

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
Claim No. CLE/gen/00953 of 2018**

**BETWEEN:**

**YURI STAROSTENKO**

**First Claimant**

**AND**

**IRINA STAROSTENKO**

**Second Claimant**

**AND**

**CREDIT SUISSE AG, NASSAU BRANCH**

**Defendant**

**Before:** The Honourable Mr. Justice Leif Farquharson

**Appearances:** Yuri Starostenko and Irina Starostenko appearing in person  
Christopher Jenkins, KC and McFalloughn Bowleg appearing for the  
Applicant, UBS AG, Nassau Branch

**Hearing date:** 11 April 2025

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**RULING**

**Introduction and Background**

1. By way of background, the present action was commenced by specially indorsed writ filed on 21 August 2018. In a statement of claim spanning 41 pages, the Claimants, Mr. and Mrs. Starostenko, sued the Defendant for negligence, misrepresentation and a host of other legal and equitable wrongs. The document is not easy to navigate and is replete with commentary and other non-factual material one would not expect to find in a pleading.

At its root, however, the genesis of the dispute appears to relate to actions or omissions attributed to the Defendant in its capacity as banker and/or investment broker which the Claimants maintain resulted in them suffering financial and investment-related losses.

2. Upon application being made by the Defendant, Bowe-Darville J. (Ret.) on 8 May 2023 directed that the Claimants' writ of summons be struck out pursuant to the former RSC Order 18, rule 19 on the ground that the causes of action relied on were all statute-barred. Following the striking out of the claim, the Claimants made an application for leave to appeal and other relief challenging the Ruling of Bowe-Darville J. This was originally set to be heard by Fraser, Sr. J. (as she then was), prior to the file being transferred to me earlier this year. Shortly before the scheduled hearing, UBS AG, Nassau Branch ("**the Applicant**" or "**UBS AG**") filed a notice of application seeking a substitution order purportedly arising out of its much publicised merger with Credit Suisse AG, the Defendant. The matter first came before me on 3 April 2025. In exercise of my case management powers, and after hearing from both sides, I decided to determine the Applicant's application for substitution before the Claimants' application for leave to appeal, it being preferable in my view to ensure that the proper parties (and an existing intended respondent) were before the Court prior to embarking further down the road in what had already become a tortuous piece of litigation.
3. The application for substitution is brought by notice of application filed on 27 March 2025 and seeks an order pursuant to Rule 19.3(5) of the *Supreme Court Civil Procedure Rules, 2022* ("**CPR**"), and/or under the inherent jurisdiction of the Court, that "*UBS AG, Nassau Branch ... be substituted for Credit Suisse AG, Nassau Branch as the Defendant in these proceedings*", with no order being made as to costs. The stated grounds for the application are as follows:
  - "2.1. That on 31 May 2024, Credit Suisse AG merged with UBS AG, with UBS AG being the surviving company in the merger.
  - 2.2 Following the merger, the Applicant succeeded to all the rights and obligations of Credit Suisse AG, Nassau Branch.
  - 2.3. On the effective date of the merger, the Applicant also became responsible for all claims, debts, liabilities, and obligations of the Credit Suisse AG, Nassau Branch inclusive of these proceedings.
  - 2.4. As a result, this application is made by the Applicant as the surviving company, seeking an order that it be substituted for Credit Suisse AG, Nassau Branch, as a Defendant in these proceedings."

4. In the ordinary scheme of things, the application could perhaps be viewed as a logical step in light of the purported merger. As it turns out, however, it has been vigorously opposed by the Claimants, both on factual and legal grounds.

#### **The Affidavit Evidence of the Parties**

5. The Applicant filed two affidavits in support of the present application, both of which were deposed to Lakeisha Sands, a branch manager originally employed with the Defendant since 2011, who following the merger transitioned to the role of branch manager with the Applicant. The first affidavit was filed on 27 March 2025 (the “**First Sands Affidavit**”) and the second affidavit (the “**Second Sands Affidavit**”) was filed on 1 April 2025. The Applicant also filed an affidavit deposed to by Tinarje Moxey, a pupil with Messrs. Lennox Paton, on 11 April 2025. This merely exhibited requests for information and other correspondence passing between the Claimants and the attorneys for the Applicant in the lead up to the current application.

6. In summary, in the First Sands Affidavit the deponent confirmed that on 31 May 2024, UBS Group AG completed the merger of UBS AG and Credit Suisse AG. In this regard, she exhibited a copy of an official press release published by UBS AG providing details of the merger. She further confirmed that following the merger, the Applicant succeeded to all the rights and obligations of the Defendant, concluding as follows:

“9. *The Applicant is the surviving company in the Merger. Therefore, in accordance with the statutory laws of The Bahamas, the Applicant became responsible for all claims, debts, liabilities, and obligations of the Defendant, inclusive of these proceedings on the effective date of the Merger.*

....

10. *In the circumstances, the Applicant seeks an order that it be substituted for Credit Suisse AG, Nassau Branch, as the Defendant in these proceedings.”*

7. The Second Sands Affidavit was filed for the purposes of providing further details and evidence of the merger and responding to various questions or criticisms raised by the Claimants in correspondence with counsel for the Applicant. The Second Sands Affidavit relevantly stated:

“6. *I am advised by our Attorneys at Lennox Paton, that the Claimants have taken issue with the Merger Application. By email communications on 28 March 2025, the First Claimant stated, amongst other things, that my First Affidavit failed to provide any evidence of the dissolution of Credit Suisse AG, Nassau Branch, the existence of UBS AG, Nassau Branch as a successor entity, and the registration of articles of merger. The First Claimant even went as far as to*

- threaten to report our Attorney to the Bahamas Bar Association. A copy of the email communications on 28 March 2025, is seen at pages [1] – [5].
7. Whilst I wholly disagree with the statements of the First Claimant, I will provide further details of the merger and the events that followed the merger in an attempt to avoid any unnecessary mischief.
  8. As I have previously stated and shown in my First Affidavit, UBS Group AG purchased Credit Suisse Group AG in Switzerland. Following the purchase, UBS AG and Credit Suisse AG were both direct wholly owned subsidiaries of UBS Group AG. In order to facilitate the integration of the UBS banking business and the Credit Suisse banking business, Credit Suisse, AG was merged into UBS AG, with UBS AG being the surviving company in the merger ("the Merger"). The Merger Agreement between UBS AG and Credit Suisse AG is confidential and therefore has not been tendered into evidence.
  9. The Defendant was a branch of Credit Suisse AG (a Swiss Company) and was registered in The Bahamas as a foreign bank. Although the Defendant, is still registered in The Bahamas as a foreign bank, factually, it no longer exists as Credit Suisse AG has been struck off the Commercial Register in Zurich.
  10. As the Merger took place in Zurich, there were entries made in the Commercial Register of Canton Zurich, which certifies the registration of UBS AG, reflects the Merger, and that Credit Suisse AG has been struck off the Commercial Register of Canton Zurich. Certified translations of the entries at the Commercial Register of Canton Zurich are seen at pages [6] – [147].
  11. This was not a merger of two Bahamian Companies or two Bahamian IBCs, therefore, articles of merger were not required to be registered by the Bahamian Companies Registrar General with respect to the Merger. UBS AG, Nassau Branch, is a branch of a foreign bank.
  12. UBS AG is registered in The Bahamas as a foreign company. I have exhibited at page [148], a Certificate of Registration issued to UBS AG, certifying that all requirements of the Companies Act, 1992 in respect of registration have been satisfied by UBS AG, and certifying that UBS AG is registered in the Commonwealth of The Bahamas as a foreign company.
  13. Additionally, UBS AG has applied for and obtained a Bahamian Business Licence (See page [149]), and the approval of the Bahamian Central Bank to operate in The Bahamas. UBS AG has also applied to the Securities Commission of The Bahamas for its licence, which is forthcoming. On receipt of the licence from the Bahamian Securities Commission, Credit Suisse AG will be struck off the Bahamian Companies Register.

### **Conclusion**

14. It is evident that the interest of the Defendant, has now passed to the Applicant. Additionally, as the company of which the Defendant was a branch has been dissolved in Switzerland, the branch has legally ceased to exist."

(Emphasis supplied)

8. The certified and authenticated translations of entries to the commercial register of the Canton of Zurich referred to in the Second Sands Affidavit reflect, among other things: that UBS AG is domiciled in Zurich and Basel, and its stated purpose is "the operation of a bank"; UBS AG is empowered to establish branches in Switzerland and abroad; an entry was made in the Official Commercial Gazette of Switzerland confirming a merger between

UBS AG and Credit Suisse AG, with the former acquiring the assets and liabilities of the latter; the journal entry date of the merger was 31 May 2024; and that as at 31 May 2024 Credit Suisse AG was dissolved (see Exhibit LS2, pgs.6-7 and 11). The Certificate of Registration referred to in paragraph 12 of the Second Sands Affidavit, as indicated, confirms that as of 22 January 2024 UBS AG was indeed registered in The Bahamas as a foreign company under the *Companies Act, 1992*.

9. In resisting the present application, the Claimants relied on an affidavit sworn to by Mr. Starostenko and filed on 2 April 2025. For the most part, this consists of legal and other submissions addressing perceived shortcomings in the Applicant's affidavit evidence and the merits of its request for substitution. It is also stated to be filed in support of an application to strike out the First and Second Sands Affidavits in their entirety on ground of irrelevance, which the Claimants filed on 3 April 2025. Whilst that application to strike out was never formally fixed for hearing, I have taken the objections raised therein into account as they are evidentiary in nature.
10. In broad summary, Mr. Starostenko deposed that the First and Second Sands Affidavits are devoid of admissible evidence, misstate the law and misstate the parties to the proceedings. In elaborating on his over-arching objections, Mr. Starostenko deposed that the First and Second Sands Affidavits fail to factually establish (among other things): the "*dissolution of Credit Suisse AG, Nassau Branch, in The Bahamas*"; the "*existence of UBS AG, Nassau branch, in The Bahamas*"; and the registration of articles of merger with the Registrar General of The Bahamas in compliance with Section 78(1) of the *International Business Companies Act* (the "**IBC Act**"). The deponent further suggests that the application contains a fundamental error in the manner in which the Applicant is described, "*improperly citing...UBS AG (a distinct legal entity) when the Merger Application exclusively concerns UBS AG, Nassau Branch*". In a somewhat surprising development, the deponent further asserted that the current application is an abuse of process because the Applicant has already been joined as the Second Defendant in this action via the Claimants' Amended Standard Claim filed on 8 January 2025, albeit by the designation "*UBS AG (A Swiss Broker)*". As far as I can tell, this '*amended*' claim (which also names seven additional defendants) was filed without leave and *after* the writ had already been ordered struck out by Bowe-Darville J. As such, I have not given any consideration to the same in reaching my decision on the current application.

## **Analysis and Disposition**

11. Before addressing the outcome of the current application, it is useful to make some brief observations about the power of the Court to substitute parties.
12. Central to the application is Rule 19.3(5) of the CPR. This provides:
  - “(5) *The Court may order a new party to be substituted for an existing one if —*
    - (a) Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or*
    - (b) existing party’s interest or liability has passed to the new party.”*
13. The Court’s power to substitute a party is necessarily wide. In the English Court of Appeal decision of London Borough of Hounslow v. Cumar [2012] EWCA Civ 1426, the issue of substitution arose in the context of a decision taken at first instance to remove the named claimant and add the entity with the necessary standing to sue, thereby effectively ordering substitution. In rejecting the defendants’ argument to the effect that the first instance judge had erred in following this two-step process, and that substitution could only be ordered where the existing party’s interest or liability had passed to the new party, Treacy J observed (at paras.11-12):

*“[11] It seems to me that Pt 19.2 is not to be construed in the narrow way contended for. To adopt such a construction would be to limit the circumstances which amount to substitution of one party by another in a way which would unduly restrict the court’s powers of action in avoiding unnecessary and empty technicality and in seeking to achieve the prompt, efficient and cost effective resolution of disputes. To limit the power to substitute to circumstances where an interest or liability has “passed” from the existing party to a new party would be to read the whole of Pt 19.2 in a way which could not do justice to a number of other situations where it would be clearly desirable to permit a change of party.*

*[12] There is support for this approach in some earlier decisions. In United Film Distribution Ltd and another v Chhabria and others [2001] EWCA Civ 416, [2001] 2 All ER (Comm) 865 Blackburne J, with whom Lord Justices Aldous and Laws agreed, stated at para 38 that the court’s power to add or substitute a party is wide. In Davies and others v Department of Trade and Industry [2006] EWCA Civ 1360, [2007] 1 All ER 518, [2007] 1 WLR 3232 Waller LJ, giving the judgment of the court, said at para 12:*

*“Part 19.2 seems to provide a very wide power to enable parties who may be affected by a finding in any proceedings to be joined. That the power was intended to be wide is supported by the paragraph of the Practice Direction quoted by the judge in a passage of his judgment set out below [Practice Direction 19A: Addition and Substitution of Parties]. The matter remains within the discretion of the court . . . .”*

(Emphasis supplied)

14. In Dunwoody Sports Marketing v. Prescott [2007] 1 WLR 2343 (CA), Collins LJ confirmed that the power to order substitution under the English CPR regime was exercisable after judgment, stating as follows (at para.23):

*"It was held under the former RSC, Ord 15 that substitution could be effected after judgment: Ord v Belhaven Pubs Ltd [1998] BCLC 447; cf Stroud and Swindon Building Society v Stalp (unreported) 27 March 1997 (a decision of Phillips LJ on a leave application in relation to the former County Court Rules, Ord 5, r 11) and Mercer Alloys Corpn v Rolls Royce Ltd [1971] 1 WLR 1520 (a decision on the inherent jurisdiction of the court to order substitution). It has been doubted whether there is a similar power in relation to joinder under CPR r 19.2 because the power is in relation to "matters in dispute in the proceedings" and there are no such matters following judgment: Kooltrade Ltd v XTS Ltd [2002] FSR 764. In my judgment the power under CPR r 19.2 in relation to joinder and substitution exists after judgment as well as before: see also C Inc plc v L [2001] 2 All ER (Comm) 446; The Selby Paradigm [2004] EWHC 1804 (Admlty)."*

(Emphasis supplied)

15. The issue of substitution of parties following a merger has also arisen in our local courts before, albeit under the RSC regime. In VLG North America Inc. v. Hillside Investments Co. Ltd. [2012] 1 BHS J. No.40, Gray-Evans J. acceded to such an application where the original claimant had ceased to remain an active company in its jurisdiction of incorporation and its assets and liabilities had been acquired by the surviving entity in a merger a number of years prior. In doing so, she traced the history of the rule allowing for substitution where one party succeeds to the claims or liabilities of another, pointing out that the equivalent rule existed in England before 1962.
16. Without making this ruling longer than is necessary, I have little hesitation in granting the substitution sought by the Applicant. To engage the jurisdiction to order substitution under Rule 19.3(5), the Court must be satisfied that it can "*resolve the matters in dispute more effectively by substituting the new party for the existing party*", or the "*existing party's interest or liability has passed to the new party.*" In my view, both limbs of the Rule are satisfied in the present case.
17. The First and Second Sands Affidavits clearly establish that UBS AG and Credit Suisse AG have in fact merged; that as a result of the merger, the assets and liabilities of Credit Suisse AG have been transferred to UBS AG; that Credit Suisse AG has been struck off the commercial register in Zurich; and that UBS AG is the surviving entity in the merger.

This is fully borne out by the entries in the commercial register of the Canton of Zurich exhibited to the Second Sands Affidavit. This evidence has not been disproved.

18. The various objections raised by the Claimants, with all due respect, also appear to be entirely misconceived. For instance, a great deal of time and energy was spent by them arguing that the merger between UBS AG and Credit Suisse AG failed to satisfy the requirements of Section 78(1) of the IBC Act. At the outset, it is to be observed that Section 78 of the IBC Act actually addresses the 'effect' and effective date of a merger or consolidation, as opposed to the detailed requirements to be satisfied for effecting the same. More importantly, as Mr. Jenkins KC observed, neither of the two entities involved in the merger in the present case was incorporated under the IBC Act. As such, the provisions of the IBC Act would not have applied.
19. The Claimants also attacked the description of the Applicant as "*UBS AG, Nassau Branch*" in its notice of application, which they said was an entity which did not exist. In this regard, they pointed out that the Business License exhibited to the Second Sands Affidavit confirmed that "*UBS AG is licensed to operate in The Bahamas as "UBS AG trading as UBS AG, Nassau Branch."*" They therefore took issue with the use of the descriptor "*Nassau Branch*" in the name of the Applicant. As far as I am concerned, this particular objection is at best semantic. There is absolutely no doubt as to the identity of the party intended to be substituted in place of the Defendant or any doubt as to its legal existence. This certainly cannot nullify the application for substitution, as suggested by the Claimants (see e.g. Rule 26.9(2)).
20. I also agree with Mr. Jenkins KC's observation that the proposed substitution is actually in the interests of the Claimants in the present case. As indicated, the Claimants have a pending application for leave to appeal the striking out of their claim by Bowe-Darville J. If they were to ultimately succeed in the action, it is in their interests for there to be an existing defendant against whom judgment could be enforced. There also appear to be outstanding taxation proceedings. On this further basis, substitution is justified to enable the Court to resolve the matters in dispute more effectively. It is also fully in keeping with the Court's overriding objective.



21. For completeness, I would merely add that the Claimants' objections to the Applicant's affidavit evidence are in my view entirely without substance. The First and Second Sands Affidavits plainly contain evidence which is relevant to the application before the Court. They are also largely factual.
22. For the reasons stated, the Applicant's application for substitution is allowed and I direct that UBS AG be substituted as the Defendant in these proceedings in the place of Credit Suisse AG. I will hear the parties further on the issue of costs.

  
FARQUHARSON, J.  
27 June 2025