Neutral Citation Number: [2026] EWCA Civ 408

Case No: CA-2025-001166-A

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch)
Charles Morrison (sitting as a Deputy Judge of the High Court)
[2025] EWHC 141 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/04/2026

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE JEREMY BAKER
and
LORD JUSTICE MILES

- -

Between :

Sukhwinder Singh	**Appellant**
- and -	
(1) Makhan Singh Bains	**Respondent**
-and-	
(2) GB Retail Limited	

- -
- -

Christopher Mann (instructed by **Shuttari Paul & Co**) for the **Appellant**
Tom Beasley and James Fagan (instructed by **MD Law**) for the **Respondent**

Hearing date : 17 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 1 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Miles :

1. In these proceedings the appellant (who was the claimant in the court below) sought specific performance of an alleged oral agreement with the respondent (the first defendant) for each to have an equal shareholding in GB Retail Limited (GBRL) (the second defendant). The judge found as a fact that there was no such agreement. The appellant now appeals that finding.

Background facts

2. The appellant and the respondent were both born in India, in 1971 and 1963 respectively. They each moved to the UK and met for the first time in about 2006. At that time the appellant did not have a settled immigration status in the UK.

3. In August 2008 a company called Goldbeach Trading Limited (Goldbeach) was incorporated under the Companies Act 2006. In January 2009 the initial director, a formation agent, was replaced by one Parwinder Singh. In June 2010 the respondent was appointed as a director of Goldbeach and Parwinder Singh resigned. At some point in 2010 Parwinder Singh also transferred the sole issued share in Goldbeach to the respondent. Goldbeach was a drinks wholesaler. It was common ground at the trial that the appellant had some involvement with the business from about 2010 onwards, but its nature and extent were disputed.

4. GBRL was incorporated on 26 November 2014 under the 2006 Act. It was a retail business. On incorporation the respondent was appointed as the sole director and he subscribed for the one issued ordinary share. As explained below, the appellant's case was that, at some stage, the respondent had agreed that he should have 50% of the shares in this company.

5. On 14 January 2015 a company called BM Consortium Limited (BMC) was incorporated. The shareholders were GBRL as to 67 shares and Baljit Singh as to 33 shares. It was common ground that Baljit Singh was a friend of the appellant and that the appellant had introduced him to the respondent. BMC was created to carry on the business of a Costcutter shop in Kidderminster.

6. On 20 May 2015 the appellant was granted leave to remain in the UK by the Home Office.

7. On 4 June 2015 another company, called Our Perfect Food Limited (OPF), was incorporated to operate a fish and chip shop, in the unit adjacent to the Costcutter shop in Kidderminster. The shareholders were again Baljit Singh as to 33 shares and GBRL as to 67 shares.

8. The appellant's case at the trial was that in about July or August 2015 the appellant and the respondent had a meeting with an accountant, Dr Sachdev, in which there was a discussion about GBRL and the other businesses. Dr Sachdev had known, and acted as accountant for, the respondent for many years previously. The appellant contended that at the meeting in July/August 2015 the appellant and the respondent told Dr Sachdev to do whatever was needed to record their status as equal shareholders in GBRL.

9. The respondent admitted in his Defence that there was a meeting at about that date but disagreed about what was said. He said that he told Dr Sachdev that the appellant would receive an equal share of the profits of GBRL but that there was no discussion of him becoming a shareholder. At the trial the respondent denied that such a meeting had even taken place and accepted that his Defence was wrong in this regard. It was common ground at the trial that after 2015 Dr Sachdev subsequently assisted the parties with aspects of the administration and tax affairs of the relevant companies, and their own personal tax affairs.

10. Dr Sachdev's office submitted an annual return to Companies House for GBRL which stated that as at 26 November 2015 the respondent and the appellant were the joint holders of the single issued share in GBRL.

11. On 14 September 2016 a confirmation statement for Goldbeach was filed by Dr Sachdev's office at Companies House which recorded the respondent and the appellant as each holding one share.

12. On 16 December 2016 a confirmation statement for GBRL was filed by Dr Sachdev's office at Companies House which recorded that the respondent was the person with significant control.

13. On 1 June 2017 the appellant and the respondent acquired a freehold commercial property known as 2292 Coventry Road, Sheldon (No. 2292) in joint names for a stated purchase price of £290,000. This was later leased to GBRL for the purposes of running a SPAR shop.

14. On 19 July 2017 BM Perfect Food Limited (BMPF) was incorporated to take over the fish and chip shop business in Kidderminster from OPF. The shares were held in the same proportions as they had been in BMC and OPF, i.e. 67 by GBRL and 33 by Baljit Singh.

15. On 20 November 2017, according to a confirmation statement filed at Companies House, the appellant transferred his share in Goldbeach to the respondent.

16. On 4 October 2018 a company called Brand Connection Limited (BCL) was incorporated. The appellant was appointed as the sole director.

17. Goldbeach went into creditors' voluntary liquidation in January 2020.

18. On 23 March 2020 Dr Sachdev wrote to the Home Office stating that the appellant was a shareholder in GBRL. The letter stated that the appellant had received dividends of £28,900 in the 2018/19 year.

19. The relationship between the parties deteriorated in late 2020 or early 2021 and there followed some discussions about the separation of their business interests. In January 2021 the appellant and the respondent's wife exchanged emails which referred to a possible division of assets belonging to the companies.

20. On 5 February 2021 the solicitors then acting for GBRL wrote to the appellant seeking explanations of certain payments made by GBRL to the appellant personally, to BCL and to the appellant's wife, Pawanjeet Kaur. The letter described the respondent as the sole director of GBRL and said that the appellant had been assisting in the management

of the business as a trusted friend. The letter referred to the appellant as the sole shareholder and director of BCL.

21. The appellant's solicitors responded in a pre-action protocol letter dated 12 February 2021, setting out the appellant's case that he was an equal shareholder in GBRL. The letter stated that in November 2014, when GBRL was incorporated, the appellant had been assisting and advising the respondent in his business and had introduced new business leads to him. It alleged that as a result of the appellant's show of commitment, the respondent decided to make the appellant his partner and offered him a 50% interest in GBRL. It said that on about 26 November 2015 the appellant acquired the 50% shareholding at a meeting with Dr Sachdev, and that the shareholding was then recorded at Companies House.

22. The letter also stated that the parties had agreed that BCL would be set up as the appellant's own personal business, but that it would provide stock to GBRL and GBRL would advance cash sums to BCL as and when required to help establish the business. The letter said that the respondent had always known that BCL was owned by the appellant.

23. The letter referred to the relationship between the parties regarding GBRL as a partnership and sought amicable terms for the division of the assets. It said that in the absence of agreement the appellant would apply to the court for a dissolution of the partnership and a winding up on a just and equitable basis.

24. There was no compromise of the dispute and on 31 March 2021 the appellant issued an unfair prejudice petition under section 994 of the 2006 Act in respect of the respondent's conduct of the affairs of GBRL.

25. On 5 April 2021 the respondent's solicitors wrote to the appellant's solicitors challenging the appellant's contention that he was a shareholder in GBRL.

26. On 21 April 2021 Dr Sachdev said in an email to the appellant that he had 50% of the shares in GBRL and that the reason why the respondent was shown in Companies House filings as the person with significant control was that the respondent was the sole director as well as 50% shareholder.

27. The respondent served points of defence to the unfair prejudice petition in May 2021.

28. On 27 May 2021 Dr Sachdev gave a witness statement (his first) in support of the appellant's unfair prejudice petition. It stated that he had known the respondent for over 25 years, that the respondent had introduced him to the appellant as his business partner in 2015, and that since then the parties had been dealing with his practice as clients, with joint shareholdings in Goldbeach and GBRL. As to GBRL, the statement stated that the respondent had introduced the appellant to him as a 50% shareholder from 26 November 2015; and, as to Goldbeach, the respondent had introduced the appellant as an equal shareholder from 12 August 2016. Dr Sachdev explained that the parties had agreed to refer to the respondent as the "person with significant control" because he was the sole director, but that the parties each had 50% of the shares in the companies. The witness statement stated that in early January 2021 the respondent told him that the parties had decided to dissolve the partnership in GBRL and asked to have a meeting to agree the terms of dissolution. It stated that there was a meeting on 8 January 2021

in which, after a few hours of meetings and discussions, a mutual agreement was drafted, which was then emailed to both parties for their signatures. There were then further emails in which the respondent contended that the appellant was getting a greater share and that the deal should be changed. But the agreement was never finalised.

29. In light of the dispute about his standing as a member of GBRL, the appellant then decided to seek an order staying the section 994 petition pending the determination, in separate proceedings, of the appellant's status as a shareholder.

30. The current proceedings, seeking an order for specific performance of the alleged oral agreement between the parties, were issued on 20 January 2022.

31. In the attached particulars of claim (the PoC) the appellant contended that by 2010, when the respondent acquired the shares in Goldbeach, the parties were on very good terms and the respondent regularly consulted the appellant for advice; and that the appellant assisted the respondent to develop Goldbeach as a viable business. The PoC then alleged:

> "11. In or about mid 2014:
>
> 11.1 the First Defendant suggested to the Claimant that the two of them run Goldbeach as an equal partnership;
>
> 11.2. the Claimant suggested that he and the First Defendant should start a new company focusing on retail sales.
>
> 12. In the course of discussions between the Claimant and the First Defendant which took place over the next few months it was agreed between them ("the Oral Agreement") that:
>
> 12.1 the Claimant would become an equal shareholder in Goldbeach;
>
> 12.2 the proposed new business would be carried on through the vehicle of a limited liability company to be incorporated for that purpose under the name GB Retail Ltd ("GB" being derived from Goldbeach) in which the Claimant and the First Defendant would ultimately have equal shareholdings in the same way that he was going to become an equal shareholder in Goldbeach;
>
> 12.3 the day-to-day running of both Goldbeach and GB Retail Ltd would become the responsibility of the Claimant as the Defendant wanted to devote more of his time to pursuing leisure activities;
>
> 12.4 in consideration for the Claimant's shareholding in GB Retail Ltd, the Claimant would:

> 12.4.1 prior to the incorporation of GB Retail Ltd, undertake all necessary preparatory work including the preparation of the retail business plan; conducting market research; investigating the target market; devising branding concepts and design; finding shop premises and sourcing the necessary equipment to fit out such premises;
>
> 12.4.2 upon the incorporation of GB Retail Ltd, operate its business on a day to day basis as aforesaid.
>
> 12.5 pending the obtaining by the Claimant of leave to remain in the United Kingdom the First Defendant would be the sole shareholder in GB Retail Limited once incorporated and its sole director;
>
> 12.6 upon obtaining leave to remain in the United Kingdom the Claimant would be engaged by GB Retail Ltd as an employee and he and the First Defendant would become equal shareholders in GB Retail Limited."

32. The PoC stated that this oral agreement was carried out between the parties. Among other allegations it was stated that in July or August 2015 the appellant and the respondent attended the premises of Dr Sachdev to discuss the business of GBRL and, at that meeting, the respondent informed Dr Sachdev that the appellant was to be recognised as a 50% shareholder in the company, and instructed Dr Sachdev to take the necessary steps to bring this about.

33. The PoC then alleged that the appellant assumed that all of the necessary formalities had been carried out and that he was a 50% shareholder. It alleged that GBRL was conducted as a quasi-partnership and that the appellant received dividends from the company in 2019 and 2020.

34. In paragraph 20 the PoC alleged that the oral agreement was consistent with the approach of the parties to other assets, including their joint acquisition of No. 2292 in June 2017 and the allotment of a single share in Goldbeach to the appellant in the last quarter of 2015.

35. The PoC also alleged that the parties had agreed in about November 2020 to sever their relationship and that they then had discussions including for the *in specie* distribution between them of the assets of GBRL. It stated that these discussions occurred on several occasions, including at a meeting on or about 11 January 2021 at Dr Sachdev's offices. It alleged that all such discussions proceeded on the basis that the appellant and the respondent were equal shareholders or partners in GBRL. It also referred to the January 2021 emails between the appellant and the respondent's wife and alleged that their contents were concerned with the assets and liabilities of the company and were only referable to the appellant being a shareholder in the company.

36. The PoC then alleged that inquiries had been made of Dr Sachdev by GBRL's solicitors which had revealed that he was not responsible for maintaining the company's register of members and the PoC went on to state that it was to be inferred that no such register had been maintained by or on behalf of the company. The PoC sought specific performance of the alleged oral agreement by the allotment of a share in GBRL to the appellant, or the transfer of the existing single share in the company into the joint names of the appellant and the respondent.

37. In his Defence dated 18 January 2022 the respondent denied that there was any such oral agreement. The Defence stated that the respondent was a native Punjabi speaker with very limited English and was illiterate. As to the business of Goldbeach, before 2014 the appellant was engaged to provide services for Goldbeach and was paid in return. The respondent accepted that the parties had a conversation in 2014 about the future of the business. The respondent alleged that he suggested that the appellant, as an employee, would receive 50% of the net profits of Goldbeach's business. The respondent never suggested or discussed the appellant becoming a shareholder in or owner of Goldbeach. The respondent also informed the appellant in that conversation that he was forming a new retail company, which became GBRL. There was again no suggestion or discussion of the notion that the appellant would become a shareholder of GBRL; he was to be an employee. The respondent did not state that he wanted to spend less time in the business in the future; he was intending to carry on working full time. The respondent was involved in the preparatory work for GBRL and the parties had agreed that they would both be involved in the business, the appellant as an employee, and not as a shareholder.

38. The Defence admitted that there was a meeting between the appellant and the respondent at Dr Sachdev's offices in 2015. The respondent alleged that at the meeting the respondent informed Dr Sachdev that, as an employee, the appellant would thereafter receive an equal share of the profits. There was never any agreement that the appellant would receive shares.

39. In the Defence the respondent addressed the incorporation of BMC by explaining that he had known the previous owner of the Kidderminster shop business, who had wanted to sell it, and that, at about the same time, Baljit Singh, a friend of the appellant, was looking for a job. The parties and Baljit Singh agreed that GBRL would invest in BMC and that Baljit Singh would run the business and receive a shareholding in return. The same arrangement was used by the three of them for the purchase of the fish and chip shop in Kidderminster in 2017.

40. The Defence admitted that the appellant was paid a salary by GBRL. The respondent alleged that the appellant was entitled to payment of 50% of the profits of the company as a part of his agreed remuneration. The respondent did not know that any payments made to the appellant in respect of the net profits were recorded as dividends. Any such allocation was made by Dr Sachdev on the instructions of the appellant. The Defence alleged that GBRL's filings at Companies House were prepared by Dr Sachdev as directed by the appellant, and alleged that the appellant had been dishonest in instructing Dr Sachdev that the share was jointly owned and to include that in the annual return.

41. As to the purchase of No. 2292, the Defence admitted that the property had been jointly acquired by the appellant and the respondent, but contended that the appellant had not contributed to the purchase monies whereas the respondent had.

42. The Defence denied that a share in Goldbeach was ever validly allotted to the appellant: the respondent as a director had not agreed to this and there was no approval of any allotment by the shareholders. The appellant had instructed Dr Sachdev to include it in the Companies House filing, but the share was not registered in the appellant's name.

43. The Defence admitted that there were various discussions between the parties in late 2020 and early 2021 but denied that the meetings were with a view to agreeing a division of GBRL's assets. The respondent accepted that he had visited Dr Sachdev's office on 11 January 2021 but denied that this was a planned meeting. He had stayed at the office because Dr Sachdev had said that the appellant was coming to the offices. There were then some discussions between the three of them. The respondent denied that any agreement was reached at the meeting, which lasted no more than an hour. The document sent afterwards, which purported to record an agreement reached at the meeting, was not accurate as there was no such agreement.

44. As to the January 2021 emails passing between the respondent's wife, Balbiro Bains, and the appellant, the respondent alleged that his wife had not discussed the matters in them with him and she was not authorised to negotiate or agree matters on his behalf.

45. Returning to the procedural history, on 1 March 2022 Deputy ICC Judge Frith ordered a stay of the section 994 petition pending the determination of these proceedings.

46. On 17 May 2022 Dr Sachdev signed a draft witness statement (his second), this time for intended deployment by the respondent. This was not ultimately relied on by the respondent, but was used in the course of the cross-examination of Dr Sachdev at the trial.

47. On 27 June 2022 the appellant served a Reply.

The trial and the witnesses

48. The trial took place over nine days in November 2024. A reserved judgment ([2025] EWHC 141 (Ch)) was given on 27 January 2025.

49. There were eight witnesses. The appellant gave evidence. He also called Ms Pawanjeet Kaur (his wife), Baljit Singh, Mr Jagjeet Singh Kaur and Dr Sachdev. The respondent gave evidence, through an interpreter. He also called Ms Parveen Paul and Mr Parminder Singh. The oral evidence occupied seven of the nine days of the trial.

The judgment

50. Given the nature of the grounds of appeal, I need to describe the judgment in some detail.

51. The judge started by explaining that the principal issue was whether the appellant had established an oral agreement under which he would obtain 50% of the shares in GBRL. The judge set out the appellant's case as pleaded in paragraphs 11 and 12 of the PoC (see paragraph 31 above).

52. The judge addressed two questions of law. The first was whether the court could consider subsequent events in deciding whether there was a contract and its terms. He decided on the basis of well-known authorities that he could, since the case advanced was that the relevant contract was oral. The second was whether the email communications between the parties in early 2021 (including those between the respondent's wife and the appellant) were without prejudice and therefore inadmissible. The judge decided that the communications did not have the purpose of resolving a dispute and were therefore admissible.

53. The judge then took the witnesses in turn and recorded his assessment of their evidence. This took up much of the judgment. He started with Dr Sachdev. As already recorded Dr Sachdev had signed three witness statements. These said very different things. The judge recorded in paragraph 31 that Dr Sachdev was in the unhappy position of having to reconcile a number of differing versions of events suggested to him by different parties at different times. The judge concluded that Dr Sachdev was capable of giving a version of events he wanted to give at the time of asking as distinct from an accurate representation of what had actually happened.

54. The judge went through the various versions of events Dr Sachdev had given. The first was in his statement of May 2021 which had supported the appellant's case, i.e., that the respondent had introduced the appellant in 2015 as his business partner and as a 50% shareholder in GBRL.

55. The judge then referred to the cross-examination of Dr Sachdev. Dr Sachdev gave evidence that at a meeting at his offices the parties had used the Punjabi word "sanja" to describe how the businesses would be run. This meant 50/50. He said that profit or capital was never discussed and that it could have been a reference to either. He said in evidence that he was told that his firm was to take instructions from the appellant.

56. The judge then referred to Dr Sachdev's draft witness statement (his second) dated 17 February 2022. Paragraph 15 of the statement referred to a meeting that had happened in or around 2011, in which the respondent had explained in Punjabi that the appellant was going to be involved in the business and that their relationship was "sanjaay" - a term meaning "together and equal". Dr Sachdev accepted that the phrase could have had a number of meanings, including an equal share of the profits - and that he had understood it that way.

57. The judge then referred to some further cross-examination in which Dr Sachdev said that the instruction to change the shareholding in GBRL was given after the appellant had obtained leave to remain in the UK but that the parties had always traded 50/50 or jointly, and that the way things were recorded at Companies House did not matter.

58. The judge then referred to the third witness statement which Dr Sachdev had signed for use by the appellant in the present proceedings. Dr Sachdev said in there that the respondent had introduced the appellant to him in about 2010 and that the respondent had said they were going to work together, that they were business partners and that everything would be joint. He also said that the respondent told him to act on the appellant's instructions. He accepted that he could no longer recall who had given him the instructions for the filings showing that the share was jointly owned by them both.

59. The judge recorded that on 21 June 2021 Parminder Singh, acting for the respondent, sent an email to Dr Sachdev, purporting to set out his position on a number of factual propositions, and with which he was being asked to agree. These included:

    i) "Clause 1: Instructions for formation of GBRL were given over the phone and no such instruction about [the appellant] being a shareholder was provided. My understanding was that everything they were doing is 50:50."

    ii) "Clause 6: I did not receive any instructions from [the respondent] towards changing share holding of [GBRL] to include [the appellant] as a shareholder. Instructions to put him as a shareholder came from [the appellant] but I can't comment on what happened in their personal understanding."

60. In an email sent the same day, Dr Sachdev stated that he agreed with these points.

61. Dr Sachdev in his evidence said that withdrawals from the earnings of GBRL by the appellant or the respondent would be shown as withdrawals of director's loans or dividend payments on which tax would be paid. Money would be taken out during the year and then at the end of the year, an accounting treatment would be given for it. This applied to expenses, dividends, salary or loan repayments. He said that "money would be taken out during the year and then at the end it would be treated as dividend or otherwise".

62. Dr Sachdev explained that when the relationship ended he had tried to help the parties reach an agreement and part ways amicably. He said that a meeting had taken place at his office in January 2021 and the division of assets was discussed. He said that he had taken notes from which he had prepared a draft settlement agreement which he had sent to the appellant and the respondent to agree to take to solicitors, but the parties then never agreed. The respondent disagreed with everything that had been proposed.

63. Dr Sachdev stated that BCL was the appellant's company. He said that the draft settlement agreement, which had covered the joint assets of the appellant and the respondent, had not addressed BCL's assets because it had been the appellant's company.

64. In re-examination Dr Sachdev again referred to the meeting of 8 January 2021 and confirmed what he had said in his witness statement for these proceedings, namely, that the parties both confirmed that they had decided to end the partnership and that he had decided that the best way to divide them was to make a list of all the assets and then divide them equally.

65. The judge contrasted this version of events with his draft statement of February 2022 (his second) where Dr Sachdev had explained that at the meeting of January 2021 the appellant had spoken in English and explained the terms he wanted, which Dr Sachdev had written down. The respondent did not participate or respond. When Dr Sachdev explained things to the respondent in Punjabi he stormed out. Dr Sachdev then typed up his notes of what the appellant had said and circulated them.

66. The judge then recorded that in oral evidence Dr Sachdev had said that it was likely that the discussions at the January 2021 were conducted in Punjabi, but that the discussion about the division never came to a conclusion.

67. As to the share in GBRL, Dr Sachdev accepted in his oral evidence that the respondent would not have known about the filings showing the share being jointly held. Nor would the respondent have known about the Companies House filings showing him as the person with significant control of the company.

68. The judge referred at paragraph 50 of the judgment to a letter dated 11 May 2021 that was written by Dr Sachdev's assistant, Lindsay Mott, on his instructions, addressed to the respondent. This referred to the appellant's instructions to split the share in GBRL 50:50 and record with Companies House that the respondent was the person with significant control owing to his position as the director of the company.

69. I pause here to interpolate that the judge did not refer to another version of the letter which included these words: "Following you advise that GB Retail Ltd was jointly owned by you with [the appellant] on an equally split basis". The judge did not refer to an email from Parminder Singh (acting for the respondent) which had suggested to Ms Mott that this paragraph should be removed. The appellant's complaint about this episode is addressed below.

70. The judge then referred to a letter that the respondent's representative, Mr Parminder Singh, had sent to Dr Sachdev containing a list of questions and answers following a meeting on 31 March 2021. The answers included (a) that no meeting was held on 26 November 2015 and that there were no minutes of a meeting on that date concerning a possible shareholding split; and (b) that the share-split that then occurred was done on the verbal instructions of the appellant, who had been authorised by the respondent to give instructions to his firm.

71. After this extensive review of Dr Sachdev's evidence, the judge concluded, at paragraph 53:

> "At all events, it was just not clear to me just what Dr Sachdev's explanation was for the numerous versions of events appearing from the contemporaneous documents, his various statements and his evidence before me."

72. The judge then turned to the evidence of Baljit Singh. He said that he had reached the impression that Baljit Singh had the objective, consistent with his friendship with the appellant, of being as helpful to him as he could.

73. Baljit Singh gave evidence that in 2014 he had told the appellant that he wanted to start a business and that they had started looking for shops. Mr Singh identified a shop in Kidderminster. A lease was taken in the names of Mr Singh and the respondent because the appellant did not at that stage have leave to remain in the UK. Mr Singh said in his evidence that he believed that the appellant and the respondent were business partners.

74. The judge recorded that in his statement Mr Singh referred to the formation of BMC. He said that the appellant and the respondent both told him that he would have 33% and that they would each have 33%, through their company GBRL. Mr Singh said that the appellant and the respondent had said that they had an equal 50:50 share in GBRL.

75. Baljit Singh also gave evidence about discussions in 2020 when the respondent said that he was getting older and did not want to carry on with the shops and that the three would divide up the assets.

76. The judge then turned to the evidence of Jagjeet Kaur. He explained that he had worked at BCL. He gave evidence that he had formed the impression that the appellant and the respondent were partners, working together. He also said that the respondent had worked in aspects of the business of BCL.

77. The judge next turned to Pawanjeet Kaur. She accepted that she had not heard any of the discussions between the appellant and the respondent about the business. The judge recorded that her recollection was uncertain.

78. The judge then analysed the evidence of the appellant. This is a long section of the judgment, running from paragraphs 70 to 107.

79. In paragraph 70 the judge recorded that he found the appellant's evidence by turns difficult to follow and contradictory. He was also troubled by the extent to which, by the appellant's own admission, his evidence had repeatedly changed. The judge said that he was left with the very clear impression that the appellant would offer evidence that, in his mind at least, supported the objective that he was at that moment pursuing. He said, "[t]he consequence of my assessment of [the appellant] and his evidence is that I am able to put very little store indeed by much of what he told the court."

80. The judge then turned to the appellant's pre-action protocol letter of 12 February 2021. As already noted, in that letter the appellant contended that the relevant agreement was reached in late 2014, at about the time GBRL was incorporated.

81. The judge noted the difference between that account of events and the version now being advanced by the appellant at trial. The appellant tried to address this divergence by explaining that he had been forced to advance that case because in 2015 he was still seeking to obtain indefinite leave to remain in the UK. The judge concluded that this explanation for the change in the appellant's case made little sense. The letter of 12 February 2021 asserted that the appellant had already been working for the respondent well before the grant of indefinite leave to remain. When confronted about this problem, the appellant said that before he obtained leave to remain, he had only been carrying out odd jobs. But that was not what the letter of 12 February 2021 had said: it said that by 2014 the appellant had shown a level of commitment that justified a 50% share in the business. The appellant ultimately contended that his witness statement for the trial was to be taken as his final and definitive statement. The judge stated that he was distinctly uncomfortable about the quality of the appellant's evidence.

82. The judge then noted that in the PoC the appellant's case was that in 2014 the respondent had suggested to the appellant that they should operate Goldbeach as a partnership and that the appellant suggested that they should start a new company focusing on retail sales. The judge noted that a similar factual account was given in the appellant's witness statement supporting the unfair prejudice petition.

83. The judge then noted that yet a further account was now given in the appellant's witness statement in these proceedings. In this version of events the appellant said that he had suggested to the respondent in 2010 that the respondent should take over Goldbeach,

which was trading in alcoholic drinks and that he, the appellant, knew the existing owner. The appellant said that the respondent said that they should go into the business together on a 50/50 basis. He said that they agreed that the respondent would hold Goldbeach in his own name but that they would be 50/50 partners. The appellant therefore spoke to Goldbeach's owner, and they acquired it without paying much. Those events were said to have occurred in June 2010. The appellant went on to say that the respondent had introduced him to Dr Sachdev and Ms Mott soon after the acquisition of Goldbeach in 2010 and told them that the appellant was now the respondent's partner in the business.

84. The judge then noted that in paragraph 16 of his trial witness statement the appellant said that in 2014 he had told the respondent that they should set up a retail business, which could be supported by Goldbeach as a wholesaler. He said that he had named the company GBRL, by taking the letters G and B from Goldbeach and adding R for retail. The parties understood that this new company was to be owned 50:50, as a partnership.

85. The appellant also said in his trial witness statement that the same understanding had applied to the other businesses they later set up, including BCL.

86. A passage in the appellant's witness statement quoted by the judge in paragraph 80 of the judgment stated: "I paid £39,000 from my personal account into the account of GBRL in November 2015 as my share of the capital investment in the company. GBRL was duly incorporated on 26 November 2014".

87. The judge recorded the clear contrast between the version of events set out in the appellant's witness statement for the trial and that set out in the letter before claim. He also noted that the appellant's evidence at trial about Goldbeach and the subsequent creation of GBRL was completely at odds with the pleaded case, namely, that it was not until the oral agreement in 2014 that there was any suggestion of a partnership or equal shareholding in Goldbeach.

88. The judge recorded that, when pressed in cross-examination, the appellant maintained his evidence that Goldbeach had been a 50:50 partnership from the beginning (i.e. from 2010), though he did concede that, unlike the respondent, he had not contributed any capital to the business of Goldbeach. The appellant attempted to justify this change of case by saying that the discussions of 2014 were merely a "re-discussion" of what had been said at the beginning, that is, that from the outset they had been partners with an equal holding in all business assets. The appellant accepted that his evidence was different from the pleaded case, but said that his trial statement was the true version.

89. In paragraph 88 the judge noted the essential inconsistencies between the appellant's versions of events. In paragraph 93 the judge concluded that the appellant was not able explain these differences convincingly.

90. In paragraph 94 the judge turned to the appellant's evidence concerning BCL. As already explained, the appellant was the sole director and registered shareholder of BCL. In his evidence at the trial (including his witness statement) he said that it was a partnership asset from the outset. As the judge noted, this was at odds, first, with the pre-action letter of February 2021 which said, "your client has always known that this company [*sc.* BCL] was owned by our client and that the company was providing liquid assets to [GBRL] to enable it to function properly and also provided stock". Second,

the PoC had stated that BCL was "a company owned and/or controlled by the Claimant". Third, the appellant's witness statement in the unfair prejudice proceedings said that he owned and controlled BCL.

91. During cross-examination various documents were shown to the appellant showing that he was the sole shareholder and director of BCL. He gave evidence that, though it was a partnership company, they had wanted to be able to show that it had a different identity, as this would assist with suppliers. The appellant also offered a new explanation, namely, an agreement that when the share in Goldbeach was transferred back to the respondent, if Goldbeach were to be liquidated, they would have had BCL as a backup. They had wanted to keep the ownership of BCL separate. This account had not featured previously. In the end the appellant accepted that he could not explain the version of events concerning BCL in the letter before claim, the PoC or the unfair prejudice proceedings.

92. The judge said at paragraph 103 that the various versions of the story about BCL and the inconsistencies increased his doubts about the reliability of the appellant's evidence. The judge noted that during the trial the appellant began to appreciate the inconsistencies in his evidence about BCL. The judge contrasted this with the respondent's evidence about BCL, which was that he had nothing to do with it.

93. The judge concluded his review of the appellant's evidence about BCL in paragraph 107 where he said that it cast doubt on the reliability of the whole of his evidence in these proceedings.

94. In paragraph 108, the judge said, "[a] court is faced with a difficult task where the quality of evidence led before it in a trial is not such as will admit of a satisfactory finding of which version of events is more probable than another."

95. The judge then turned to the respondent's evidence. The judge recorded that in his witness statement the respondent had stated that as he had invested more than £120,000 into Goldbeach and GBRL and the appellant had invested nothing, he had no intention of giving away half of the value of the companies. He said that he had never agreed that the appellant would be a 50:50 shareholder. The respondent specifically denied that the appellant had made an investment into GBRL. In cross-examination he said that they had agreed that the respondent should have the same "sanja" for GBRL as for Goldbeach (meaning a share of the profits).

96. The judge addressed the respondent's evidence about meeting the appellant in January 2021 at Dr Sachdev's offices. The respondent said that he had gone to Dr Sachdev's offices to drop off some papers and, when told that the appellant was coming, had agreed to wait. The respondent said that the meeting was short and that while there were proposals to divide the assets of GBRL, there was no agreement.

97. The judge then addressed the email exchanges between the appellant and the respondent's wife dated 16 January 2021. The judge concluded that "on their face, there can be little doubt that the messages suggest that [the respondent's] wife was engaged in a discussion about the splitting of the assets of the business operated by [the appellant and the respondent]". He nevertheless concluded that they did not however "add anything much at all". The judge rejected as extraordinary and incredible the respondent's evidence that his wife had not been acting on his instructions. He

otherwise found the respondent to be a truthful and credible witness, whose evidence was to be preferred to that of the appellant where it conflicted.

98. The judge accepted as truthful the respondent's account that the parties ultimately fell out in January 2021 over the valuation of the fish and chip shop business.

99. Returning to the January 2021 emails the judge found that they did not point conclusively to a recognition on the part of the respondent that he was obliged to split his assets with the appellant. He accepted as convincing the respondent's evidence that he had not been obliged to split anything with the appellant, and concluded that their language was equally consistent with the respondent agreeing to provide some benefit to the appellant following his profitable engagement with the business over a long period.

100. The respondent's evidence was that he did not know about the appellant being registered as a shareholder of Goldbeach or indeed about any of the filings at Companies House recording the joint ownership of the share in GBRL. The judge said there was no evidence to show that the respondent knew these things and concluded that they were done on the appellant's instructions.

101. The judge referred to Dr Sachdev's email of 21 June 2021 in which he had said that instructions for the incorporation of GBRL were given over the phone, that there was no instruction about the appellant being a shareholder, and that he understood that "everything they were doing is 50:50". The judge said that, taking Dr Sachdev's evidence as a whole, the more likely explanation was that the appellant had given instructions to Dr Sachdev concerning the way the shareholding should be recorded. Dr Sachdev had been told by the parties that he could act on the appellant's instructions and he and his team did so. It was probable that the respondent was not involved in the Companies House filings.

102. The judge held that it had suited the appellant and Dr Sachdev to be able to present an equity ownership position that was consistent with the tax planning that was Dr Sachdev's principal concern in acting for the parties. Dr Sachdev's evidence was that drawings from the business were allocated to salary or dividends depending on the best tax outcome.

103. The judge reminded himself that the respondent was illiterate and that his understanding of English was rudimentary. He left all of the administration of the businesses to the appellant.

104. Having considered the evidence of these various witnesses, the judge turned to the central factual issue, namely whether there was an oral agreement as alleged by the appellant. In paragraph 126 he said:

> "At all events it is for [the appellant] to establish the existence of the Oral Agreement on the balance of probabilities. He must lay a satisfactory evidential foundation for that assertion. In my judgment he has failed to do so. For the reasons that I have given, I am unwilling to rely upon [the appellant's] evidence as establishing the likelihood of the Oral Agreement."

105. The judge then referred in paragraph 127 to a passage from Chapter 6 of Phipson on Evidence (20th Edition) concerning exceptional cases where the judge may be forced to the conclusion that it cannot say that either version of events satisfies the balance of probabilities, in which case the burden of proof may determine the case. As the passage explained, the judge may only dispose of a case on this basis if they cannot reasonably make a finding one way or the other on a disputed issue. The judge also referred to the cases of *Stephens v Cannon* [2005] EWCA Civ 222, [2005] CP Rep 31, and *Verlander v Devon Waste Management* [2007] EWCA Civ 835, which establish that the court should only exceptionally resort to the burden of proof and should only do so where it cannot reasonably make a finding in relation to a disputed issue. (I pause here to note that neither counsel had referred to the passage from Phipson or the cases cited by the judge. The judge did not invite submissions about them).

106. In paragraph 130 the judge said that the quality of the appellant's evidence taken as a whole, and his assessment of him as a witness, led him to the firm conclusion that he could not with any confidence arrive at the view, on the balance of probabilities, that there was an oral agreement as alleged. He described the evidence as unreliable, uncertain and contradictory. The appellant had therefore failed to satisfy him, on his own evidence, of the oral agreement.

107. The judge then said in paragraph 131 that it could not seriously be argued that the evidence of Dr Sachdev, which suffered from similar or serious inconsistencies, was such as to corroborate the alleged oral agreement. He said that the evidence of Dr Sachdev "simply does not go that far".

108. The judge then went on in paragraph 132 to say that if he had not been of the firm view that the appellant had failed to prove his case, by reason of the unreliable nature of his evidence, he would alternatively have found on the balance of probabilities that the version of events put forward by the respondent was to be preferred. The judge accepted the respondent's evidence that he never agreed to anything more than the appellant receiving a half share of the profits of the business. He indeed doubted that the respondent had a proper understanding of the meaning and effect of a shareholding in a company.

109. He then said at paragraph 133 that in these circumstances it was not a case where he was called upon to expend a great deal of time in assessing what it was that the parties did after the agreement was entered into, in order to assess whether there was an agreement. He was clear in his view that there was no agreement. He said that, in any case, he did not see anything in the evidence of the appellant and his witnesses that, because of later events, there must have been the oral agreement contended for. He returned to the emails sent by the respondent's wife in January 2021 and the conflicting evidence of the parties about the alleged settlement agreement. He concluded that he had seen nothing in the subsequent conduct of the parties as providing the evidence he would need in order to find the oral agreement.

110. In paragraph 135 he said that nothing turned on the evidence of Baljit Singh in relation to the holding of the lease for the Kidderminster shops or about what the respondent had said about there being a 50/50 partnership with the appellant. The judge said that this was not inconsistent with the respondent's stance that he was in a business partnership with the appellant concerning the sharing of profits. The judge also considered that the evidence of the other witnesses added nothing.

111. The judge concluded that the appellant had failed to establish the alleged oral agreement.

The appeal

112. There are three grounds of appeal: (1) the judge failed to consider the divergences in the appellant's case against the totality of the evidence and failed to have regard to similar divergences in the respondent's case; (2) the judge failed to consider compelling evidence in support of the appellant's claim as to the existence of the alleged oral agreement and/or which undermined the respondent's credibility; and (3) the judge's assessment of the respondent as a truthful and credible witness was against the weight of the evidence.

113. The appellant submitted at the appeal that grounds 1 and 3 fall to be considered in the context of ground 2 and indeed most of the appellant's argument at the hearing of appeal was devoted to that ground. Like the appellant, I shall start with the second ground.

Approach of an appellate court to findings of fact

114. In paragraph 2 of *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 Lewison LJ said:

> "The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> (i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be

> discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

115. One of the principal authorities relied on for that summary was *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600, where Lord Reed said, at paragraph 67:

> "It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

116. In some cases the complaint is that the court has failed to give adequate reasons for its conclusions. The parties referred to two relevant decisions of this Court. In paragraph 39 of *ACLBDD Holdings Ltd v Staechelin* [2019] EWCA Civ 817, [2019] 3 All ER 429, Lewison LJ said:

> "[39] Mr Wardell also relied on a judge's duty to give reasons for his decision. The principle is clear. The judge must give reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. The judge's duty is to give reasons for his decision. He need not give reasons for his reasons: *Secretary of State for Communities and Local Government v Allen* [2016] EWCA Civ 767 at [19]. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted: *English v Emery Reimbold & Strick Ltd*, *DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd*, *Verrechia (t/a Freightmaster Commercials) v Comr of Police of the Metropolis* [2002] EWCA Civ 605, [2002] 3 All ER 385, [2002] 1 WLR 2409; *FAGE* at [115]. Where there is a conflict of fact between witnesses, it may be enough for the judge to say that one witness

> was preferred to another because he had a clearer recollection of events, or the other gave answers which demonstrated that his answers could not be relied on: *English* at [19]. …"

117. In *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112 Males LJ stated at paragraphs 46 to 47:

> "46. Without attempting to be comprehensive or prescriptive, not least because it has been said many times that what is required will depend on the nature of the case and that no universal template is possible, I would make four points which appear from the authorities and which are particularly relevant in this case. First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of "the building blocks of the reasoned judicial process" by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it.
>
> 47. I would not go so far as to say that a judgment which fails to follow these requirements will necessarily be inadequately reasoned, but if these requirements are not followed the reasoning of the judgment will need to be particularly cogent if it is to satisfy the demands of justice. Otherwise there will be a risk that an appellate court will conclude that the judge has "plainly failed to take the evidence into account".

118. Hence, on the one hand, *Volpi* shows that an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration and the mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. On the other, as *Simetra* illustrates, where the judge does not address and explain the reasons for rejecting apparently compelling evidence which is contrary to the conclusion which he proposes to reach, the appellate court may, but will not necessarily, conclude that the evidence has been overlooked.

Ground 2 of the appeal

119. The appellant contended that the judge demonstrably failed to consider compelling evidence in support of the appellant's claim as to the existence of the alleged oral

agreement and/or which undermined the respondent's credibility. The appellant advanced overarching reasons for inviting the court to conclude that the judge's approach to the fact-finding exercise had led him to overlook that evidence:

i) The appellant contended that the judge had wrongly relied on the principles from the applicable cases where it was not possible to reach a decision on the balance of probabilities. The passage from Phipson referred to in paragraph 127 of the judgment and the cases referred to in paragraphs 128 and 129 were not cited by counsel at the trial and they led the judge along the wrong path. He had improperly focused on the quality of the appellant's oral evidence and had not undertaken a holistic assessment.

ii) The judge's comment in paragraph 108 that he was faced with "a difficult task where the quality of the evidence led before it in a trial is not such as will admit of a satisfactory finding of which version of events is more probable than another" indeed shows that he did not carry out the task of weighing the rival versions of events. The judge reached a decision about the appellant's own testimony without considering, in the process, the other evidence relied on by the appellant.

iii) This erroneous approach is also shown by the judge's comment about the appellant's evidence in paragraph 130 of the judgment (see paragraph 106 above). It appears that the judge thought that if he had found that the appellant could not "on his own evidence" support the oral agreement, the result was effectively determined.

120. The appellant contended that the judge wrongly approached the evidence of the witnesses one-by-one and, having found the appellant's evidence to be unsatisfactory and unreliable, effectively rejected his case. By taking this approach the judge had failed to undertake a holistic or global assessment and failed properly to scrutinise relevant evidence, which provided compelling support for the existence of the oral agreement. Although the judge did say in paragraph 132 that he preferred the respondent's version of events, his reasons were generalised, and did not explain how he had arrived at that conclusion.

121. This led the judge to say at paragraph 133 that in the circumstances he did not need to expend a great deal of effort assessing the events after the agreement in issue was supposedly entered into. The appellant submitted that the judge seems to have reached a view based only on the contradictions in and incoherence of the appellant's testimony and, having done so, thought that it would be arbitrary to find, on the basis of later events, that there had been an agreement. The judge should instead have approached the evidence of the later (post-agreement) events without such a predisposition.

122. The appellant contended that these errors of approach support the conclusion that the judge overlooked four compelling items or areas of evidence concerning (a) an alleged injection by the appellant of £39,000 into GBRL as a capital contribution at or about the time he was formally recognised at Companies House as having an equal interest in the sole issued share in GBRL; (b) the circumstances in which No. 2292 was acquired in the joint names of the parties (in place of GBRL, after it was refused funding); (c) the respondent's inability to provide any credible explanation of the purpose and advantages behind the incorporation of GBRL; and (d) the relative shareholdings in

BMC, OPF and BMPF held by Baljit Singh as to 33% and GBRL as to 67%, and the respondent's inability to advance any credible reason for this, as against the evidence given by the appellant and Baljit Singh.

123. The appellant submitted that the judge's unorthodox and unwarranted approach to the caselaw on the burden of proof, together with the absence of reference in the judgment to any findings about these four areas of evidence, demonstrated that he had overlooked relevant evidence. The appellant also submitted that, given the informality of the parties' approach to their commercial and corporate dealings, the judge should have attached far more weight than he did to the documentary evidence and the parties' conduct after the date of the alleged agreement, including the receipt by the appellant of dividends and the January 2021 email exchanges.

124. As to the four specific complaints, the first piece of evidence said to have been overlooked by the judge is the payment of £39,000 made by the appellant to GBRL in November 2015. This payment was made at about the same time as the confirmation statement which was filed at Companies House recording the parties as joint holder of the share in GBRL.

125. The appellant described this payment in paragraph 16 of his trial witness statement as his share of the capital investment in the company. As already noted, the judge cited the relevant part of this evidence in paragraph 80 of the judgment, but did not otherwise address it. The appellant contended that this was critical, compelling, evidence: it was inherently unlikely that a mere employee would have invested such an amount as a capital injection.

126. The second item of evidence which the appellant says was overlooked related to the acquisition of No. 2292 in the joint names of the appellant and the respondent in 2017. This was a mixed use unit. The appellant contended at the trial that the parties originally intended that GBRL would buy the property, but that the original intended lender, Lloyds Bank, was unwilling to lend to the company. This case was supported by an email from the bank manager dated 16 March 2017. Because of this difficulty the purchase was completed in the joint names of the appellant and the respondent. This was also evidenced by an email from the conveyancing solicitor to the respondent's wife dated 20 October 2023. The appellant gave evidence to this effect in his witness statement for the trial. After it was acquired, the property was let to GBRL.

127. The respondent's evidence at the trial was that Lloyds would never have refused to fund the acquisition of the property, that it was never intended that the property would be acquired by GBRL, that there was no need for the appellant to join in the acquisition as the appellant could have done it himself, and that it was only put in joint names because the appellant had asked for something in his name.

128. The appellant submitted that the documents concerning the purchase (including the emails from the bank manager and the conveyancing solicitors) showed convincingly that the GBRL was originally going to buy the property, that finance was not available and it then went ahead in the joint names of the appellant and the respondent. This was independent evidence which was put to the respondent in cross-examination.

129. There were no findings in the judgment about the circumstances of the joint acquisition of No. 2292. The appellant contended that this was a compelling part of the evidence and that the judge's failure to address it showed that he had overlooked it.

130. The appellant's third specific complaint concerns the parties' evidence about the origin of the idea to establish GBRL. On the appellant's case, it was his idea to establish a retail business, essentially to complement Goldbeach's wholesale trade. The respondent's case was that GBRL was his idea and that the sole purpose for establishing it was to sell damaged stock owned by Goldbeach. However, the respondent was wholly unable to explain why this required incorporation of a new company, nor could he identify the advantages of establishing a new retail business. The respondent's evidence here lacked any commercial or other credibility and ought to have been rejected by the Judge.

131. The fourth specific complaint concerns the respondent's explanation for the 67:33 distribution of the shareholdings in BMC, OPF and BMPF. The respondent claimed in oral evidence that he came up with the percentages in which Baljit Singh and GBRL held shares in the relevant companies, but was unable to explain why the relative percentages were fixed in the agreed ratio. Again, the judge made no specific findings of fact about this issue. He also failed adequately to address the evidence of Baljit Singh, which was material on this issue. The judge should have rejected the respondent's evidence as lacking any credibility and should have accepted the appellant's explanation. Most pertinently for the appeal, the judge did not properly consider apparently compelling evidence.

132. The respondent defended the judgment. He submitted that the judge had reached a rationally supportable conclusion. The caselaw shows that a judge should be assumed to have considered all of the evidence unless the contrary was demonstrated. In this case the judge carried out a careful and diligent analysis of the evidence. He ultimately had to decide which of the parties he believed. None of the specific areas of evidence now identified by the appellant was of critical importance, and the judge was not required to address them specifically. But it is reasonable to conclude that he had them all in mind. The respondent made detailed submissions on each of the specific areas of complaint on appeal, which I found of real assistance in considering the appellant's challenges to the judgment.

133. I turn to my analysis of those challenges. The first aspect of the appeal was the submission that the judge led himself astray by reference to the burden of proof, as shown by his citation of the passage from Phipson and the cases referred to in paragraphs 128 and 129 of the judgment. The appellant also criticised the judge for approaching the evidence of the witnesses one-by-one and said that he had failed to undertake an holistic evaluation of the evidence.

134. I consider that there is some force in these general submissions. The judge was wrong to seek guidance in the principles which apply as a last resort in cases where it is not possible to decide between two versions of events. The passages the judge cited from Phipson and the authorities were not referred to by counsel during the trial and it is perhaps unfortunate that the judge did not seek submissions about them, as counsel would have agreed that this was not a last-resort case of the kind discussed in the authorities. There was in this case ample evidence, including the testimony of the protagonists, Dr Sachdev and Baljit Singh, the oral evidence of other witnesses, and the

documentary evidence, on the basis of which the court was able to decide which version of events to accept. The fact that the appellant's evidence may have been confusing, contradictory and patchy was a reason for treating it with real caution (as the judge did), but not for resorting to the burden of proof.

135. There is some force in the appellant's argument that paragraphs 108 and 126 of the judgment suggest that the judge erroneously thought he was driven to, as a last resort, to decide the case on the burden of proof.

136. I also think, with respect, that the judge's decision to go through the witnesses one-by-one in turn was probably not an ideal way to approach the evidence in this case. Any fact-finding exercise requires the court to marshal all of the evidence, including the witness testimony, the documents and the uncontested events, and to test each strand of evidence against the others, and against the inherent probabilities and motives of the actors. It is an iterative or reflexive process. In this case, where events over a number of years were in play, a chronological approach would have been preferable. That approach, which is usefully taken in judging many business or property disputes, creates a handy framework for the court to assess and weigh each strand of evidence about the contended factual issues.

137. By contrast, a witness-by-witness approach may lead to the assessment of credibility of each witness in something of a silo, without going through the necessarily iterative process of testing his or her testimony against the other evidence and the probabilities of the case.

138. However, as the respondent submitted, there are counterpoints to these concerns about the judge's approach. First, after referring to the principles applying to the exceptional category of cases identified by Phipson, the judge went on to say, in the alternative, that he preferred the respondent's version of events over the appellant's on the balance of probabilities. While some of the language used by the judge might suggest that he was led astray by his own reference to the cases on the burden of proof, I agree with the respondent's submission that the judge actually determined the case against the appellant on the evidence, on the balance of probabilities.

139. Second, judgments may be structured in more than one way and although a witness-by-witness approach may not have been ideal here, the judge was clearly aware that the central issue in this case was whether there was an oral agreement. There were no contemporaneous attendance notes, and few emails or other documents which demonstrated with any certainty what the parties had intended. This is not surprising: the respondent was illiterate and unsophisticated and the parties conducted their affairs with marked informality. For these reasons the judge was entitled to place the main focus on the parties' oral testimony, and to test the coherence and consistency of that evidence. I am also satisfied on a fair reading of the judgment as a whole that the judge did not take an unduly narrow approach to the case and decide it simply on the basis of what he saw as flaws in the appellant's testimony.

140. Third and in any event, I accept the respondent's argument that the appellant's approach on this appeal severely downplayed the extent and significance of the shifts and turns in the appellant's evidence. The appellant had offered various versions of events, including as to the origin of the arrangements. These shifts were not limited to the date on which the oral agreement was supposed to have been reached. They changed in a

basic way the case he was advancing about the parties' involvement in the businesses, and the reasons why, according to the appellant, the respondent had been willing to give him a 50% ownership share in them. These were not just details or nuances; they went to the very factual conditions in which the agreement to share the ownership of the businesses was supposedly reached.

141. The judge was in my view entitled specifically to emphasise the appellant's inconsistent evidence concerning BCL. In all the communications about the dispute before serving his witness statement for the trial, the appellant had asserted that this was his own company, but he then seems to have realised that this stance might undermine his case at the trial that all of the businesses run by the parties were jointly held. This was more than a mere discrepancy: as the judge saw things, it showed that the appellant was prepared to make things up as he went along. In short, the judge's assessment of the appellant was that his evidence was entirely unreliable. In my judgment there was ample material on which the judge could reach this conclusion.

142. The judge also had the advantage over this court of hearing and observing the live evidence from the witnesses. His conclusions about the appellant's and respondent's evidence were partly based on his assessment of the way they gave evidence. The transcripts are no substitute for the experience of hearing evidence in a case of this kind.

143. Fourth, there were seven days of oral evidence at the trial, much of it puzzling or patchy. The judge had to do the best he could to make sense of it. We have been taken only to limited, selected, highlights. He also had the benefit of written opening and closing oral submissions. The judge explained in his judgment that he had taken all of this material into account.

144. Reading the judgment as a whole, I am not persuaded that the appellant's general challenges to the approach taken by the court, based on the structure and form of the judgment, demonstrate that the judge did not have all the evidence in mind, even if he did not refer to it all. In short, this ground of appeal cannot be determined at a general, rather abstract, level and it is necessary to consider the four specific items of evidence the appellant contends were overlooked by the judge.

145. The first of these concerns the £39,000 payment made in November 2015. I have set out a summary of the appellant's submissions at paragraphs 124-125 above.

146. In my judgment the appellant has failed to show that the judge overlooked the evidence concerning this payment. The judge clearly knew about it, as he referred to it in paragraph 80 of the judgment. The appellant was cross-examined about the payment and it was referred to in closing submissions.

147. Moreover, I am unable to accept the appellant's contention that this was a crucial piece of evidence of such significance as to require particular mention in the judgment. It was not pleaded or referred to in the pre-action letter, and was referred to for the first time in the appellant's trial witness statement (and, even then, briefly and without detail). There was no disclosure about it. Furthermore, the appellant's pleading in paragraph 12 of the PoC (see paragraph 31 above) did not allege that the parties had reached any agreement about capital contributions; on the contrary, the alleged consideration was the work the appellant would contribute to the business.

148. In any event, the allegation at the trial that the payment was capital contribution was contested. The respondent said that it was a loan and that there were many other such loans. The relevant internal ledgers prepared by Dr Sachdev's firm listed it as a director's loan (though the appellant was never a de jure director of the company). The same ledger showed many other such loans, apparently made by a number of third parties. It also showed much larger amounts being loaned by the respondent. There was also a document prepared by Dr Sachdev at some date after March 2020 which states that "[the respondent] is of the opinion that [the appellant] has not invested any money into G B Retail Limited. So investment of £39,000 (reference SUK) dated 12th November 2025 was the loan which [the respondent] has eventually returned, not [the appellant] …". The appellant's evidence about the nature of the payment must be considered in light of the judge's general findings about the poor quality of his testimony. I am also unable to accept the appellant's argument that the respondent accepted in evidence that the £39,000 was an investment: the respondent's evidence (which was given through an interpreter) did not support the conclusion that he thought it to be a "share issue".

149. I accept the respondent's submission that the £39,000 payment was given far less forensic focus at the trial than the appellant now seeks to suggest. As already explained, the payment was not pleaded. The appellant gave no details as to how it was calculated or why it was paid. It was made a year after the alleged 50:50 partnership arrangement and the amount was considerably less than any amounts listed in the ledger as paid into the company by the respondent. Hence the payment alone does not strongly support the case advanced by the appellant on this appeal that it was compelling evidence for a 50% interest in the capital of the company.

150. The payment was therefore only one piece of the evidential jigsaw, and it is being given far more prominence now than it had at the trial. I am not satisfied that it amounts to compelling evidence that any judge discharging his function would have been expected to address separately in the judgment.

151. The second specific complaint concerned No. 2292 (see paragraph 126 above). I agree with the respondent's submission that this was not a crucial piece of evidence, and it did not require any particular scrutiny from the judge; it was again one of many matters put forward. Whether or not it was the case that GBRL had initially intended to acquire the property, it ultimately did not. No. 2292 remained under separate ownership and at no point was it held or treated as being held by GBRL.

152. It is also material that in the PoC the appellant did not contend that the property was originally to be bought by GBRL. Instead he said that the joint ownership of the property was consistent with the way the parties held the shares in the company. The point therefore lacked the forensic force now sought to be attached to it on this appeal. This was not compelling evidence of such a kind that the judge's failure to address it in terms leads me to infer that he overlooked it.

153. The third specific complaint concerns the reasons for establishing GBRL (see paragraph 130 above). Again this was not an important issue which required particular identification and consideration. I agree with the respondent's submission that this issue did not go to the core issues between the parties, and at most only potentially went to credibility. This was not therefore compelling evidence of the kind one would naturally expect any judge carrying out his functions specifically to address. In any event, the

judge did consider this issue in paragraph 112 of the judgment. This is really just a challenge to the judge's preference for the respondent's evidence over the appellant's, a conclusion he was rationally entitled to reach.

154. The fourth specific complaint concerns the shareholdings in BMC, OPF and BMPF (see paragraph 131 above). I agree with the respondent's submission that GBRL's 67% interest simply permitted GBRL to take the same proportion of the profits. This was consistent with the profit-sharing agreement which was argued by the respondent. It did not necessarily reflect ownership of GBRL. The respondent explained this in cross-examination. The judge generally viewed the appellant's evidence as unreliable. He also thought that Baljit Singh was seeking in his evidence to assist the appellant. For the reasons given above, the judge was entitled to prefer the evidence of the respondent. In any event, he was alive to this element of the history when referring in the judgment to Baljit Singh's evidence at paragraphs 58 to 60, and to the appellant's closing arguments at paragraph 7. The judge also rejected the appellant's evidence in general terms at paragraph 130. He also said at paragraphs 133 and 135 that he did not see anything in the evidence to alter his conclusions about the appellant's case.

155. I accept the respondent's general submission under ground 2 that the appellant's challenge involved island-hopping and that the appellant had failed to demonstrate persuasively that the judge had failed to consider the evidence on any of these points. The overall decision for the judge was whether the parties entered into the oral agreement and, taking into account all the evidence he heard, he was entitled to reach the conclusion he did. The appellant has not persuaded me that the judge demonstrably failed to take account of relevant evidence. For these reasons, I would dismiss this ground of appeal.

Ground 1

156. The appellant contended that the judge erred in failing to consider the divergences in the appellant's case against the totality of the evidence. The appellant submitted that the divergence between his pleaded case and his evidence was not significant when viewed in light of all of the evidence. The judge's approach to the appellant's credibility was undermined by his failure to consider key corroborative evidence (see ground 2 above). The Judge effectively treated credibility as a binary choice between the appellant and the respondent, without properly bringing in or evaluating the other witnesses' evidence.

157. Moreover, the judge failed to approach the divergence in the respondent's evidence with the same critical mindset. The respondent had accepted in his pleading that the parties met Dr Sachdev in 2014 and discussed how the appellant would be rewarded for his work in the business of Goldbeach. But, in his evidence at trial, the respondent denied that there had been any such meeting.

158. The respondent contended that the judge was right for the reasons he gave and made more detailed submissions in support of this conclusion. Again, I have taken account of the respondent's submissions in the following discussion.

159. In my judgment this ground of appeal was ultimately a complaint about the judge's assessment of the credibility of the principal witnesses. This is prototypically part of

the trial process, and this court will not interfere with the judge's assessment unless it is rationally insupportable.

160. Although this was advanced in the grounds of appeal as a self-standing challenge, counsel for the appellant realistically accepted that this challenge was closely related to ground 2, since it depended in large part on the premise that the judge had failed to consider crucial parts of the evidence (which, it was said, corroborated the appellant's account). Without the foundation of ground 2 the remainder of this ground was undermined.

161. Moreover, as already explained at paragraph 140 above, the judge was in my view entitled to conclude that the shifts in the appellant's evidence were major and material and were far from being the minor tweaks now suggested by the appellant. The judge was aware of the changes in the position taken by the respondent. He properly scrutinised the respondent's evidence and indeed found that the respondent's evidence on one point (whether his wife was acting behind his back when corresponding with the appellant in January 2021) to be extraordinary and incredible (see paragraph 97 above).

162. Contrary to the appellant's contentions, the judge did not restrict himself to the divergencies between the pleading and the appellant's evidence at the trial. He also drew attention to the appellant's poor performance as a witness in paragraph 70 of the judgment. He also relied on other difficulties he saw in the development of the appellant's case over time.

163. Further, as explained in paragraph 142 above, the judge had the great advantage over this court of hearing the cross-examination of the witnesses. Thus, the judge considered the divergence in the appellant's case in its proper context. We have been taken to selected highlights from transcripts. This is not a criticism. It is in the nature of attempts to overturn findings about the credibility of witnesses. But it is not at all surprising that such appeals seldom succeed. In my judgment there is no proper basis for departing from the judge's conclusions about the credibility of the witnesses. This ground therefore fails.

Ground 3

164. The appellant contended that the judge's assessment of the respondent as a truthful and credible witness was against the weight of the evidence. The appellant again accepted that this ground was closely related to ground 2, since a large part of the complaint was that the judge had ignored compelling evidence which was at odds with the respondent's case (as well as corroborating the appellant's). Since ground 2 has been dismissed, the foundation underpinning this ground falls away.

165. Ground 3 is also essentially the obverse side of ground 1. The appellant contended under ground 1 that the judge should have concluded that the appellant was more credible than the respondent and under this ground said that the respondent was less credible than the judge held. For the reasons already given for dismissing ground 1, I am unable to accept the general complaint that the judge's comparative assessment of the evidence of the parties was wrong.

166. There remained some specific complaints under this head. The first was that the judge failed to address the evidence of the appellant, his wife, and Baljit Singh about the respondent's involvement in the business of BCL. It is right that the judge did not specifically address this point in the judgment, but it was only one strand of the evidence among many, and the judge was not required to refer to everything in his judgment. The key issue concerning BCL was whether it was a jointly-held partnership asset. The judge was entitled to conclude on the basis of the PoC and the other pre-trial communications that the company was the appellant's and that the respondent had no interest in it. In any case, as the authorities show, the court assumes that the judge had the evidence in mind unless the contrary is demonstrated. That test has not been met here.

167. The second specific complaint concerned the evidence of Parminder Singh. The appellant contended at the trial that Parminder Singh, acting on the instructions or for the benefit of the respondent, had tried to manipulate Dr Sachdev into giving evidence that suited the respondent's case. This case was put to Parminder Singh in cross-examination, which the judge heard. The judge was not required to reach a conclusion on this point in the judgment. It is indeed hard to see how it could have had any real weight, given the judge's decision to regard Dr Sachdev's evidence as fundamentally unreliable. That decision was open to the judge; indeed, was almost inevitable given the way that Dr Sachdev's evidence changed with the wind.

168. In any event, the examples identified by the appellant did not to my mind establish a cogent case of attempted manipulation. Rather, they came to little more than one party, the respondent, asking Dr Sachdev whether he agreed with his case. The appellant and his solicitors were seeking the same thing. Indeed, they sent the first typed statement to Dr Sachdev without having met him beforehand. The fact that Dr Sachdev was willing to sign up to one version of events only to say diametrically the opposite to the other side does not itself establish manipulation by either side. It shows instead that he was caught in the crossfire, apparently prepared to agree with more or less anything suggested to him by the party who happened to be asking him at the time.

169. I referred in paragraph 69 to the change in the contents of a letter from Dr Sachdev's assistant. The letter initially included a paragraph which was then excised on the suggestion of Parminder Singh. This was described by the appellant as manipulation. I did not find this persuasive. Parminder Singh, having received the letter said that the relevant paragraph did not accord with the respondent's recollection and the paragraph was removed. The conduct complained of is equally consistent with seeking to set the record straight. In any event, the judge heard evidence about this episode and is to be assumed to have had it in mind: it does not fall into the class of apparently compelling evidence which one would naturally expect any judge who was aware of it to identify (cf. *Simetra*).

170. The appellant also submitted that the email of 21 June 2021 (see paragraph 59 above) showed an attempt to control Dr Sachdev's evidence. Again this contention carries little force. The email set out the respondent's version of events and asked Dr Sachdev whether he agreed. He said that he did.

171. The appellant also said that Parminder Singh had tried to control Dr Sachdev's evidence through a series of questions and answers in April 2021. These were referred to in the judgment. Again they do not on their face suggest manipulation of Dr Sachdev's

evidence. They do not amount to the kind of compelling evidence that one would naturally expect a judge to address specifically in a judgment.

172. More generally, the judge heard the evidence of Parminder Singh and the various allegations of manipulation of Dr Sachdev's evidence that were levelled at him in cross-examination. I am not satisfied that he did not have this evidence in mind when reaching his judgment. Moreover, as already explained, the judge did not reach his conclusions about the central factual issue between the parties on the basis of Dr Sachdev's evidence. On the contrary, he rejected it as unreliable.

173. The assessment of the respondent's credibility was for the judge, in the light of all of the evidence, and having had the benefit of hearing him give evidence. The appellant has not persuaded me that the specific complaints he has raised have any substance. I am not persuaded by this ground of appeal.

Conclusion

174. The central issue in this case was whether there was an oral agreement for the appellant to be given half the shares in GBRL. After a nine-day trial the judge found that there was not. The judge decided that the appellant's evidence was fundamentally unreliable and he preferred that of the respondent. The appellant can be in no doubt from the judgment why he lost. I am not satisfied that the judge overlooked relevant evidence and the overall conclusion he reached was rationally available to him on the evidence. I would dismiss the appeal.

Lord Justice Jeremy Baker:

175. I agree.

Lord Justice Peter Jackson:

176. I also agree.