

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division

Claim No.
2015/CLE/gen/No.01451
2014/CLE/gen/No.01620

BETWEEN:

JUNKANOO ESTATES LTD

First Claimant

AND

YURI STAROSTENKO

Second Claimant

AND

IRINA TSAREVA-STAROSTENKO

Third Claimant

AND

(1) UBS (BAHAMAS) LTD. (In Voluntary Liquidation)
(2) UBS AG (A SWISS BROKER)
(3) KEVIN LEE PRICE
(4) THIBAUD HALEWYCK
(5) GEORGE MAILLIS
(6) MARCO TURNQUEST

Defendants

(Actions and Counterclaim consolidated by Order of the Judge dated 4 November 2015)

Before:	The Honorable Madam Justice Carla Card-Stubbs
Appearances:	No appearance for the First Claimant Yuri Starostenko & Irina Starostenko, (Pro Se) Mrs. Chizell Cargill Counsel for the Fifth and Sixth Defendants

Hearing date:s **January 26, 2026; January 27, 2026**

Civil Procedure and Practice — Strike out application — Addition of parties after expiry of limitation period — Whether claims against newly added defendants are treated as brought when the original proceedings were commenced or when those defendants were joined — Limitation Act, Ch. 83, section 5 — Supreme Court Civil

Procedure Rules 2022, as amended, Parts 19.2, 19.4, 20.2 and 26.3 — Whether late joinder may defeat an accrued limitation defence — Whether allegations of fraud, concealment and breach of duty render a limitation issue unsuitable for summary determination — Procedural irregularity — Failure to obtain permission to add parties after expiry of the limitation period — Failure to file an amended statement of claim particularising claims against newly added defendants — Abuse of process.

The Claimants commenced consolidated proceedings arising out of mortgage and credit facility disputes. By Standard Claim Form filed on February 21, 2024, the Fifth Defendant, George Maillis, and the Sixth Defendant, Marco Turnquest, were named as defendants for the first time. The Fifth and Sixth Defendants applied to strike out the claims against them, or alternatively to be removed as parties, on the grounds that the claims were statute-barred, that their addition after expiry of the limitation period was procedurally irregular, and that the claims amounted to an abuse of process. The Claimants opposed the applications on the basis that the proceedings had been commenced in 2015, that the 2024 filing was merely an amendment within existing proceedings, and that allegations of fraud, concealment and related wrongdoing made summary determination inappropriate.

HELD: *The claims against the Fifth and Sixth Defendants are struck out as statute-barred and as an abuse of process. Alternatively, and if necessary, the Fifth and Sixth Defendants are removed as parties.*

1. *A claim against a newly added defendant is brought when that defendant is joined to the proceedings, and not retrospectively from the date on which proceedings were commenced against other parties. The late addition of a defendant does not, without an applicable statutory or procedural gateway, deprive that defendant of an accrued limitation defence.*
2. *The claims against the Fifth and Sixth Defendants were first brought on February 21, 2024, when they were named in the Standard Claim Form. The fact that the 2017 Statement of Claim described the wider factual matrix did not make them parties to claims previously instituted against others.*
3. *The claims against the Fifth and Sixth Defendants arose from alleged events occurring between 2012 and 2016. They were therefore brought more than six years after the alleged causes of action accrued and were statute-barred under section 5 of the Limitation Act.*
4. *The Claimants' allegations of fraud, concealment, fiduciary breach, regulatory non-compliance and fictitious trading did not displace the limitation bar. Serious allegations, without proper pleading connection and materiality to the date on which the claims were first brought against the newly added defendants, did not render the limitation issue unsuitable for summary determination.*
5. *The addition of the Fifth and Sixth Defendants after expiry of the relevant limitation period was procedurally irregular. Permission under Part 19.4 of the Supreme Court Civil Procedure Rules 2022, as amended, was not sought, and no amended Statement of Claim was filed particularising the claims against them.*

RULING

Introduction

- [1.] Before this court are the applications of the Fifth Defendant, George Maillis, and the Sixth Defendant, Marco Turnquest, to strike out the claims against them, or, alternatively, to remove them as parties to these consolidated proceedings.
- [2.] On September 17, 2026, this Court delivered its decisions with reasons to follow. This judgment sets out the decisions as well as the reasons for the decisions.

- [3.] For the reasons that follow, the applications are acceded to and the claims against the Applicants are hereby struck out.

Background

- [4.] The underlying proceedings arise from mortgage and credit facility disputes as described in the various parties' affidavits.
- [5.] On October 3, 2014, UBS Bahamas by Supreme Court Action CLE/gen/No.01620 ("Action 1620") commenced a Mortgage action against the Claimants. Summary judgment was obtained in March 2015. On September 16, 2015, the Claimants commenced a separate action by Writ of Summons, viz, Supreme Court Action CLE/gen/No.1451 ("Action 1451") against UBS Bahamas. That action also concerned the mortgage. By court order, the actions were consolidated. On November 14, 2017, the Claimants filed a Statement of Claim. The causes of action arose in contract and tort.
- [6.] On February 21, 2024, the Claimants filed a Standard Claim Form and added Defendants to the action, including the Fifth and Sixth Defendants.
- [7.] The Defendants submit that the claims directed to Mr. Maillis arise from events in 2012 to 2014 and that those directed to Mr. Turnquest arise from events in 2014 to 2016. The Claimants do not materially dispute that chronology. The Claimants' position is that the claims were already before the Court as part of the existing action, and that the filing of February 21, 2024 merely amended those proceedings.

THE APPLICATION

- [8.] The Fifth and Sixth Defendants each filed an application on the 2nd day of December 2024. The applications are similar in material respects. Each is made pursuant to Part 1.1, 19.2(5) and 26.3 (1)(a) and (c) of the Supreme Court Civil Procedure Rules 2022 (as amended) ("CPR") and the Court's inherent jurisdiction.
- [9.] Each Application cites 3 grounds for moving the application: The grounds as recited in the application of the Fifth Defendant of this application are as follows:

Limitation Barred/Frivolous, vexatious or Abuse of Process

- 1.1 The Claimants' Claim against the Fifth Defendant is limitation barred, pursuant to section 5 of the Limitation Act, as the causes of action relied on by the Claimants, as set out in their Standard Claim Form and the unamended Statement of Claim filed 14 November 2017, accrued at the latest in November 2017 when the

Statement of Claim was filed, which is more than 6 years prior to the Fifth Defendant purportedly being added as a party to this Action.

- 1.2 The Claimants Claim should therefore be struck out as being frivolous or vexatious or an abuse of process of the Court, as the Claim sets up a cause of action against the Fifth Defendant which was statute barred at the time the Standard Claim Form was issued against the Fifth Defendant.

Non-compliance with the CPR

- 1.3 The Claimants filed the Standard Claim Form, purporting to amend this action by adding the Fifth Defendant herein, without first obtaining the permission of this Court in accordance with Part 19.4(1) of the CPR, as the purported amendment/addition was made after the expiry of the relevant limitation period.
- 1.4 In the alternative, the Claimants, in purporting to amend this action by adding the Fifth Defendant, have failed to file an amended statement of claim particularizing their claim against the Fifth Defendant, in accordance with Part 19.2(2) of the CPR, and have instead only filed a Standard Claim Form naming the Fifth Defendant as a party hereto.

Overriding Objective

- 1.5 Pursuant to Part 1.1 of the CPR, the Fifth Defendant should be removed as a party to this action, or in the alternative the action should be struck out against him, in accordance with the Court's overriding objective to deal with cases justly and fairly and at a proportionate cost.

- 1.6 The following written evidence will be used at the hearing of the application:

[10.] The same grounds are recited in the application of the Sixth Defendant.

[11.] Each application seeks the following relief:

- a. The Standard Claim Form filed herein on 21 February 2024 be struck out as against the [5th/6th] Defendant on the grounds that claims against the [5th/6th] Defendant are statute barred and are therefore scandalous, frivolous or vexatious and or are otherwise an abuse of the process of the court;
- b. In the alternative, the [5th/6th] Defendant be removed as a party to this action as the [5th/6th] Defendant has been improperly added as a party hereto;
- c. The Claimants pay to the [5th/6th] Defendant the costs of and occasioned by this application, to be assessed by the Court in accordance with Part 72.26(1) of the CPR; and
- d. Such further or other relief as the Court deems fit.

- [12.] The Application of the Fifth Defendant is supported by the Affidavit of George Maillis filed on December 2, 2024. The Application of the Sixth Defendant is supported by the Affidavit of Marco Turnquest filed on the December 2, 2024.
- [13.] The Claimants oppose the applications. The Claimants filed the affidavit of Yuri Starostenko dated November 17, 2025 in response to George Maillis and the affidavit of Yuri Starostenko dated November 18, 2025 in response to Marco Turnquest as well as a Final Affidavit of Irina Tsareva filed on December 19, 2025.

SUBMISSIONS OF THE PARTIES

Defendants/Applicants' Submissions

- [14.] The Defendants' principal argument is based on limitation grounds. The Fifth and Sixth Defendants contend that the claims against them were first brought only when they were added by the Standard Claim Form filed on February 21, 2024 and that the claims against them are statute-barred under section 5 of the Limitation Act because they were only added as parties in February 2024, more than six years after the events relied on.
- [15.] The Fifth and Sixth Defendants submit, further, that the legal effect of adding a new defendant is that, absent some applicable procedural gateway, the claim against that defendant is treated as brought when that defendant is joined, and not when proceedings were first commenced against other parties.
- [16.] The Defendants further contend that the joinder was procedurally defective. They submit that the Fifth and Sixth Defendants were added irregularly because the Claimants failed to obtain permission under CPR Part 19.4(1) after the expiry of the limitation period and failed to file an amended Statement of Claim particularising the case against them.

Claimant's Submissions

- [17.] The primary contention of the Claimants is that the action was validly commenced by Writ of Summons on 16 September 2015 and that the Statement of Claim filed on 14 November 2017 already set out the factual matrix from which the claims against the Fifth and Sixth Defendants arise. The Claimants contend that the Standard Claim Form filed on 21 February 2024 was merely an amendment within an existing action under CPR Part 19 and did not commence a new claim.

- [18.] They further submit that their reply affidavits contain serious and particularised allegations of fraud, concealment, fiduciary breach, regulatory noncompliance, misleading representations, and fictitious trading, and that these issues make it inappropriate to determine limitation summarily.
- [19.] They contend that the Fifth and Sixth Defendants were required by the Order giving directions for the hearing of the application to file evidence responding to their affidavits by 10 December 2025. The Defendants did not do so. The Claimants contend that, as a result of the Defendants' failure to respond by affidavit, the factual matters raised in their reply affidavits stand uncontroverted for purposes of these applications.

Issues

- [20.] The issues arising are as follows.
- 1) Whether, as against the Fifth and Sixth Defendants, the claims are to be treated as first brought on 21 February 2024 or as part of proceedings already commenced in 2015.
 - 2) Whether, if first brought in 2024, the claims are barred by limitation.
 - 3) Whether the allegations of fraud and concealment relied on by the Claimants make it inappropriate to determine the applications now.
 - 4) Whether the addition of the Fifth and Sixth Defendants was procedurally regular.

Jurisdiction to strike out

- [23.] The Defendants contend that the claims were statute-barred as against the Fifth and Sixth Defendants and are an abuse of process.

- [24.] The Court may strike out a statement of case under **Rule 26.3 CPR**. **Rule 26.3(1)** provides:

- (1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that—
 - (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;

- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[26.] Notably Rule 26.3 (1) CPR is “in addition to any other power under these Rules”.

[27.] A Court may strike out a statement of case or part of a statement of case on a party’s application or *suo moto*: Rule 26.2 CPR. This is an exceptional power of the Court and a Court ought to exercise this discretion only in clear and obvious cases.

[28.] In ***B.E. Holdings Limited v. Piao Linji*** [2014/CLE/gen/01472 Justice Charles, as she then was, stated:

“7. As a general rule, the court has the power to strike out a party’s case either on the application of a party or on its own initiative. Striking out is often describes as a draconian step as it usually means that either the whole or part of that party’s case is at an end. Therefore it should only be taken in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this discretion deprives a party of his right to a trial and his ability to fortify his case through the process of disclosure and other procedures such as request for better and further particulars”.

[29.] A *statement of case* is defined in Part 2, Rule 2.1 which provides

“statement of case” means —

- (a) a claim form, statement of claim, defence, counterclaim, additional claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the Court.

[30.] The Defendants also challenge the procedure undertaken to add them to the action. This Court must determine whether, at the time of the addition of the Fifth and Sixth Defendants to the action, the claims were statute-barred as against them and, if so, whether such joinder infringed the procedure set out in the CPR.

[31.] Rule 19.2 CPR provides for the joinder of a party to the proceedings. The relevant provisions are:

19.2 Change of Parties

- (1) The Court may add, substitute or remove a party —

- (a) on application by a party; or
- (b) without an application.
- (2) A claimant may add a new defendant to proceedings without permission at any time before the case management conference by filing at the court office, an amended claim form and statement of claim.
- (3) Parts 5, 7, 9, 10 and 12 apply to an amended claim form referred to in paragraph (2) as they do to a claim form.
- (4) The Court may add a new party to proceedings without an application, if —
 - (a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or
 - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the Court can resolve that issue.
- (5) The Court may, by order remove any party if it considers that it is not desirable for that person to be a party to the proceedings.
- (6) The Court may order a new party to be substituted for an existing one if —
 - (a) the Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
 - (b) the existing party's interest or liability has passed to the new party.
- (7) The Court may add, remove or substitute a party at the case management conference.

[32.] The CPR also makes provisions for the amendment of a statement of case subsequent to the expiry of a limitation period. The relevant rule is Rule 20.2 CPR which provides:

20.2 Changes to statements of case after end of relevant limitation period.

- (1) This rule applies to a change in a statement of case after the end of a relevant limitation period.
- (2) The Court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.
- (3) The Court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was —
 - (a) genuine; and
 - (b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.
- (4) The Court may allow an amendment to alter the capacity in which a party claims.

[33.] Additionally, the CPR explicitly addresses the addition of parties after the limitation period has expired. Rule 19.4 provides:

19.4 Special provisions on adding, etc., parties after limitation period.

- (1) The Court may add or substitute a party after the end of a relevant limitation period only if the —
 - (a) addition or substitution is necessary; and
 - (b) relevant limitation period was current when the proceedings were started.
- (2) For the purposes of paragraph (1), the addition or substitution of a party is necessary only if the Court is satisfied that —
 - (a) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;
 - (b) the interest or liability of the former party has passed to the new party; or
 - (c) the new party is to be substituted for a party who was named in the claim form in mistake for the new party.⁷³

Issue 1 : Whether, as against the Fifth and Sixth Defendants, the claims are to be treated as first brought on 21 February 2024 or as part of proceedings already commenced in 2015.

[34.] The Court must determine whether the claims against the Defendants are properly treated as part of the proceedings commenced in 2015 or as new claims brought only when the Defendants were subsequently joined, after the relevant limitation periods had expired.

[35.] In this case, it is useful to consider, as a starting point, what claims are said to be brought against the Defendants. The Claimants set out:

The claimants use a single claim form to include all twelve (12) claims which can be conveniently disposed of in the same proceedings (Rule 8.4 of the CPR) and are making claims against the defendants on the basis of the facts asserted in the Statement of Claim, filed in this action 14 November 2017, so as to make (i) all the defendants aware of what each of them is to defend himself against, and (ii) all the parties to this dispute and are before this Court so that its decision will bind all of them (Rule 19.1 of the CPR).

[36.] On the Claimants' submissions, the claims may be summarized as:

1. Claim No. 1 (breach of contract claim)
2. Claim No. 2 (breach of statutory duty claim) against...George Maillis
3. Claim No. 3 (Misfeasance claim) against...George Maillis
4. Claim No. 4 (repudiatory breach of contract) against...George Maillis
5. Claim No. 5 (conspiracy to injure business claim) against...George Maillis
6. Claim No. 6 (Rescission claim)
7. Claim No. 7 (Rescission claim)

8. Claim No. 8 (Conspiracy to defraud claim) against...George Maillis
9. Claim No. 9 (fraudulent misrepresentation claim) against...George Maillis
10. Claim No. 10 (malicious prosecution claim) against...George Maillis and Marco Turnquest
11. Claim No. 11 (conspiracy to defraud claim) against...George Maillis and Marco Turnquest
12. Claim No. 12 (Malicious abuse of process claim) against... Marco Turnquest

[37.] In this case I am satisfied that the relevant limitation period for the claims against the Defendants in this matter is 6 years. Section 5 of the Limitation Act, Chapter 83 provides, in part:

Section 5

5. (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -
 (a) actions founded on simple contract (including quasi contract) or on tort; ..."

[38.] It is not in dispute that George Maillis and Marco Turnquest were first named as parties by the Standard Claim Form filed on February 21, 2024.

[39.] The Defendants submit that there is an important distinction between the continuation of proceedings against an existing party and the first assertion of a claim against a person not previously before the Court. Their submission is that the Action against the Defendants is deemed to have commenced on the date they were added as parties, and not on the date of the original Writ. The Defendants' position is that at the time the Defendants were joined to this Action, the Claimants' claim against them was already outside the prescribed limitation period.

[40.] On this issue, I reproduce the thrust of the Claimants' arguments. They submit:

1. The action was validly and timely commenced with the issuance of a Writ of Summons on 16 September 2015, and amended pursuant to the Order of this Court on 14 November 2017, well within the six-year limitation period.
2. The Amended Claim Form of 21 February 2024 was an amendment within an existing action, governed by CPR Part 19 (Addition and Substitution of Parties), not the commencement of a new claim. It explicitly incorporates the facts from the 2017 Statement of Claim, introducing no new causes of action.
3. In particular, the amendment explicitly states it is made "on the basis of the facts asserted in the Statement of Claim, filed in this action 14 November 2017." No new facts were introduced. It is therefore not a "change in a statement of case after the end of a relevant limitation period" under CPR Part 20.

4. Consequently, CPR Rule 20.2 (requiring leave for post-limitation amendments) is inapplicable. The amendment was permissible without leave under CPR Rule 19.2(2).

[41.] The general principle is that a claim against a party added to existing proceedings is ordinarily treated, for limitation purposes, as a new claim, and unless a procedural or statutory gateway applies, time is assessed as against that party up to the date they are actually added (and, in practice, served), not the date of the original action. This is the principle established in **Liff v Peasley [1980] 1 ALL ER 623** and **Ketteman v Hansel Properties Ltd [1988] 1 ALL ER 38**, both cases cited by the Defendants.

[42.] In **Ketteman v Hansel Properties Ltd** the House of Lords determined that a newly added defendant is sued only when properly joined, so an expired limitation period is not normally avoided by treating the joinder as if it happened when the original statement of case was issued. That court rejected the proposition that adding a defendant automatically relates back to the date of the original writ against another defendant.

In that case, Lord Keith of Kinkel opined at page 47:

A cause of action is necessarily a cause of action against a particular defendant, and the bringing of the action which is referred to must be the bringing of the action against that defendant in respect of that cause of action. The causes of action here against Mid-Sussex and the architects were separate and distinct from the cause of action against Hansel. In my opinion there are no good grounds in principle or in reason for the view that an action is brought against an additional defendant at any earlier time than the date upon which that defendant is joined as a party in accordance with the Rules of Court. Further, I consider *Byron v. Cooper* to constitute clear authority in this House against the relation back theory. That was a case under the Tithes Act 1832, which by section 1 provided for shortening of the time required for establishment of a claim to inter alia exemption from tithes. Section 3 provided:

"That this Act shall not be prejudicial or available to or for any plaintiff or defendant in any suit or action relative to any of the matters before mentioned, now commenced, or which may be hereafter commenced, during the present session of Parliament, or within one year from the end thereof."

The rector of a parish filed a bill for an account of tithes against five defendants before the expiry of the time so limited, and after the expiration of that time the bill was amended by order of the court so as

to add a further four defendants. The House held that the latter were not deprived of the protection of section 1 of the Act. Lord Brougham said at p. 579:

"The first miscarriage in the court below, however, was to consider the whole defendants to the suit, the whole nine appellants, as excluded from the operation of the Act. The ground of this opinion was that the bill being originally filed before 16 August 1833, and the four last-named appellants being, under an order of the Court of Exchequer, made defendants to that same bill, were as much excluded by the 3rd section of the Act as if they had been made originally defendants to the bill filed on 5 August 1833. This is as great and as manifest an error as could well be committed."

and later, at pp. 579-580:

"The parson is permitted to add new defendants to his amended bill, in order to save delay and expense; but each defendant so added is to be considered as sued by the proceeding which makes him a defendant, and the date of his being added is the date of the suit's commencement quoad him; consequently the four last-named and last-added defendants in this case were only sued in November 1834, and quoad them the bill and the suit bear the date of November 1834. They do not fall, therefore, within the description of the 3rd section of the statute. They are not defendants, to use the words of that statute, 'in a suit or action commenced within one year' after 16 August 1832, being the last day of the session in which the Act passed."

Although the wording of section 2(1) of the Limitation Act 1939 naturally differs from that of section 3 of the Tithes Act 1832, that difference is not such as to demonstrate an intention that a defendant brought into an action by amendment, in respect of a cause of action separate from that against an existing defendant, should be treated as having had the action brought against him at the same time as it was brought against the latter.

Accordingly, I find myself in respectful agreement with the provisional view expressed by Brandon L.J. in *Liff v. Peasley* [1980] 1 W.L.R. 781, 804 that the "no useful purpose" theory, and not the "relation back" theory, is the true basis of rule of practice to which I have referred.

- [41.] In **Liff v Peasley**, the claim against an added defendant was treated as brought when that defendant was joined, not when earlier proceedings against others were commenced.
- [43.] I accept that the relevant principles of law in this regard are that:
1. A limitation statute bars an action after a specified time from accrual.
 2. A cause of action is necessarily against a *particular defendant*.
 3. An action against a newly added defendant is brought when that defendant is actually joined under the procedural rules.
 4. There is no legal basis for deeming an action against that defendant to have begun to have begun earlier merely because related proceedings were already underway against another party.
- [44.] In my judgment, those are the legal principles directly engaged here. The limitation defence is not a merely technical matter. It is a substantive protection. A claimant cannot ordinarily avoid it simply by asserting that a later claim against a new party should be treated as though it had always been part of the original action.
- [45.] In my judgment, the claims against the Fifth and Sixth Defendants were first brought when those Defendants were named in the Standard Claim Form filed on February 21, 2024 and are not to be treated as effective as of the date of the 2017 Statement of Claim or at the commencement of the proceedings in 2015. Neither Mr. Maillis nor Mr. Turnquest was previously named as a defendant before 2024.
- [46.] I do not accept the Claimants' submission that, notwithstanding that fact, the claims against those Defendants should be treated as forming part of an action already commenced in 2015 because the underlying factual matrix had been set out in the 2017 Statement of Claim. The existence of prior proceedings against other parties does not, without more, mean that a person later added becomes retrospectively subject to claims which were never previously brought against him. There is an obvious and legally significant difference between amending the articulation of an existing claim against an existing defendant and bringing a claim, for the first time, against a person who was not previously a party at all.
- [47.] I accept the Defendants' submission that no amended Statement of Claim was filed particularizing the case against Mr. Maillis and Mr. Turnquest and that state of affairs reinforces this conclusion. It is apparent from the pleadings that the Fifth and Sixth Defendants were first called upon in 2024 to answer claims against them personally. That is the substance of the matter.
- [48.] I consider the principles earlier identified in **Kettman v Hansel Properties Ltd** and **Liff v Peasley**. The Court should not permit the Claimants to defeat a limitation defence

accrued to newly added defendants by treating late joinder as if it were no more than an internal amendment to pre-existing proceedings.

[49.] I therefore find that, as against the Fifth and Sixth Defendants, the claims were first brought on February 21, 2024.

Issue 2: Whether, if first brought in 2024, the claims are barred by limitation.

[50.] The next question is whether, on that footing, the claims were already statute-barred.

[51.] The Defendants' position is that, on review of the claims, the claims directed against Mr. Maillis arise from alleged events in 2012 to 2014, and the claims directed to Mr. Turnquest from alleged events in 2014 to 2016. The Claimants do not dispute this nor do they offer an alternative chronology which would place the pleaded claims within six years of February 2024. Instead, their submission is dependent on the relation-back argument which I have already rejected.

[52.] This is therefore a case in which the limitation defect is apparent on the face of pleadings. It is not a case requiring a trial to determine when the relevant acts occurred. The dispute is legal, not factual: whether a later-added defendant may be treated as though he had always been sued. For reasons already given, the answer is no.

[53.] It follows that, on the Claimants' own factual case, the acts or omissions relied on occurred more than six years before the Fifth and Sixth Defendants were joined. In those circumstances, I find that the limitation consequence is clear: the claims were already out of time.

[54.] My determination is that the claims are statute-barred.

Issue 3: whether the allegations of fraud and concealment relied on by the Claimants make it inappropriate to determine the applications now.

- [55.] The Claimants submit that their affidavits made in reply to the Application raise grave allegations of fraud, concealment, fiduciary breach, regulatory wrongdoing, and fictitious trading, and that these matters render summary disposition inappropriate. The Claimants submit that the allegations in their affidavits remain unanswered.
- [56.] The Defendants submit that they chose not to file further affidavit evidence after the Claimants' reply affidavits because they considered those affidavits did not relate directly to the limitation point and because the Defendants' pleaded defences already refuted the allegations in the Standard Claim Form.
- [57.] I have considered the submissions of the Claimants carefully, but I do not accept them. The Claimants sought to set out and elaborate on allegations of fraud by affidavit. General or serious allegations do not, without proper pleading connection and materiality to the issue in hand, answer a limitation objection.
- [58.] It also seems to me that even if certain matters in the Starostenko reply affidavits stand unanswered by further responsive evidence, that does not establish that claims first asserted against these Defendants in 2024 were brought within the Limitation period. The absence of rebuttal affidavits from the Defendants does not alter the date on which these Defendants were added or the periods to which the claims relate.
- [59.] Again, the Claimants' fraud and concealment argument remains dependent upon their primary submission that the 2024 filing did not amount to the first bringing of claims against these Defendants. Once that primary submission fails, the mere existence of serious allegations about the underlying facts does not prevent the Court from applying the limitation bar. I therefore reject the Claimants' submission that the allegations of fraud and concealment, or the absence of further responsive evidence, make the present applications unsuitable for determination.
- [60.] The Court's jurisdiction to strike out may be exercised where the defect in the claim is one of law, is apparent on the pleaded case, and renders the claim unsustainable. A claim which is plainly statute-barred may, in an appropriate case, be struck out as frivolous, vexatious, or an abuse of process: **Ronex Properties Ltd v John Laing Construction Ltd. [1983]**

QB 398. That case is authority for the proposition that where a claim is plainly unsustainable in law, including because it is statute-barred, it may properly be struck out.

- [61.] I am satisfied that the authorities considered by this Court support two related propositions: first, a newly added defendant should ordinarily not be deprived of an accrued limitation defence by later joinder; and second, where the limitation defect is plain on the face of the claim against that defendant, strike-out may be granted in an appropriate case.
- [62.] Therefore, it is my opinion that where it is clear from the pleadings that the cause of action against an added defendant arose outside the limitation period, and there is no available route by which the Claimant can escape that bar, the Court should strike out the claim as disclosing no reasonable cause of action, or as frivolous, vexatious, and an abuse of process.
- [63.] For the reasons above, the allegations of fraud do not make this application unsuitable for summary determination. The indisputable fact is that the Claimants sought to advance claims against the Defendants after the expiration of the limitation period. No reason is shown as to why the Defendants ought not to be allowed to rely on the limitation defence. That being so, there is no good legal rationale for causing the Defendants to incur expense in going to a trial. This is an appropriate case for a court to exercise its discretion to strike out a case against a party.
- [64.] The Claims are struck out as against the Defendants as an abuse of process.
- [65.] The above findings and ruling are sufficient to dispose of this matter. I will, nonetheless, consider the procedural argument made.

Issue 4: Whether the addition of the Fifth and Sixth Defendants was procedurally regular.

- [66.] The Defendants submit that the Claimants failed to obtain permission required under Rule CPR 19.4(1) after the expiry of the limitation period and failed to file an amended Statement of Claim under Rule Part 19.2(2) CPR.
- [67.] The Claimants submit that permission was unnecessary because the February 2024 filing was merely an amendment within existing proceedings before case management, and that Rule 20.2 CPR does not apply.

- [68.] I find that the submission of the Claimants is misconceived. Once it is acknowledged that the Fifth and Sixth Defendants were being added for the first time after expiry of the relevant limitation period, the addition cannot properly be characterised as a purely internal amendment of an existing claim against an existing defendant.
- [69.] In this case, no leave was sought to add the Fifth and Sixth Defendants. In this case, no amended Statement of Claim was filed particularising the case against these newly added Defendants.
- [70.] The Court's power to add or substitute a party after expiry of a relevant limitation period is not at large. Under Part 19.4 CPR that jurisdiction is strictly conditional. Such an amendment may only be permitted if the limitation period had not expired when the proceedings were originally commenced and if the Court is satisfied that the addition is strictly necessary such as, for example, where the claim cannot properly be carried on without that party.
- [71.] As a general principle of law, a court should be slow, and ordinarily should refuse, to permit the addition of a defendant after the expiry of the relevant limitation period where that would have the effect of displacing an accrued limitation defence. That restrictive approach is consistent with the underlying principles as summarized above in **Ketteman v Hansel Properties Ltd.** Therefore, under rule 19.4 CPR, the default position is that leave to add a defendant will generally not be granted after the limitation period has expired - because the Court will not deprive a defendant of a valid statutory limitation defence. An applicant seeking to add a defendant after the limitation period has expired must show that such an addition is necessary within the meaning of rule 19.4(2) CPR.
- [72.] No such application lies before this Court and no reason for the joinder of the Fifth and Sixth Defendants has been demonstrated.
- [73.] I therefore find, as an alternative and secondary ground, that the addition of the Fifth and Sixth Defendants was procedurally irregular.

CONCLUSION

- [74.] I find that George Maillis and Marco Turnquest were first added as parties by the Standard Claim Form filed on February 21, 2024 and that the claims directed against them arise from

events said to have occurred in 2012 to 2016. I find that as against those Defendants, the claims were therefore first brought more than six years after the alleged acts or omissions relied on. The Claimants cannot avoid that consequence by treating the late addition of entirely new defendants as though it were merely an amendment within pre-existing proceedings against others.

[75.] I find that the claims against the Fifth and Sixth Defendants were accordingly statute-barred when first brought.

[76.] I also find that, in any event, the addition of those Defendants was procedurally irregular.

[77.] The Claims are struck out as against the Defendants as an abuse of process. That is sufficient to dispose of the matter.

[78.] For avoidance of doubt, and additionally, if necessary, the addition of the Defendants were procedurally irregular and the Fifth and Sixth Defendants are removed as parties to the action.

COSTS

[79.] Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Claimants shall pay the costs of the Fifth Defendant and Sixth Defendant to be assessed if not agreed.

ORDER

[80.] The ORDER and directions of this Court are as follows.

It is ordered that:

1. The claims against the Fifth Defendant, George Maillis, and the Sixth Defendant, Marco Turnquest, as introduced by the Standard Claim Form filed on February 21, 2024, are struck out.

2. Alternatively, and if necessary, the Fifth and Sixth Defendants are removed as parties to the action.
3. The Claimants shall pay the Fifth and Sixth Defendants' costs of the applications, such costs to be assessed if not agreed.

Dated this 16th day of October 2026.

Hon. Madam Justice Carla D. Card-Stubbs
Justice of the Supreme Court