Neutral Citation Number: [2026] EWHC 396 (Comm)

Case No: LM-2025-000189

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15/05/2026

Before :

HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

DR ALI ASGHAR	**Claimant / Appellant**
- and -	
DR SHOBHANA PATEL	**Defendant / Respondent**

- -
- -

James Knott (instructed by **Penningtons Manches Cooper LLP**) for the **Claimant**
George McPherson and Devon Airey (instructed by **Russell-Cooke LLP**) for the **Defendant**

Hearing date: 29 January 2026

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Approved Judgment

This judgment was handed down remotely at 10.45 on 15 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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His Honour Judge Bird :

Introduction

1. This is an appeal under section 69 of the Arbitration Act 1996 on a question of law arising out of an arbitral award made on 7 March 2025 ("the Award").

2. The question of law concerns the terms and construction of an agreement reached between the parties about the basis on which Dr Patel would retire from a partnership. The outcome of that issue depends to a large extent on whether the agreement was an oral or a written agreement.

3. If the agreement was oral, the Respondent contends that no error (or question) of law arises (because construction of oral contracts is said to be a matter of fact) and so the appeal must fail.

4. If the agreement was written:

    a. the Appellant contends that the tribunal plainly erred as a matter of law in its approach to construction (in particular by impermissibly taking account of the subjective intention of the parties and of subsequent events to cast light on what was intended).

    b. If there was such an error of law, the Respondent submits that it was not material (the tribunal came to the correct construction).

5. It follows that the form of the agreement (oral or written) is a central issue in this appeal. As explained below, the parties approached this question on the common basis that there had been an oral agreement but that it had been put into (reduced to) writing.

6. Permission to appeal was granted by His Honour Judge Pelling KC on 27 May 2025. As Mr McPherson explains in his skeleton argument (paragraphs 6.1 and 37) the grant was based on the factual premise that the agreement was in writing. Given the common position that the

agreement had been reduced to writing that is not surprising.

Permission; a preliminary point

7. A preliminary issue arises about the permission. Mr McPherson, who appears for Dr Patel, says that permission ought never to have been granted.

8. In ***CVLC3 and CVLC4 v AMPTC*** [2021] EWHC 551 (Comm), Cockrill J as she then was (agreeing with HHJ Waksman QC as he then was in ***Agile Holdings v Essar ("The Maria")*** [2018] EWHC 1055 (Comm)) said: "….*the permission stage is intended to be a qualifying hurdle which is not revisited and that, while it may not be impossible to revisit the various component parts of the permission decision, there will have to be highly unusual circumstances justifying this course*."

9. In ***Allseeds Switzerland SA v Intergrain SA*** [2025] EWHC 2788 (Comm), after reviewing the authorities, Butcher J summarised the position as follows:

> "*The judge hearing the appeal is not, strictly, bound by any of the decisions made as to satisfaction of the qualifying hurdles made by the judge dealing with permission to appeal.*
>
> *(2) With that said, and subject to (3) below, it will require highly unusual circumstances for the court to revisit, on the appeal, the component parts of the test for permission to appeal.*
>
> *(3) The issue of whether the determination of the question of law will substantially affect the rights of one or more of the parties (s. 69(3)(a)) is in a rather different position. As I understood to be common ground on this hearing, it is not uncommon for the court hearing the appeal (or the tribunal on a remission ordered by that court) to revisit the issue of whether the answer to the question(s) of law for which permission to appeal was given did substantially affect the rights of the parties*."

10. I accept (see ***Ocean Crown v Five Oceans Salvage Consultants*** [2010] 2 All ER (Comm) 931) that it is open to me to conclude that there is in fact (contrary to the decision granting permission) no error of law. In my view, that exercise is concerned with the determination of

the appeal itself and not with reconsideration of the reasons for which permission was granted.

11. Mr McPherson's argument (that there was no error of law because the agreement was not one wholly in writing) is one that should be dealt with by resolving the appeal rather than revisiting the permission decision.

The award

12. The parties to the award are 2 (of 4) former partners in a general medical practice. Dr Patel, who had retired from the practice in January 2012, and Dr Asghar, a continuing partner. The referral to arbitration (by Dr Patel) arises out of an arbitration agreement contained in the partnership agreement and the award deals with a dispute about what sums Dr Asghar would pay to Dr Patel following her retirement and on what basis. The evidence shows that Dr Patel started proceedings in the County Court in 2023 but that the proceedings were stayed on Dr Asghar's application and referred to arbitration. As an aside, I note on the particular facts of this dispute, that if the issue had been resolved by litigation it would almost certainly have been resolved more quickly and more cost effectively.

13. By way of background, it is necessary to set out the following:

    a. The partnership operated from premises owned by the partners at Chatham Street in Reading ("the Property").

    b. Dr Patel retired from the partnership on or about 2 January 2012. There was no agreement about the terms of her retirement. Dr Patel retained her share in the Property.

    c. In January 2018, the parties met to discuss terms. An agreement was reached.

    d. An agreement was reached that Dr Asghar would pay £60,000. Dr Asghar's position at the arbitration was that that sum was to be paid in return for Dr Patel transferring her share of the Property to him. Dr Patel's position was that the sum was to be paid even if no transfer took place.

e. Later in 2018 the mortgagee of the Property appointed receivers and the Property was sold to Dr Asghar's son for £675,000. The issue at arbitration was whether Dr Asghar was obliged to pay the £60,000 even though there could be no transfer of any share in the Property.

14. The appeal bundle contained statements of case directed by the Arbitrator. The parties agree I should consider them. It is helpful, before turning to the basis of the appeal, to consider the case advanced by each party. The relevant sections are these:

a. Dr Patel's "Statement of Claim" pleads:

i. particulars of the relevant agreement at paragraphs 29 to 33;

ii. at paragraph 30 that an oral agreement was reached at a meeting that took place on 31 January 2018;

iii. at paragraphs 30.1 to 30.3 the terms of the oral agreement which are then defined as "***the 2018 Agreement***".

iv. At paragraph 31 that "***The 2018 Agreement was subsequently reduced to writing***" in an email written by Dr Asghar on 7 February 2018.

b. In the Statement of Defence, Dr Asghar responds as follows:

i. At paragraph 24.2 it is admitted that the terms of ***the 2018 Agreement*** were orally agreed at the January 2018 meeting; and

ii. at paragraph 25, paragraph 31 of the Statement of Claim is admitted. The effect is that it is admitted that the oral agreement was reduced to writing. Dr Asghar goes on to plead that he will rely on the email of 7 February 2018 "***for its full terms and effect***".

<u>Indicators that the Arbitrator treated the agreement as an oral agreement</u>

15. At paragraph 44 of the award, under the heading "*what were the terms of the 2018 Agreement?*" the Arbitrator says this:

> "*There was no dispute between the Parties as to the relevant legal framework I should apply in ascertaining the terms of an oral agreement. It was common ground that this is a question of fact, having regard to the recollection of the parties and other witnesses: Lewison on The Interpretation of Contracts (8th ed.) at [4.13];* ***Barton v Gwyn-Jones*** *[2023] UKSC 3 at [12];* ***Maggs v Marsh*** *[2006] BLR 396 at [26]. Furthermore, where a contract is oral, evidence of things said and done after the contract is concluded is admissible to help decide what the parties actually agreed:* ***BVM Management Ltd v Yeomans*** *[2011] EWCA Civ 1254 at [23].*"

16. I note that here, the Arbitrator is dealing with the identification of the terms of the agreement, not the proper interpretation of those terms. He makes no reference to the email of 7 February 2018.

17. Paragraph 4.13 of Lewison (referred to by the Arbitrator) appears under the heading: "*The ascertainment of the terms of a contract which is partly written and partly oral or which is wholly oral is a question of fact*."

18. The Arbitrator identifies the agreement as an oral agreement at various other places in the award (see paragraph 2 and 45) and elsewhere he employs the defined phrase "the 2018 Agreement". At paragraph 2 that term is defined in this way: "*The dispute arises from the alleged existence of an oral agreement between the Claimant and the Respondent said by the Claimant to have been formed in or around 31 January 2018 and evidenced in writing in February 2018 (the "2018 Agreement")*."

19. It is clear, at this stage at least, that the Arbitrator proceeded on the basis that there had been an oral agreement (albeit one evidenced in writing). As the rest of the award shows, consistent with that approach, he took account of "*the recollection of the parties and other witnesses"* and *"evidence of things said and done after the contract is concluded*."

Indicators that the arbitrator treated the agreement as a written agreement

20. At paragraph 46 of the award, and in light of the pleaded position, the Arbitrator accurately recorded that:

> *"The Parties each accepted that the 2018 Agreement was reduced to writing on 7 February 2018…"*

21. Mr McPherson argued that the Arbitrator's finding of fact at paragraph 46 was intended by him to mean that the oral agreement had been evidenced in writing. At paragraph 68 of his skeleton, he says: "*In context, therefore, "reduced to writing" must be construed as "evidenced in" writing only*". I am unable to accept that.

22. The phrase "*reduced to writing*" is archaic, but its meaning is entirely clear. When applied to an oral agreement, it means the agreement made orally has subsequently been put in writing. The verb "to reduce" in this context means to convert something to another form. Here the oral agreement was converted to a written agreement. There is no room for any other meaning in the pleadings or in the award.

23. There is no suggestion in the award that only part of the oral agreement (the 2018 Agreement) was reduced to writing. As Mr Knott submitted, the Arbitrator did not investigate that issue because it was admitted. That being the case, oral evidence as to the terms ("to qualify the written contract" as Mr McPherson puts it at paragraph 51 of his skeleton argument) is not admissible.

24. The email of 7 February 2018, which was addressed to Dr Patel, set out the following:

> *"The solicitor details are*
> *Hadgkiss Hughes and Beale*
> *83-85 Alcester Road*
> *Birmingham*
> *B13 8Eb*
>
> *The details of the agreement are*
> *You will be paid 60,000 pounds for your share of the surgery building*
> *You will not be required to pay any money for settlement of the outstanding mortgage*
> *You have no claims against us partnership at chatham street*

There is no rents payable to you historically or in the future whilst the agreement is completed.
I hope this is satisfactory. If anything is not agreeable please let me know."

What does the Arbitrator conclude?

25. Mr McPherson suggested (in an echo of the submission recorded at paragraph 21 above) that I should proceed on the basis that the agreement was an oral agreement. He suggested that this interpretation was consistent with the Arbitrator's legal analysis.

26. I do not accept that argument for two reasons. First, it would require me to ignore both paragraph 46 of the award and the common position adopted by the parties as set out in the pleadings. Secondly, the argument that the proposition is supported by the Arbitrator's legal analysis assumes that the Arbitrator adopted the correct analysis. As that is the question for the appeal, it is plainly not a sound basis on which to proceed.

27. In my judgment, given the common position adopted by the parties on the pleadings and the very clear recording at paragraph 46 of the award, I must proceed on the basis that the agreement was originally an oral agreement and that it was subsequently reduced to (that is put into) writing.

Agreement in writing

28. It might be thought, given the common position that the agreement was "*reduced to writing*", that the Arbitrator's task would be the relatively straightforward one of construing the words of the written agreement by applying the well-known principles set out in ***Wood v Capita*** [2017] AC 1173, with particular reference (given the informality of the circumstances) to the factual matrix at the time the agreement was reached. It was common ground before me that in interpreting a written contract, events subsequent to the formation of the contract are inadmissible because they are irrelevant to the objective meaning of the words used at the time they were chosen by the parties to capture the bargain they had struck.

29. The Arbitrator approached his task as follows (in chronological order running through the award) after setting out the respective cases of the parties:

a. First, he dealt with the witness evidence in order to ascertain what was agreed orally in January 2018.

b. He then dealt with the Claimant's "primary claim" and set out the written agreement (the email). At paragraph 47 he referred to emails written on 22 February 2018 and 3 April 2018, after the agreement had been reduced to writing.

c. At paragraph 50 he expressed his conclusion that "*it was not a term of the 2018 Agreement that [Dr Asghar's] obligation to transfer £60,000 to the claimant was conditional upon the claimant first transferring her interest in [the Property]*". In reaching that view he placed specific reliance on:

i. The content of the 22 February 2018 email;

ii. The 3 April 2018 email; and

iii. The subsequent conduct of Dr Asghar.

30. None of these factors is a valid consideration to take into account when interpreting a written agreement.

Error of law

31. The Arbitrator's approach to the interpretation of the contract was in my judgment, as a matter of law, wrong.

Was the error material?

32. Mr McPherson invites me (see paragraph 80 of his skeleton argument) to examine if the tribunal was right in any event to conclude that the payment obligation and the transfer obligation are independent. He submits that the Arbitrator's conclusion was correct and, in any event, the obligation to pay the £60,000 can be enforced because:

a. on the true construction of the written agreement the obligation to pay £60,000 ("the payment obligation") and the obligation to transfer Dr Patel's share in the Property

("the transfer obligation") were independent (or not connected) as a matter of construction.

b. Even if the obligations were dependent:

i. Dr Patel is entitled to enforce the payment obligation because she was ready and willing to transfer her interest in the Property, but Dr Asghar was not ready and willing to pay ("**the ready and willing argument**").

ii. Dr Patel surrendered her claims against the partnership and her right to any rent from the Property when she reached the agreement. It follows that Dr Asghar had already received "a substantial portion of the consideration … for the payment of the £60,000" ("**the not wholly executory argument**").

33. Mr Knott submits these points are not open to Dr Patel because they were not matters dealt with in the award (and are not matters of pure law) and have not been raised in a Respondent's Notice (see ***Cottonex Anstalt v Patriot Spinning Mills*** [2014] EWHC 236 (Comm) at paragraphs 41 and 42, referred to by Picken J in ***Mitsui v Asia-Potash International Investment*** [2023] EWHC 1119 (Comm) at paragraph 84).

34. Mr McPherson accepts the enforcement points were not before the tribunal and are not points of pure law. He suggests they should be remitted (because they "*engage factual questions*") or alternatively decided on the basis of the "*admitted pleaded position*" (see his skeleton at paragraphs 96, 98 and 100.2).

35. I am satisfied that Dr Patel is not entitled to raise the enforcement points (first raised by her in Mr McPherson's skeleton argument for this substantive appeal and not at the permission to appeal stage). To the extent that permission was sought to raise them I refuse it, not least because they are not pure points of law.

36. Mr McPherson submits that "*the admitted pleaded position*" is sufficient to resolve the relevant factual questions. I disagree. The pleaded position is as follows: Dr Patel pleads that in a letter dated 19 June 2018 her solicitors confirmed she was "*happy to execute the transfer*" and asked for confirmation she would be released from the mortgage. In response Dr Asghar admits that those words were used but makes it plain that he will "*refer to [the letter] in full, rather than the quotations reproduced by [Dr Patel].*" It is plainly not admitted that Dr Patel

was happy to execute the transfer.

37. Had the arbitrator applied the correct legal test he would have construed the words "*You will be paid £60,000 for your share of the surgery building*" as creating dependent or concurrent obligations which reflected a plain situation of exchange. The word "*for*" could have no other meaning. In consequence, because Dr Patel could not transfer her share in the Property, no obligation to pay the sum arose.

38. Mr McPherson also argued that oral evidence was admissible in order to understand the terms of the contract because the parol evidence rule (an exclusionary rule) did not apply to contracts that were only partly committed to writing. As I have explained, the Arbitrator's finding (and the common position of the parties) was that "*the (oral) agreement*" was reduced to writing. In my view that is an unambiguous reference to the totality of the agreement.

Conclusion

39. In my judgment the appeal must succeed. I reach that view essentially for the reasons advanced by the Appellant. In summary:

    a. The Arbitrator found the agreement was a written agreement.

    b. He erred in law by taking account of the subjective intentions of the parties and events subsequent to the conclusion of the contract as aids to construction.

    c. The argument that the Arbitrator did not intend to find that the agreement was in writing is in my view hopeless. I am bound by his factual findings and any attempt to go behind them is in my judgment doomed.

40. In my judgment the correct outcome of the interpretation exercise is plain. The meaning of the words chosen by the parties to record their agreement "*You will be paid £60,000 for your share of the surgery building*" is plain. The relevant share was an asset held by Dr Patel as a partner. As a result of her retirement (given there was no formal dissolution) three issues needed to be dealt with: what would happen to Dr Patel's share in the Property; what sums were due to Dr Patel from the partnership; and what sums were due to the partnership from Dr Patel? The bargain reached by the parties was that these things would be dealt with in a

simple transaction: Dr Patel would transfer her share in the Property and in return she would receive £60,000 representing the balance due to her when an informal account of the respective liabilities and credits was taken.

41. In those circumstances I am satisfied it is appropriate to set aside the award. The power to do so only arises under section 69(7) of the 1996 Act if I am satisfied that it would be inappropriate to remit matters to the tribunal. I am so satisfied. Remitting the matter would lead to more expense (in a case where the costs are multiples of the sums at stake) and delay. The outcome of the construction exercise is in my judgment clear.

42. I am grateful to counsel for their assistance.

Postscript

43. After circulation of the draft judgment on or about 24 February 2026. Mr McPherson on behalf of the Defendant submitted long written submissions seeking certain corrections, further explanations and (in my view when properly understood) seeking to raise new points or to re-argue the appeal.

44. Unusually I invited a response to those points from the Claimant. I received a full response drafted by Mr Knott. I have taken into account the points set out in the further written submissions from each party.

45. I have accepted some helpful typographical changes to the judgment. Beyond those run-of-the-mill changes, I can see no need to make any corrections to the judgment. I do not accept there has been a failure to give reasons for my conclusions. A fair summary of my approach is set out at paragraph 39 above (and appeared in the draft circulated).

46. Any attempt to re-argue the appeal or to raise new points is impermissible.