of fiduciary duties, the transferee company and its director would be accomplices in the asset stripping and, consequently, they would have been jointly and severally ordered to restore the company's estate, perhaps in the context of an action for injunction to restore the status quo ante or, perhaps more interestingly, to reverse the unjust enrichment (Arts. 232 and 241 LSC; 1902 of the Civil Code).

The problem is that the claimant filed a director liability to shareholder claim, but it does not appear that the case was sufficiently made for this action to be brought. With different arguments, the claim would probably have been upheld, perhaps with an additional finding of liability of the transferee company.

3. Commentary

3.1. *The requirement of 'direct harm'*

The principle of 'concentration' or 'channelling' of liability vis-à-vis the company limited by shares requires that actions for damages for harm to a company's estate be redirected towards the restoration of the harmed estate. The damages must be used to achieve the corporate purpose of protecting the other shareholders and the company's creditors.

It would be inadmissible for the shareholders to take compensation that appertains to the company because the estate of a company limited by shares (including the right to compensatory damages from the directors) can only be distributed among the shareholders, in accordance with their shareholding, if the legal requirements for detachment in protection of creditors (payment of dividends, liquidating dividends, etc.) are met. For this reason, company shareholders have recourse to 'derivative' actions but not a 'direct' action to be awarded damages for harm to the company's estate. This is why a claim for payment of damages filed by a shareholder against a company director - a genuine company-related action to which the general principles of director liability apply, including lack of dure care — only lies for harm caused directly or direct harm (Art. 241 LSC).

With adequate arguments, the Supreme Court might well have reached a different conclusion

That said, there are some cases in which it is not easy to draw the line between mere harm to a company's estate and harm to a shareholder's legal position as a pecuniary interest that justifies the filing of a director liability to shareholder claim, without opening the door to actions for damages for the breach of duties of loyalty between shareholders (Art. 1258 of the Civil Code).

3.2. *Improper distribution of the liquidation residue*

The channelling of director liability claims towards the reconstruction of the company's estate, which denies the possibility of claiming damages for indirect losses, is also enforceable during a company's liquidation stage. There is only one moment when this rule disappears because it makes no sense to apply it, and this occurs when the company's estate is identified with the liquidation residue (de facto or de jure) to be distributed among the shareholders. From this moment on, any harm to this residue is direct harm to the liquidating dividends.

If there are no potentially aggrieved creditors, but rather a set of company assets that should have been distributed among the shareholders (the client portfolio and other assets), it makes no sense to demand the restoration of the company's estate, and the shareholder/company claim game must be deactivated because it loses its very basis. In the case under discussion, there is no doubt that, if the above premises were proven in the proceedings, the director liability to shareholder claim should have been upheld and the damages awarded to the shareholder would have the same legal treatment as the liquidating dividend (liability for supervening liabilities).

3.3. *De facto expulsion*

Another possible argument can be constructed around the idea of shareholder expulsion. The transfer of the client portfolio to a third company owned by the same shareholders and directors as the original company, accompanied by the cessation of business of the original company and its continuation through the portfolio transferee, can in fact be identified as a "de facto" expulsion of the claimant shareholder from the first company. This is unlawful behaviour that directly harms the shareholder's legal position as a pecuniary interest and may justify having recourse to a director liability to shareholder claim to be paid damages by the directors and their accomplices equivalent to the fair value of the claimant's shares.

Although the case law here is not as extensive in its arguments as more recent case law, there are at least two precedents where a claim of this type was upheld:

— The judgment of the Supreme Court, First Chamber, of 25 November 2002 (RJ 2002\\10276), upheld a director liability to shareholder claim on these grounds:

> The issue in dispute focused mainly on the validity of the claim for payment of damages filed against the defendants — one a shareholder and the other a director of the company Aplicaciones Informaticas, Delta, S. L., in which the claimant was also a shareholder — where the defendants had proceeded to close up shop, without any subsequent liquidation or insolvency proceedings, and continue the business under another corporate form.

— There is also a precedent in the Judgment of the Supreme Court, First Chamber, of 12 March 2007 (RJ 2007\1816), which established as follows:

> ... the co-defendant directors devised and carried out, over the course of several years, a joint and concerted action aimed at frustrating the property rights (mainly regular and liquidating dividends) that should have accrued to the claimant shareholder in the entity C., SL, an action which involved, on the one hand, diverting a large part of the actual profits of the initial company formed by the three to the legal entities created by the co-defendants and referred to

above and, on the other hand, the liquidation of the initial company and the transfer of the relationships and expectations thereof to the new companies in which only the co-defendants had a stake.

The judgment affirmed the decision ordering the directors to pay the claimant the value of his shareholding, calculated by reference to the value of the company before the unlawful transfer took place.

In short, the judgment in question is fundamentally correct: as a general rule, any harm to the estate must be compensated through a director liability to company claim, and the shareholder cannot claim compensation by way of a director liability to shareholder claim for the harm caused to his share in the company's estate. However, this rule may be waived when, in the absence of affected creditors and external shareholders, it loses its raison d'être. The factual requirements of this ruling is one such case: the direct harm is equivalent to the fair value of his shareholding as a de facto expelled shareholder or, if preferred, to the share he would have been entitled to in an orderly liquidation.