DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

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No Second Chances for Second Thoughts: Adcamp LLP v Office Properties PL Ltd & Ors [2026] EWCA Civ 50

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Date: 6 February 2026

Judges: Lord Justice Singh, Lord Justice Phillips and Lord Justice Zacaroli

Key Words:

Civil Procedure, Limitation Act 1980 s.35, CPR 19.6, Substitution of Parties, Professional Negligence, Mistake of Identity, Second Gateway, Limitation Periods, Adcamp v Office Properties, Legal Mistake

Summary

The judgment in ***Adcamp LLP*** concerns two appeals heard together involving the interpretation of **CPR rule 19.6(3)(b)** and **section 35 of the Limitation Act 1980** [1]. In both cases, claimants (Office Properties and the Lee Claimants) initially sued a successor law firm (BDB Pitmans LLP) for the alleged negligence of a predecessor firm (Pitmans, now Adcamp LLP), mistakenly believing the successor had assumed the predecessor's liabilities [3-5, 7-8]. Upon realising the successor had not assumed these liabilities, and after the relevant limitation periods had expired, the claimants sought to substitute the original firm (Adcamp) as the defendant [6, 12].

The Court of Appeal **allowed the appeals** by Adcamp, reversing the High Court decisions [89-94]. The Court ruled that the "second gateway" for substitution—where it is necessary to maintain an existing claim—cannot be used to substitute a defendant where the claimant made a mistake as to the defendant's identity (a mistake of law regarding liability) rather than a mere mistake of name [72-73, 89-90].

Key Themes:

1. ***Limitation Periods****: The tension between the hardship on claimants losing a cause of action versus the hardship on defendants facing indefinite liability [64].*
2. ***CPR 19.6(3) Gateways****: The distinction between the "first gateway" (mistake of name) and the "second gateway" (necessity for determination of the original action) [20-23].*
3. ***Mistake of Identity vs. Mistake of Name****: The application of the Sardinia Sulcis test, which establishes that only mistakes as to the name of a party (not their actual identity or liability in law) fall within the first gateway [23, 29-30].*

4. ***Definition of* "*The Claim*"***: Whether a claim against a new defendant is the "same claim" as the original if the factual basis regarding assumption of liability differs [40-42, 64-65].*
5. ***Judicial Precedent****: The Court of Appeal's disapproval of the obiter dicta of Leggatt J in Insight Group Ltd v Kingston Smith, which had suggested a broader interpretation of the rules [46, 88-89].*

Background

1. **The Office Properties Appeal:** Office Properties engaged Pitmans (now Adcamp) in 2017. They alleged negligent advice regarding a dividend and lease guarantee [2]. In 2018, Pitmans' business was sold to BDB, but liabilities were not novated [3-4]. Office Properties sued BDB in 2022, mistakenly believing BDB had assumed Pitmans' liabilities [5-8]. They later sought to substitute Adcamp as the defendant after the limitation period expired [6].
2. **The Lee Appeal:** The Lee Claimants retained Pitmans in 2018 for a property transaction and alleged negligence [9-10]. They sued BDB in 2024, again under the mistaken belief that BDB had assumed Pitmans' liabilities [10-12]. They applied to substitute Adcamp (Pitmans) after the limitation period had expired [12].
3. **Procedural History:** In both cases, Deputy High Court Judges permitted the substitution, relying on the reasoning in *Insight Group Ltd v Kingston Smith* [2012] EWHC 3644 (QB); [2014] 1 WLR 1448 *("**Insight Group**")* that the "commercial reality" was that the claim was for the same negligence, regardless of the entity sued [31-32, 36-37].

Legal Issues and Analysis

The Court focused on whether the substitution satisfied the "second gateway" under CPR 19.6(3)(b) and s.35(6)(b) of the Limitation Act 1980.

1. **The First Gateway (Mistake):** The parties agreed the cases did not fit the "first gateway" (mistake of name). The claimants intended to sue BDB based on a mistaken belief of law (that BDB was liable). Under the authority of *Adelson*, this is a mistake of identity, not name [29-30].
2. **The Second Gateway (Necessity):** This gateway applies if the "claim cannot properly be carried on" against the original party unless the new party is substituted [20-21].
    1. **"The Claim":** The Court had to determine if the claim against Adcamp was the *same* as the claim against BDB. The appellants argued they were different: the claim against BDB required proving BDB assumed Pitmans' liabilities, whereas the claim against Adcamp did not 43-44].
    2. **The Court's Decision:** The Court accepted the appellants' argument. The claim against Adcamp was substantially different because it did not rely on the "assumption of responsibility" facts required to sue BDB [72-73, 81-82]. Therefore, the substitution was not for the purpose of maintaining the *original* claim, but to launch a *new* claim against a new party [62].
    3. **Rejection of *Insight Group*:** The Court explicitly disagreed with Leggatt J's obiter view in *Insight Group*, which suggested that substituting a firm for an LLP (where liability had not transferred) was "equivalent" to procedural substitutions allowed in other cases [68-69]. The Court distinguished cases like *Parkinson* and *Irwin*, noting those involved the *same* cause of action (the company's claim) merely being brought by a different representative (liquidator/administrator), whereas the current appeals involved pursuing a different defendant for a liability that had never transferred [67-68, 102-103].
    4. **Incoherence of Rules:** The Court acknowledged it seems anomalous that a mistake of identity cannot be fixed but ruled that expanding the "second gateway" to fix mistakes

deliberately excluded from the "first gateway" would undermine the statutory scheme [79, 89-90].

Conclusion

Lord Justice Zacaroli, with whom Lord Justices Phillips and Singh agreed, concluded that **the conditions for the second gateway were not met**. The claims against Adcamp were not the same as the original claims against BDB because the facts necessary to establish liability were materially different (specifically regarding the transfer of liability) [81-82]. Consequently, the Court had no jurisdiction to allow the substitution after the limitation period had expired [37, 83-84].

Key Takeaway:

You cannot use the "second gateway" (necessity) of CPR 19.6(3)(b) to substitute a defendant after the limitation period has expired if the mistake was one of identity (mistakenly believing a successor entity was liable)*. Substitution under this rule is generally limited to cases where the original claim cannot be maintained due to procedural issues (like insolvency) or where liability has legally passed to a new party (like death or merger); it does not allow a claimant to pursue a "new claim" against the correct tortfeasor to correct a legal error regarding who to sue [89-91].*

Parting Thoughts

The Court of Appeal has, with admirable calm and not a flicker of sympathy-induced hand-wringing, put CPR 19.6 back in its box and labelled it clearly. This was not a case about procedural tidying-up. It was about trying—after limitation had slammed shut—to swap the wrong defendant for the right one and hoping the rules wouldn't notice.

They did.

The claimants' problem was not bad drafting, a typographical stumble, or an unfortunate misspelling. It was a full-blooded mistake of legal identity: suing a firm that was never liable, on the confident (and incorrect) assumption that liability had followed the business. That is not a naming error; it is a category error. The law, as the Court patiently but firmly explained, does not operate a lost-property desk for expired causes of action.

The attempt to smuggle the claim through the "second gateway" failed because that gateway is not an escape hatch for legal misjudgment. It exists to keep an existing claim alive where it genuinely cannot proceed—procedurally—without substitution. What it does not do is convert a claim against B into the "same claim" against A when the factual and legal foundations of liability are materially different. Calling both "professional negligence" does not make them twins; at best, they are distant cousins who do not share a limitation period.

In rejecting the High Court's reliance on Insight Group, the Court of Appeal restored doctrinal order. Parkinson and Irwin were about who may properly bring the same cause of action. Adcamp was about trying to bring a different claim against a different defendant after time had run out. The distinction matters. Pretending otherwise would hollow out section 35 of the Limitation Act and replace Parliament's carefully struck balance with something far more generous to claimants—and far less lawful.

There is, the Court accepted, an apparent oddity here: some mistakes can be corrected, others cannot. But that oddity is baked into the statute, endorsed by binding authority, and not something to be quietly fixed by creative interpretation. If the law is unsatisfactory, the remedy lies upstairs, not

sideways.

The result is bracingly clear. If you sue the wrong entity because you misunderstood who was legally responsible, limitation will not politely step aside while you regroup. The second gateway is not a second bite. It is a narrow door, and it does not open for mistakes the first gateway has already locked out.

Or, put more bluntly: know who you are suing, and why, before the clock runs down. The courts will not rewind it for you.

#CivilProcedure #Litigation #LimitationAct1980 #CourtOfAppeal #ProfessionalNegligence #LegalUpdate #CPR19 #DisputeResolution #LimitationPeriods #AdcampvOfficeProperties #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

The Interpretation of the "Second Gateway" (CPR 19.6(3)(b) and s.35(6)(b))

1. ***Nemeti v Sabre Insurance Co Ltd*** **[2013] EWCA Civ 1555** *– The Court of Appeal rejected the view that the "second gateway" is solely aimed at errors of format or constitution; however, it established that a substitution is not "necessary" to maintain an original claim if the new claim against the new party is substantially different (e.g., a negligence claim vs. a statutory indemnity claim), effectively launching a new claim rather than maintaining the old one.*
2. ***Insight Group Ltd v Kingston Smith*** **[2012] EWHC 3644 (QB); [2014] 1 WLR 1448** *– A High Court decision where Leggatt J (obiter) suggested that substituting a firm for an LLP (where liability had not transferred) should be permitted under the second gateway as "equivalent" to procedural substitutions; the Court in the present judgment expressly disapproved this obiter reasoning, finding it inconsistent with the requirement that the claim must remain the same.*
3. ***Parkinson Engineering Services plc (in liquidation) v Swan*** **[2009] EWCA Civ 1366; [2010] Bus LR 857** *– Substitution of a liquidator for the company was allowed under the second gateway because the cause of action (the company's claim) remained identical, involving the exact same duty, breach, and loss, with the substitution merely providing the necessary procedural standing.*
4. ***Irwin v Lynch*** **[2010] EWCA Civ 1153** *– Similar to Parkinson, the Court allowed the substitution of a company for its administrator where the administrator lacked standing; this was permitted because the cause of action asserted was identical throughout, distinguishable from the present appeals where the identity of the defendant changes the nature of the claim regarding liability.*
5. ***Various Claimants v G4S*** **[2021] EWHC 524 (Ch); [2021] 4 WLR 46** *– Mann J suggested the word "properly" in the rule was intended to correct locus standi errors; the Court in the present judgment noted this formulation involved a "gloss" similar to that rejected in Nemeti.*

The "First Gateway" (Mistake of Name vs. Identity)

1. ***Adelson v Associated Newspapers Ltd*** **[2007] EWCA Civ 701; [2008] 1 WLR 585** *– Binding authority confirming that the Sardinia Sulcis test applies to the CPR, meaning a mistake as to the identity of the party (liability) is excluded from the first gateway, and the court cannot use the second gateway to circumvent this deliberate exclusion.*
2. ***The Sardinia Sulcis*** **[1990] EWCA Civ; J1108-6; [1991] 1 Lloyd's Rep 201** *– Established*

the distinction between a mistake as to the name of a party (correctable) and a mistake as to their identity (not correctable); cited as the controlling test for distinguishing errors of fact and law regarding the "first gateway."

Transfer of Interest and Legislative History

1. ***"Choko Star" Industrie Chimiche Italia Centrale and another v Alexander Tsaviliris & Sons Maritime Co and others* [1996] 1 All ER 114; [1996] 1 WLR 774; [1995] 2 Lloyd's Rep. 608** – *Held that where proceedings are properly constituted within the limitation period, a substitution due to a subsequent transfer of liability or interest (e.g., merger) involves no new cause of action and therefore no limitation issue arises under s.35.*
2. ***Yorkshire Regional Health Authority v Fairclough Building Ltd* [1995] EWCA Civ J1101-1; [1996] 1 WLR 210** – *Approved The Choko Star, confirming that substitution following an assignment or transmission of a cause of action involves no "new claim" for limitation purposes, distinguishing these scenarios from the present appeals.*
3. ***Roberts v Gill* [2010] UKSC 22; [2011] 1 AC 240** – *Discussed the legislative history of the Limitation Act 1980, noting that Parliament provided a general formula for the rules of court rather than legislating for specific cases, and confirmed that transfer of interest cases generally do not trigger limitation issues.*

Principles of Statutory Construction and Limitation

1. ***Haward v Fawcetts* [2006] UKHL 9; [2006] 1 WLR 682** – *Lord Scott emphasized that the Limitation Act strikes a specific balance between hardship to claimants and defendants, and it is not the function of the judiciary to strike a different balance or "do justice" outside the statutory language.*
2. ***Letang v Cooper* [1965] 1 QB 232** – *Diplock LJ defined a "claim" as a factual situation entitling a person to a remedy; cited to discuss whether the factual ingredients of the claims against the original and substituted defendants were the same.*
3. ***Re Eurocruit Europe Ltd (In liquidation)* [2007] EWHC 1433 (Ch)** – *Cited within Parkinson to establish that s.212 of the Insolvency Act 1986 does not create a new cause of action but provides a procedural remedy.*

Legislation:

Limitation and Civil Procedure

1. ***Limitation Act 1980***
    1. ***Section 35:*** *The central statutory provision governing "new claims" in pending actions; it establishes that new claims involving the addition or substitution of parties are deemed to have commenced on the date of the original action but prohibits the court from allowing such claims after the limitation period has expired unless specific conditions ("gateways") are met.*
    2. ***Section 35(6)(b) / Section 35(5)(b):*** *The "Second Gateway" (Necessity); the specific condition relied upon by the appellants (and rejected by the Court), which allows substitution only if the original action "cannot be maintained" without it; the Court interpreted this to require the "new claim" to be substantially the same as the "original claim," preventing its use where a claimant seeks to sue a new defendant for a liability that was never transferred.*
    3. ***Section 35(6)(a):*** *The "First Gateway" (Mistake); allows substitution where a party was named in mistake for the new party; cited to confirm the binding Sardinia Sulcis test*

which excludes mistakes of identity (liability) from this gateway, a restriction the Court refused to undermine by expanding the second gateway.

4. ***Section 35(2):*** *Defines a "new claim" as one involving the addition or substitution of a new cause of action or a new party.*
5. ***Section 33:*** *Cited as a contrast to s.35 to demonstrate that where Parliament intended to grant the court discretion to disapply limitation periods (e.g., in personal injury or death cases), it did so expressly.*

2. ***Civil Procedure Rules 1998 (CPR)***
    1. ***Rule 19.6 (formerly Rule 19.5):*** *The procedural rule implementing s.35 of the 1980 Act regarding the addition and substitution of parties, requiring that the limitation period was current when the proceedings started and that the substitution is "necessary".*
    2. ***Rule 19.6(3)(b) (formerly Rule 19.5(3)(b)):*** *The procedural equivalent of the "Second Gateway," requiring that the claim "cannot properly be carried on" by or against the original party; the Court rejected arguments that the word "properly" implies a focus solely on procedural/locus standi errors, holding instead that the rule cannot cure a substantive lack of liability in the original defendant.*
    3. ***Rule 19.6(3)(a):*** *The procedural equivalent of the "First Gateway"; cited regarding the distinction between mistakes of name versus identity.*
    4. ***Rule 19.6(3)(c) (formerly Rule 19.5(3)(c)):*** *Specific provision for substitution following death or bankruptcy where interest/liability has passed; noted as an example of a "transfer of interest" case where no limitation issue typically arises.*
    5. ***Rule 17.1:*** *Permitted the claimants to amend their claim form without permission prior to service.*
    6. ***Rule 17.4(3):*** *Replicates the wording of the former RSC Order 20 rule 5 regarding the correction of a mistake as to the name of a party.*

Insolvency

1. ***Insolvency Act 1986***
    1. ***Section 212:*** *Provides a summary remedy for misfeasance by company officers; cited in the analysis of Parkinson to demonstrate that a liquidator bringing a claim under this section is asserting the same cause of action as the company, merely via a different procedure.*
    2. ***Section 20:*** *Provides for the release of an administrator from liability; cited in Parkinson as the substantive defence that rendered the original claim by the company unsustainable, necessitating substitution.*
    3. ***Section 238:*** *Concerns transactions at an undervalue; cited in the analysis of Irwin regarding claims brought by administrators.*

Historical Rules of Court

1. ***Rules of the Supreme Court (RSC)***
    1. ***Order 20 Rule 5:*** *The predecessor to CPR 19.6(3)(a) and 17.4(3); established the test in The Sardinia Sulcis distinguishing between mistakes of name and identity.*
    2. ***Order 15 Rule 7:*** *Dealt with the change of parties by reason of assignment or transmission of interest during proceedings; cited to distinguish cases of genuine transfer of liability (where s.35 does not apply) from the present appeals.*
    3. ***Order 15 Rule 6:*** *The predecessor to CPR 19.6 regarding the substitution of parties.*

Insurance Regulations

1. ***European Communities (Rights against Insurers) Regulations 2002***
    1. ***Regulation 3:*** *Allows for direct claims against insurers; cited in the analysis of Nemeti to illustrate that a claim based on this regulation is substantially different from a common law negligence claim against a driver.*

Legal Texts & Commentary:

Legislative History and Reform

1. ***Law Reform Committee's "Final Report on Limitation of Actions" (1977, Cmnd 6923)****, Cited to explain the legislative intent behind the Limitation Act 1980; specifically, that the Committee rejected the idea of legislating for specific cases due to the difficulty in devising necessary formulae, recommending instead a "general formula" (now found in s.35) with the power given to the Rule Committee to provide for specific cases. It was also noted that in Nemeti, the judge at first instance had relied on this report to suggest the second gateway was solely aimed at errors of constitution or formality, a view subsequently rejected by the Court of Appeal.*

Civil Procedure Commentary

1. ***The White Book (Civil Procedure Rules), Paragraph 19.6.6*** *Cited regarding the interpretation of Rule 19.6(3)(c) (substitution following death or bankruptcy); the commentary suggests that because s.35(6) of the 1980 Act does not mention such cases, this rule is merely a specific example of the "second gateway" (necessity). The Court disagreed with this view, holding instead that genuine transfer of interest cases do not trigger limitation issues under s.35 at all, and therefore do not rely on the gateways.*

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
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