



IN THE COUNTY COURT AT
CENTRAL LONDON

Case No: G58YJ591

Thomas More Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Date: 28th February 2025

Before :

HIS HONOUR JUDGE HOLMES

Between :

MR AMIR UDDIN AHMED

Claimant

-and-

MR HARUN MIAH

Defendant

Mr Al Mustakim (instructed by Capital Solicitors LLP) for the Claimant
Mr William Spence (instructed by Gunnercooke LLP) for the Defendant

Hearing date: 13-15 January 2025

JUDGMENT

His Honour Judge Holmes:

1. On 27th November 2018 a group of community businessmen and elders of the Bengali Community in East London met together. What the purpose and conclusion of that meeting was is at the heart of this case.

THE CLAIMANT'S CASE

2. Mr Ahmed and Mr Miah both come from the Sylhet district in Bangladesh. They are distantly related through marriage and knew each other when they lived in Bangladesh. Mr Ahmed was a teacher when he was in Bangladesh, but when he came to the United Kingdom he needed to earn a living and so established a money remittance business in 2013. That business is called Akil Enterprises Ltd.
3. Mr Ahmed says that in 2016, Mr Miah asked to borrow a sum between £70,000 and £80,000. He asked him to transfer the money lent to him to various people in Bangladesh. This was done in 65 transactions between 26th January 2016 and 2nd January 2017, although the vast majority of the transfers were in the first half of the year. The single largest transaction was £2,673.14, the smallest, £44.54. It is said that the total sum paid was £72,784.52. Mr Ahmed says that it was agreed that Mr Miah would pay the money back to him after 12 months with an additional sum of 20%, a sum variously described as profit or commission. The agreement was oral.
4. Mr Ahmed says that Mr Miah would call him and ask him to pay a set sum of money to a named individual. Mr Ahmed would then do so and send a text message to Mr Miah with a PIN, the name of the recipient and the name of the sender. As an example, the final transaction on 2nd January 2017 generated this text:

Pin=12444327069
Trust bank any 110-
Rani/ Md Kamal Hussain
5. The beneficiary, in this case Rani Begum, was to go to a branch of Trust Bank in Bangladesh. He would then provide the PIN and would receive 110,000 Bangladeshi Taka. The sender was recorded as Md Kamal Hussain. This tallies with the receipt provided by Mr Ahmed.
6. There is no documentary evidence to show Mr Miah making an explicit request for a payment. However, Mr Miah sent a WhatsApp message to Mr Ahmed on 18th June 2016 which was "00 880 1783300055 Foyajul Islam". Payments were made to Mr Islam, with that telephone number, on 10th June and 29th August

2016. After the final PIN was sent on 2nd January 2017, Mr Miah replied to it saying, “Salam bhai thank you”.

7. There is little detail about how or why the money was lent, but Mr Ahmed says that because of his knowing Mr Miah and his family he agreed to loan him between £70,000 and £80,000. Mr Ahmed has provided a list of the transactions. In his statement he summarises them in this way: £17,960 was sent in the name of Hannan Miah; £12,954 to Humayun Rashid (Mr Miah’s brother); £6,624 was sent to Khatija Bibi (Mr Miah’s mother); £1,892 to Foyzul Islam; and £4,707 to Rani Begum. Those sums total £44,137.
8. Save for one small payment of £200, no money was repaid. Mr Ahmed therefore contacted Mr Miah. Various messages between the two men have survived. On 24th March 2017, there is a text from Mr Miah’s wife, Husna, to Mr Ahmed which reads, “salem bhaisab i will sort this out 2/3 weeks in Bangladesh there has been problems with the money dont worry thank you.” ‘Bhaisab’ or ‘Bhai Sab’ is a respectful term used to describe someone older than one’s self. Various other messages through the spring and summer of 2017 show various promises of payment being made. For example on 5th May 2017 there was this, “Salam bhaisab I gave someone ur account to put money in, On monday definitely dont know how much thank u”. These messages were from Mr Miah’s own mobile phone.
9. On 26th October 2017 Mr Ahmed sent a message to Mr Miah which read,

“Salam Baishab- I am very sorry to say one week ago nearly one house talking you marked final decision Thursday 26th October 2pm you will come to my office bring with minimum £10000/- So I hopefully waiting. Today is that date, So I called you 4 times but you don’t received. Now you text me- next Tuesday you will contact. Brother- Is it your humanity ?”
10. On 3rd November 2017 there were two messages, the first in English, was from Mr Miah, which read, “Salaam baisab, i put £200 in your account i will contact you next week thank you.” There was then a message in reply from Mr Ahmed in Bengali, which in translation reads, “Salam Baisab, after delaying 6/7 months you gave just £200, you are making this more and more difficult. I gave you the money with trust. You are not staying on your words. I want to go Bangladesh and you are hurting me. Allah is watching everything.”
11. There were a total of three meetings between Mr Ahmed and Mr Miah. The first was on an unknown date. At the second meeting which was on 27th September

2018, in addition to Mr Ahmed and Mr Miah, two other people were present, Mr Boshor Miah and Mr Nur Baks. I have a partial transcript of a recording made at that meeting. It appears that the arrangement at the earlier meeting was that Mr Miah would respond in that meeting to what Mr Ahmed said was owing. Mr Miah did not do so, he said he would pay if a further week was given. Mr Miah's primary concern in that meeting was a letter sent by Mr Ahmed in which he said that if payment was not received within 14 days, he would instruct a solicitor.

12. That meeting having failed, according to Mr Ahmed, it was on the initiative of Syed Arif Ali and Abdul Kayyum that the third meeting came to be held on 27th November 2018 in Mr Ahmed's home. Mr Ali is a relative of Mr Miah, and it is said that he was the person who made the substantial contribution to the organisation of the meeting. Mr Ahmed says that Mr Ali arranged the date of the meeting having first obtained the consent of Mr Miah.
13. This was seen by Mr Ahmed and the other participants as a community arbitration. The meeting was presided over by Mr Ashique Choudhury, who is described as "elderly". It is clear that he is a respected senior member of the community. In addition there was Mr Kalam Mahmud Abu Taher Choudhury, who was the editor of a Bengali newspaper published in London, Mr Md Abdul Kayyum, and Mr Syed Arif Ali. Those three gentlemen gave evidence before me. The other attendees, in addition to Mr Ahmed and Mr Miah, were Shamim Ahmed, Md Nur Baksh, Abdul Ali, Helal Uddin Ahmed, and Raja Uddin.
14. There is a transcript of part of the meeting, headed "Arbitration Verdict". The transcript needs to be seen as a whole, but it begins with Mr Ashique Choudhury saying these words,

"Bismillahir Rahmanir Rahim (In the name of Allah, the most gracious, the most merciful). With your permission. Ma shaa Allah (God has willed it), with the grace of Allah, after having a long discussion, my younger brother present here, we both have arrived at a decision. This is a matter of hope. But you will not misunderstand us."

Mr Miah replies, "No Sir ... I will not misunderstand you. I need all of you. To be in the society, I need all of you. I will not misunderstand you." Mr Miah also says, "I have informed you. You don't have to tell me; I have my agreement whatever you say."

15. Mr Abu Choudhury then delivers the verdict of the arbitrators. He does so in these terms:

“We have come here after taking lot of trouble. Worshipping lies in thousands of actions. We all have come taking trouble. You are not my enemy; he is not my enemy. We are all from the same community. A haq (right) is due to you. It’s quite late into the night. You all forgive me. I would just say one single thing. A dead body of a companion was brought before the Prophet (Peace be upon him). Prophet (Peace be upon him) of Allah asked, if anyone would get anything from him. Then when answer was given to the affirmative that he borrowed. The Prophet (Peace be upon him) said, someone would have to take responsibility to pay the borrowings. When the Companions took the responsibility, then the Prophet (Peace be upon him) had offered the funeral prayer. And then my father was a great Moulana. This does not need much description. In Jagannathpur he had huge followings.”

16. Someone says, “Moulana was my cousin.” Mr Abu Choudhury then continues:

“Yes, yes. When I was a child, he would say, if one is due to pay on dirham, on the day of resurrection, he would have been deprived of his seven hundred accepted prayer. Then I would ask – Dad, how much was a dirham. Then he would say – it was four ana and one paisa. So it is seen that even the pious man would face his approved prayer being given away to others. So owing is so dangerous. Because owing is the right of the human being; Allah will not forfeit it. Allah will forgive namaj (prayer), jakat (charity), hajj (pilgrimage). But Allah will not forgive right of one human being to another. We all will die. We shall all have to return. We need to be serious. So we both have seen. We shall cause some loss on to you. We have discussed together. What we have got is – the paper he has given – the paper you have given, what we believe, the calculation you have given about £80,175, we fully agree on it, This is what you would get from him. This is your right on him to get it back. And the calculation which you have shown about £7,000 that you would get from him, that is ok that you did the calculation. But he has disputed with it. Unless we see his calculation,... for this reason, we will request you to please, for sake of Allah, excuse him from this claim. This is the request we make to you. And we shall make another request. From this £80,175 merely by looking at us, you please excuse him by an amount of £20,000 from this. We shall request you, the amount of money which you will get, is also difficult to pay. And how you will pay this £60,000 and when you will pay, if you tell us, we shall be happy to know. This is what is the verdict of today’s night. And to you, we have a request. You please excuse him. Yes, you could give him money. Ut you have also some problem. Such a huge

amount of money, you have made the trap for yourself. Now you are in trouble. Therefore, we shall request, you please looking at us, excuse this £27,000. The rest £60,000 we declare in the verdict for you. This is what we both have agreed upon. Now I request you all to agree on it. Now you make you comment.”

17. At the conclusion of the meeting, Mr Abu Choudhary wrote a document headed, “An Arbitration Meeting between Amir Uddin Ahmed and Harun Miah 27 November 2018 at 7.00pm. Arbitration from the Community.” The eleven people present wrote their names and signed. The agenda is given as “(1) Money matter which taken Mr Harun Miah from Amir Uddin Ahmed.” The second page says:

“Decisions

After investigation of the Mr Amir Uddin Ahmed & Harun Miah’s all accounts & documents it was decided the following –

- (1) All Present Arbitrators are agreed with the accounts of Mr Amir Uddin Ahmed, we agreed with the £80,000, but £7,058 accounts are disputed.
(2) We all are decided that Mr Harun Miah will Pay £60,000 to Mr Ameer Uddin Ahmed. We requested Mr A.U. Ahmed to give up £27,000 due to current situation of the Harun Miah. Mr Harun Miah agreed to pay £60,000 Pounds. He will pay every month until pay the full amount. Mr A.U. Ahmed also agreed with the Arbitrators decisions.

Verdict declared by

(signature)	(signature)
(K.M. Abu Taher Choudhury)	(Ashik Choudhury)

I am agreed with the decision

(signature)	(signature)
(Amir Uddin Ahmed)	(Harun Miah)

18. Payment was not made, and in May 2020 Mr Ahmed began these proceedings. In them he seeks a declaration that the agreement of 27th November 2018 is binding and for payment of the “agreed reduced amount of £60,000”.

THE DEFENDANT'S CASE

19. Mr Miah's pleaded case is that he did not borrow money from Mr Ahmed. The only sum which Mr Miah transferred using Mr Ahmed's company was the sum of £500 in March 2016. He accepts that he received various text messages between January 2016 and January 2017 which contained the PINs. He denies that the sum of £200 was paid by him to Mr Ahmed on 3rd November 2017.
20. Mr Miah says that he was invited to Mr Ahmed's home on 27th November 2018 for a social function. He was invited by a friend, not by Mr Ahmed. He says that he was pressured by those present to remain. He admits signing a document, but was not provided with a copy. He is unable to say whether the written document I have referred to above was the document he signed. He denies that the initials next to his name on the first page are his.
21. In his witness statement he repeats that he received the PINs but says that he did not enter into any transactions. He identifies three telephone numbers which have been used in relation to them. He accepts the first (ending 002) is his, but denies that the other two (ending 379 and 419) are his or his wife's.
22. Of the 27th November 2018 meeting he says that he was surprised to find himself with the elders of the community. He says that he started to record the meeting on his phone "as I was scared and worried for my own safety". He said that he had listened back to the recording. He also says that the phone ran out of power and therefore stopped recording. As more and more people entered the room, Mr Miah says that he was "getting much worried about my safety".
23. Mr Miah says that the two Mr Choudhurys asked him how he was going to pay back the money which was alleged to be owing. Mr Miah says that he responded by saying that he did not owe anything and had no intention of paying. He alleges that Mr Baksh responded by shouting at him and said, "what will he do once he's outside, then he had started pressuring me."
24. In paragraph 33 of his statement, Mr Miah says this, "After a few hours of this conversation back and forth in the house between the community members and businessmen, I asked Arif Ali who had tricked me to attend the meeting to give me a chance and he aggressively shouted and said to me there is no opportunity for me to say anything."
25. Mr Miah also says, in paragraph 37, "I wrote my name on a document at that meeting for the pressure of the house but did not put my signature to any documents in the presence of the house nor anywhere." He denies that the signatures on the document are his.

26. In his oral evidence, Mr Miah denied that he had sent money through Mr Ahmed's company prior to January 2016. He said he had been to his business premises shortly after they were introduced. He thought this was in 2013. That evidence was given shortly before lunch. After lunch, he was asked about not being to Mr Ahmed's office since 2013 and he said that he had returned after a three-year gap in 2016. He accepted attending in 2016, but could not remember the date or month. He sent some money, but could not remember the detail. He said he sent around 50,000 taka (about £400). Ultimately, he accepted having gone to Mr Ahmed's office on three occasions.
27. Mr Miah denied receiving the text messages containing the PINs. He was asked about the recipients of the monies. He denied that they were relatives. He then accepted that one was his mother, one his brother and one his stepbrother.
28. Contrary to what was in his witness statement, he accepted that the telephone number ending 419 belongs to his wife. He denied knowing Hanan Miah, whose name is against the first transaction on 26th January 2015 and is said to have a telephone number ending 356. That same number is one which Mr Miah sent by WhatsApp to Mr Ahmed on 28th November 2016. He maintained his denial that he knew Mr Hanan Miah. He also denied sending the text message saying that he had paid £200 into Mr Ahmed's account.
29. Mr Miah accepted that two of the people present at the meeting were his cousins, Boshir Ali and Raja Uddin. He denied that they were there at his invitation. He accepted, contrary to the Defence, that he wrote his name on the front of the written document which came from 27th November 2018 meeting. He also appeared to say that due to pressure he had signed the document. He denied that he had disputed the amount of £7,000 in the meeting.
30. He then denied that he had said, "if you are hurt, please forgive me", despite it being in an agreed translated transcript of the meeting.

ADDITIONAL EVIDENCE

31. Mr Ahmed relies upon evidence from Mr Abdul Kayyum, one of the arbitrators. He describes Mr Ahmed as a "renowned teacher in Bangladesh and I know him to be a well-known person from our neighbouring village." He refers to Mr Miah as "my neighbour, we studied in the same primary school and he was my classmate." He says that a number of the arbitrators were known to Mr Miah and that one, Mr Raja Uddin, was his cousin. He says that both men signed the agreement. Mr Syed Arif Ali gave a statement to similar effect. Both men denied that there was any pressure on Mr Miah. They described the atmosphere as calm and said that they all had a meal after the meeting.

32. Mr Kalam Mahmud Abu Taher Choudhury gives a little more detail about the community tradition of arbitration. He also says that from the start of the meeting, that save for £7,000 which was in dispute, Mr Miah accepted owing the money to Mr Ahmed. He described drawing up the agreement and said that both men signed without any pressure being placed upon them.

ENFORCEABILITY OF THE 27TH NOVEMBER 2018 AGREEMENT

33. The first issue raised by Mr Spence is whether this is a contract of compromise at all. He argues that this was an arbitration, but a forced arbitration which was of no legal effect. Such that the agreement which recorded the outcome of the arbitration is equally of no effect.
34. Mr Spence points to the wording of the written document. It describes itself as an “arbitration meeting”, to “Arbitration from the Community”, to “Decisions”, that “All Present Arbitrators are agreed”, and that “Mr A.U. Ahmed agreed with the arbitrators decision”. In their witness statements a similar picture is given. Mr Ahmed says, “Finally, on the initiative of Syed Arif Ali and Abdul Kayyum, an arbitration meeting was held in my residence on 27/11/2018 in the presence of community personalities... The defendants accepted their arbitration wholeheartedly. Mr Kayyum put it this way, “I am one of the arbitrators who had arranged an arbitration on 27/11/2018... The arbitration meeting was held on the pre-decided date... The verdict was announced by community personality Mr Abu Taher Choudhury.” Mr Syed Arif Ali said, “I proposed to resolve the matter through an arbitration. Subsequently, along with Abdul Kayyum, I organized an arbitration with the consent of both the claimant and the defendant... On 27/11/2018, we sat for the arbitration.” And that everyone requested Mr Choudhury “to announce the verdict”. Mr Abu Taher Choudhury said, “Like any other persons, I too go forward in resolving various social, business even family problems of our ever-expanding community through arbitration. This is a tradition in our society... After holding the meeting amid a very friendly atmosphere, we decided give the verdict in written. The verdict was delivered on the full consent of both the parties which I had to write down.” In their oral evidence this position was confirmed.
35. Arbitration is, I was told, a tradition in the Bengali community. Arbitration is a valuable tool to settle all manner of disputes. To recognise the outcome of an arbitration, English law requires certain things to be done and a level of fairness. First, there must be an agreement to arbitrate. There is a dispute on the evidence as to whether such an agreement was present. The Claimant’s case is that Mr Miah knew what the meeting on 27th November was for and that he agreed to attend. It said that Mr Miah entirely consented to having the dispute between

them resolved by arbitration. Mr Miah says that he thought he was attending a social function. He had no idea what he was attending Mr Ahmed's home for. He arrived and suddenly found himself thrust into a hostile atmosphere and required to participate.

36. I found Mr Miah to be an entirely unreliable witness. His evidence was riddled with inconsistencies – whether a phone number belonged to his wife, whether text messages were sent from him, whether he knew the recipients of the PINs, his business history with Mr Ahmed, whether he wrote his name or signed the written agreement are only some of the problems with his evidence. There is, in addition the transcript of the second meeting where there is no denial that he owed Mr Ahmed money. There is no denial in the third meeting either. There are the various text messages and WhatsApps where Mr Ahmed is chasing for payment. If he had not borrowed a penny, or even if he had only borrowed £200 or £500, it would have been very simple to say so: he did not.
37. Whilst Mr Miah may have attended the arbitration meeting alone, he was not isolated; two of his cousins were present. His account of the meeting is also not borne out by the transcript of the meeting. Whilst what has been transcribed is the 'verdict' not the earlier parts of the meeting, it is quite clear that rather than being under undue pressure, he stands up for himself and says that he cannot afford to stipulate an amount per month. He also, on his account, refused to sign the agreement despite the pressure to do so.
38. In my judgment he knew why he was attending the home of Mr Ahmed on 27th November 2018. He may not have appreciated the number of people who would be present, but he knew why he was attending. In my judgment he also agreed that the dispute would be subject to an arbitration by members of the community.
39. That said, this was not an arbitration which met the requirements to be binding. Mr Miah may have agreed to come to the property and he may have known what the purpose of the meeting was, but he had no say in the identity of the arbitrators, two of the arbitrators may have been his cousins, but the other seven were either friends or relations or selected by Mr Ahmed. A fair-minded and informed observer would conclude that there was a real possibility that the majority of the arbitrators were biased, see *In re Medicaments and Related Classes of Goods (No. 2)* [2001] 1 W.L.R. 700, CA. A number of the arbitrators had spoken to Mr Ahmed about the dispute before the arbitration. During the arbitration itself only two or three of the arbitrators looked at the underlying evidence. The decision is wholly devoid of reasoning and the rationale appears to be that Mr Ahmed says he was owed £87,000, Mr Miah disputed £7,000, and that left £80,000. The

arbitrators thought that Mr Miah could not afford that, so they applied a further discount of £20,000. There is no legal logic to that step. Mr Mustakim, entirely realistically, did not seek to try and argue that this was a binding arbitral award.

40. But does an invalid arbitral award become a binding contract of compromise if the parties endorse and agree the arbitral decision? As a matter of principle and subject to the elements of a binding contract of compromise being present and the absence of any defence such as undue influence, I cannot see why not.
41. The requirements for a contract of compromise are in essence the same as those for any other concluded agreement: (i) consideration; (ii) an agreement which can be identified which is complete and certain, and (iii) the parties intended to create legal relations. Mr Mustakim termed this accord and satisfaction, but I do not think that the substance is changed by the terminology used.
42. Consideration is generally said to be the accrual of some benefit to one party or the suffering of some detriment to the other party. In relation to a compromise there must be a genuine dispute. I am satisfied on the evidence that there was a dispute between the parties. I prefer Mr Ahmed's evidence on the underlying debt. Mr Spence placed great reliance on the receipts which Mr Ahmed produced of the transactions. There are problems with them. The first and most fundamental is that on Mr Ahmed's case he agreed, at the request of Mr Miah, to use false names on the receipts. A few did show Mr Miah as the customer, but the vast majority used the names and addresses of other people. Some of those addresses were open to question or just plain wrong – for example Cardiff is placed in West Yorkshire.
43. Mr Ahmed said that this was done at the request of Mr Miah. There was no exploration of why it might have been requested, although one can speculate. There is no defence of illegality advanced and nor, on these facts, would one be likely to succeed. Against that there are the PINs which were sent to Mr Miah, Mr Ahmed chasing for payment, and the failure of Mr Miah to deny that money was owed. All of those points establish at the very least that there was a valid dispute between the parties.
44. Mr Spence suggested that there was an inherent unlikelihood of someone lending £72,000 to a man of straw. But equally, how likely is it that Mr Ahmed would choose, wrongly, to allege that a man of straw had borrowed money from him and thereafter sought to obtain a judgment against him; a judgment which he may have significant difficulty enforcing?

45. There is also no doubt that Mr Ahmed, by the terms of the agreement, was giving consideration – he was accepting a reduction of £27,000. What consideration Mr Miah was providing is less clear. But I am satisfied that Mr Miah disputed £7,000 of the debt in the meeting. He was, therefore securing an acknowledgment from Mr Ahmed that he did not owe the full amount. That is sufficient consideration.
46. Was the agreement complete and certain? In my judgment the agreement was certain to the extent that there was an agreement by Mr Miah to repay £60,000 to Mr Ahmed. The terms on which it was to be repaid, however, were far from certain. Indeed Mr Miah refused to commit himself to an amount per month. It would appear from what was said during the meeting that this might be £100, £200 or £500 per month, but was dependent on him being able to pay what he could afford. Is such a term sufficiently certain?
47. It was said by Toulson L.J. in *Durham Tees Valley Airport v. bmibaby* [2010] EWCA Civ. 485, [2011] 1 Lloyd’s Rep. 68 at paragraph 88:
- “Where parties intend to create a contractual obligation, the court will try to give it legal effect. The Court will only hold that the contract, or some part of it, is void for uncertainty if it is legally or practically impossible to give to the agreement (or that part of it) any sensible content.” (citing *Scammell v. Dicker* [2005] EWCA Civ. 405, [2005] 3 All E.R. 838, para 30, Rix L.J.).”
48. Could the court imply a term that it was to be repaid within a reasonable period of time? In my judgment that is problematic. Mr Spence points to cases such as *In Re an Arbitration between Comptoir Commercial Anversois and Power, Son & Co.* [1920] 1 K.B. 868 at 899; *O’Brien v. Associated Fire Alarms Ltd* [1968] 1 W.L.R. 1916 at 1923 and 1925; and *IMT Shipping and Chartering GmbH v. Chansung Shipping Co. Ltd. (The “Zenovia”)* [2009] EWHC 739 (Comm), [2009] 2 Lloyd’s Rep. 139 at [22] as authority for the proposition that the court cannot imply a term which is contrary to a contracting party’s express intention. The implication of a term for payment within a particular period of time would run counter to Mr Miah’s refusal to specify a time period.
49. Likewise the implication for payment within a reasonable period of time would beg the question as to what factors should be considered in determining what was reasonable. Should that take into account Mr Miah’s ability to pay? Should it consider Mr Ahmed’s need for the money? Should it consider the original terms? The reality of Mr Mustakim’s submission was to simply allow the court to determine a period it considered reasonable. That is going too far.

50. However, even if the court could imply a term for payment within a reasonable period of time (despite the absence of such a term being pleaded), Mr Ahmed asks me to imply a further term that failure to pay a reasonable amount each month would render the whole sum due and owing. That, again, is going too far.
51. There is also a residual question as to whether Mr Miah intended to create legal relations. On my factual findings he agreed to submit to the arbitration. In my judgment he acknowledged a debt of £60,000 to Mr Ahmed and intended to do so. What is far more open to question is whether he intended to create a legal obligation to repay that sum. I am, on balance, not persuaded that he did. He agreed with the outcome of the community meeting, but in terms of promises to repay the money he was vague and non-committal.
52. In my judgment there was no binding contract of compromise entered into at the meeting on 27th November 2018. The effect of that decision is that the original agreement could be enforced by Mr Ahmed.

CAN MR AHMED SEEK ENFORCEMENT OF THE ORIGINAL AGREEMENT IN THESE PROCEEDINGS?

53. The Claim Form and Particulars of Claim seek to enforce the outcome of the meeting on 27th November 2018. The Particulars of Claim seeks a declaration that the agreement is valid, payment of the sum of £60,000, interest, costs and, “further or other relief”. It does not seek, as an alternative, enforcement of the original debt, or even a claim for money had and received. The Particulars of Claim were drafted in May 2020. There has been no application to amend, and due to the long delay in this litigation, limitation has now expired.
54. Mr Mustakim’s skeleton is predicated on the basis that if the agreement is held to be invalid, then the underlying claim could be pursued. He says that the facts of the original debt are pleaded and that the absence of an alternative claim in the prayer is not fatal and the words, “further or other relief” are sufficiently wide to encompass such a claim. It is true that in very brief terms the underlying agreement is set out. Although that pleading does not contain the information required by the Practice Direction to Part 16. For example, the words used in reaching the agreement are not pleaded.
55. In *Kirin-Amegen Inc v. Transkaryotic Therapies Inc. (No. 2)* [2002] R.P.C. 3, Neuberger J, said at paragraph 31:

“In summary, it appears to me that where there is a claim for “further or other relief”, then, unless the claimant obtains permission to amend the particulars of claim to broaden the relief claimed, the position is as

follows. First, relief will not normally be accorded in respect of a claim of a type which is not pleaded. Secondly, relief will not be accorded which is inconsistent with the relief specifically claimed, but that does not, of course, preclude alternative relief being granted, for instance, damages or a declaration in lieu of an injunction, or damages in lieu of specific performance. Thirdly, relief will not be granted if not supported by the allegations in the pleaded case. Fourthly, relief will not be accorded, save in very unusual circumstances, if the defendant reasonably claims that the claim for it takes him by surprise.”

56. The bare facts of the original agreement are set out in the Particulars of Claim, but at no stage does Mr Ahmed suggest that the sum due under that agreement is still owing. The Defence responds to the factual averments in relation to the underlying debt and goes on to deny that there was an agreement to lend him money or that he is indebted to the Claimant.
57. In my judgment, the current pleadings are not adequate to include the claim for the underlying debt. No application was made to amend. Whether the decision not to apply was correct is not for me to say. Any such application would undoubtedly have had a limitation hurdle to overcome, whether it might have been capable of being surmounted is, again, not a matter for me.

DISPOSAL

58. The claim is dismissed. Given my findings it is not necessary to determine the various alternative arguments concerning undue influence and non est factum.
59. Counsel helpfully agreed the majority of the order, but were unable to agree on the issue of the costs for the defendant’s application to adduce an additional witness statement which was made on 13th January 2025. I refused the application. The parties agreed to my suggestion that they each make brief written submissions on the point and I deal with it on paper.
60. The starting point is that the application failed and that therefore the defendant should not be entitled to his costs of making the application and preparing the witness statement in support. I have seen nothing which would cause me to take a different approach. The question is whether the claimant should be entitled to his costs of resisting the application. As a matter of principle I think he should. This is not a situation such as it was in *University of Manchester v. John McAslan* [2022] EWHC 3154 (TCC) where there were competing issues and some of the application succeeded and some did not in preliminary skirmishes in litigation. This was a free-standing application that the defendant chose, wrongly in my view, to make. Costs should follow the event.

61. However, the costs of the application to the claimant should be very limited indeed. It is work that I would expect to be included within counsel's brief fee, just as if the defendant had come and made an oral application on the first morning of the trial. I accept that the solicitor will have been put to a small amount of additional work in reading the application and a small amount of correspondence in acknowledging and taking instructions etc. It seems to me that I can deal summarily with the point and will assess the costs of the application in the sum of £420 plus VAT (£504), being one and a half hours of solicitor time.
62. The costs of the claim will be the subject of detailed assessment. Although no submissions have been made on the point, I consider it appropriate to make an order that the claimant pay 75% of the approved budget by way of an interim payment. That is a sum of £26,613 plus VAT (£31,935.60).