Neutral Citation Number: [2026] EWHC 1897 (KB)

Case No: KB-2025-003177

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2026

Before:

THE HONOURABLE MR JUSTICE SWEETING

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Between:

Kevin Lee Rice	**Claimant**
- and -	
Napril Holding Ltd	**Defendant**

- -
- -

Edward Cumming KC and **Sam Neaman** (instructed by **Keystone Law Limited**) for the **Claimant**
Crispin Hayhoe (instructed by **TKD Solicitors**) for the **Defendant**

Hearing date: 15th July 2026

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Approved Judgment

This judgment was handed down remotely at 11am on 24.07.2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

MR JUSTICE SWEETING:

Introduction

1. This is my judgment in relation to the Claimant's application for summary judgment by way of declarations as to the proper construction of contractual terms. The Claimant argues that all of the relevant material is before the court, that the arguments raised by the Defendant have no realistic prospect of success, and that the Court should accordingly grasp the nettle and determine the matter. If the issues identified are determined at this stage, then that will alter the course of the litigation although it will not bring it to an end.

Relief from Sanctions

2. The Defendant failed to serve evidence in response to the application but now applies to do so out of time and for relief from sanctions.

3. The applicable principles are well established and need not be rehearsed at length. The Court must apply CPR 3.9 and the three-stage approach identified in *Denton v TH White Ltd* [2014] EWCA Civ 906. The Court considers:

   i) The seriousness and significance of the breach;

   ii) Why the default occurred; and

   iii) All the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate cost, as well as the need to enforce compliance with rules and court orders.

4. As to the first stage, I accept that the default was significant. The application was made only shortly before the hearing of the Claimant's summary judgment application and the Defendant's evidence was served very late. The need for an application for relief from sanctions is itself indicative of a breach which cannot be regarded as trivial.

5. Turning to the second stage, I am satisfied that there is a reasonably cogent explanation for what occurred. The evidence before me establishes that there has been a significant change in the Defendant's management. Mr Brooks (whose witness statement the Claimant seeks to rely on) was appointed a director on 22 May 2026 and did not assume his duties until 2 July 2026. He explains that it took a further period for him to acquaint himself with the affairs of the company and the litigation. In addition, the Defendant only instructed its present solicitors on 29 June 2026.

6. This is not a case in which a litigant has simply ignored a court order or elected not to engage with the proceedings. Rather, the material before the Court indicates a period of disruption in the Defendant's management and legal representation, coupled with attempts by the newly appointed director and newly instructed solicitors to understand a substantial piece of commercial litigation at short notice.

7. Standing back and considering all the circumstances, at the third stage, I am satisfied that it would not be just to refuse relief. The proceedings concern claims and counterclaims of considerable value. The Defendant has advanced a pleaded defence, counterclaim, and Part 20 claim.

8. I also take into account that any prejudice occasioned to the Claimant by the lateness of the application is limited. The Claimant has been able to address the application at the hearing. No trial date has been lost. Nor has the efficient conduct of the litigation been materially affected.

9. By contrast, refusal of relief would prevent the court from considering evidence which the Defendant says bears on matters remaining in issue between the parties, including its counterclaim and related claims. In the circumstances of this case, that would be a disproportionate consequence.

10. I have given due weight to the importance of compliance with rules and orders. Nevertheless, the overriding objective requires the court to deal with cases justly and proportionately. In my judgment that objective is better served by granting relief than by refusing it.

11. Accordingly, applying CPR 3.9 and the guidance in *Denton*, I grant the Defendant's application for relief from sanctions. It follows that I have taken into account Mr Brook's evidence.

Background and Argument

12. The application arises out of a share purchase agreement dated 14 July 2023 ("the SPA") by which the Claimant, Mr Kevin Rice, sold to the Defendant, Napril Holding Limited, the entire issued share capital of Core Management Group Limited ("the Company"). The purchase price included an earn-out mechanism under which further quarterly payments, known as "Stretch Value Payments", might become payable by the Defendant to the Claimant during a three-year period following completion.

13. The Company carried on business as an umbrella payroll company. In broad terms, it acted as an intermediary between contractors and end users or recruitment agencies. It employed contractors, processed payroll, dealt with PAYE and national insurance obligations, provided associated employment benefits and administrative services, and offered specialist services within the construction industry under the Construction Industry Scheme.

14. The Company's clients are predominantly comprised of recruitment agencies, managed service providers and businesses operating in sectors including construction, engineering, healthcare, information technology and finance. Clients entered into "framework" or master agreements with the Company, but those agreements did not themselves oblige clients to place work with the Company or give rise to payment obligations.

15. Instead, work was provided through successive ad hoc instructions, typically sent by email and accompanied by what the parties have described as a "Requirement Document" or assignment schedule. These documents specified the contractors concerned, the work required, hours, rates of pay and other relevant details. Revenue was generated when clients paid the Company sums representing the remuneration and associated employment costs of the contractors covered by those instructions. It is common ground that these sums constituted the Company's revenue generally and for the purposes of the SPA.

16. The parties' negotiations culminated in the execution of the SPA on 14 July 2023. Clause 3.1(g) provided that the final purchase price would include the aggregate of any Stretch Value Payments payable under Schedule 7 to the SPA. Schedule 7 established a mechanism under which quarterly payments would be calculated by reference to "Relevant Revenue".

17. For present purposes the material provisions are contained in paragraph 1.1 of Schedule 7. "Relevant Revenue" is defined as the consolidated quarterly "New Revenue" of the Group together with the Buyer's estimate of any "Lost Revenue". The present application concerns only the meaning of "New Revenue". Issues of construction and fact also arise in relation to Lost Revenue but are not to be determined as part of the present application.

18. The definition of "New Revenue" comprises four categories. These include revenue derived from new clients, existing clients contracting for new lines of business, portfolios of clients acquired following introduction by the Claimant, and an existing client agreeing either to renew its business with the "Group" (the Company and its subsidiaries) or to increase that business in respect of existing lines of business provided by the Group at the date of completion of the SPA.

19. Following completion, the Defendant made Stretch Value Payments in respect of the first four quarters. It is common ground that those payments were calculated on the basis of all revenue generated by the Group during the relevant quarter. The parties differ as to the significance of that fact. The Claimant says that the payments were made in accordance with the Defendant's obligations under the SPA and in accordance with the construction for which he contends. The Defendant says that they were made subject to a reservation of rights and advances a different construction of the SPA.

20. The dispute crystallised when the Defendant adopted the position that the definition of "New Revenue" was subject to an implied threshold. Its case, as pleaded, is that Stretch Value Payments should be calculated only by reference to revenue exceeding a quarterly baseline amount equivalent to 25% of the Company's annualised turnover at completion (paragraphs 16 and 31 of the defence). Further, although the Defendant's pleaded case accepts that "New Revenue" is defined in Schedule 7, the Defendant also contends that revenue derived from an existing client merely "maintaining", rather than increasing, existing business falls outside the definition of "New Revenue". The relevant part of the definition in Schedule 7 is:

> "(d) an existing client agreeing to renew their business with the Group or increase the business with the Group in respect of existing lines of business which are being provided by the Group at Completion;"

21. Thus, the Defendant posits a category of business by reference to a client who is "maintaining" an existing line of business, in contrast, it would appear, to a client who is "renewing". The term "maintaining" or any variant of that term is not used in the SPA.

22. The Claimant rejects the Defendant's construction. He contends that the language of Schedule 7 encompasses all revenue generated through the Company's ordinary trading

and that there is no textual basis for introducing the threshold for which the Defendant contends.

23. As to the argument that "maintaining" a line of business would fall outside of the definition, Mr Cumming, King's Counsel, on behalf of the Claimant, pointed out that the Company's business model did not involve any fixed term or standing contractual arrangements as opposed to framework agreements setting out the basis on which a client could contract if it chose to do so. In practice the Requirement documents tended to be submitted weekly and so represented the client in each case "renewing" a line of business to which it was not already contractually committed. Mr Cumming accepted that it was at least feasible that there could be a Requirement document involving a longer period so that it would not fall to be "renewed" during a stretch value accounting period but would still be a source of revenue. Whilst on his submission that possibility was more theoretical than real, any potential difficulty could be avoided by a slight adjustment to the terms of the declaration sought.

24. Since, in the normal course of the Company's business clients placed their business on a short-term basis without any future obligation to do so there was, in that sense, nothing to be "maintained". That explained why the contract was worded as it was by reference to "renewal" and accorded with the commercial purpose of the earn out provisions which were predicated upon Mr Rice remaining involved in the Company's business for a three-year period. It was accepted in argument that the rationale for the stretch value payments was, amongst other things, to incentivise Mr Rice in his continuing consultancy role to win new business and to build and maintain the existing business. To ensure that Mr Rice did not simply sit on his hands Schedule 7 includes a provision at paragraph 5.2 that:

> "No Stretch Value Payments shall be payable in respect of any Quarter where the consolidated Group Revenue for that Quarter is equal to, or less than, the Quarterly Revenue Amount."

25. As Mr Cumming KC observed, this provision would be otiose if there were a 25% threshold requirement and inconsistent with a competing provision covering the same ground. He argued that it could not be read as incorporating the qualification set out at paragraph 16 of the defence nor, as a matter of construction, could the Defendant's construction be derived from the wording of the definition of "New Revenue". There is no pleaded claim for rectification on the part of the Defendant. I should add that Mr Hayhoe, who had recently been instructed on behalf of the Defendant to resist the present application, was not the author of the pleadings.

26. Against this background the Claimant seeks declaratory relief as to the proper interpretation of the SPA and summary judgment on that issue. The declarations sought are framed in the negative by reference to the defence case but for practical purposes require the court to construe the meaning of the relevant term "New Revenue" in its contractual setting.

27. The Defendant resists the application and advances a counterclaim. It seeks declarations reflecting its own construction of the SPA and repayment of sums which it contends were overpaid during the first four quarters. There is, however, no reverse summary judgment application. In the alternative, if its construction of the SPA is wrong, the Defendant pursues a Part 20 claim against Fieldfisher LLP, the solicitors advising it

during the transaction, alleging negligence in the drafting of the relevant provisions. That firm did not play any part in the hearing, and as matters stand would require relief from sanctions in order to allow it to rely on its draft Part 20 Defence.

28. The Defendant submitted that this was not an appropriate case for summary determination. It contended that the dispute concerning the meaning of "New Revenue" could not properly be resolved by reference to the language of the SPA alone but required consideration of the wider factual context in which the agreement was negotiated. As referred to earlier, the Defendant relied upon its pleaded case that, during the negotiations preceding the SPA, the parties agreed that a threshold mechanism would operate when calculating the revenue relevant to the earn-out provisions. The Defendant submitted that a spreadsheet prepared by the Claimant formed an important part of that narrative and was consistent with the existence of such a threshold. It argued that there was a substantial factual dispute concerning the timing and content of the relevant discussions and that those matters could only properly be resolved at trial following disclosure and oral evidence from the individuals involved in the negotiations, including a Mr Bresnihan and former representatives of the Defendant.

29. The Defendant further submitted that the court should be slow to determine the construction issue in circumstances where a Part 20 claim had been brought against Fieldfisher LLP in relation to the drafting of the SPA. It argued that the draft defence served by Fieldfisher could not safely be treated as determinative, both because it remained a draft and because relevant communications and documents relating to the drafting process had not yet been disclosed. According to the Defendant, the existence of those matters reinforced the need for a trial. In fact, the Claimant did not seek to rely on the third-party defence in the application observing merely that the matters set out were a probable explanation for why a rectification claim had not been raised in the defence.

30. More fundamentally, the Defendant submitted that the Claimant's interpretation produced an implausible result. It argued that the ordinary meaning of the expression "New Revenue" was inconsistent with the Claimant's contention that it extended to all or substantially all revenue generated by the business. Mr Hayhoe submitted that there was an obvious distinction between "new" revenue and total revenue and that the question of what the parties intended by that phrase was one requiring investigation of the surrounding facts and circumstances.

31. The Defendant therefore maintained that its construction of the SPA enjoyed a real prospect of success and that the disputes identified in the pleadings and evidence were not capable of being resolved on a summary judgment application

32. For the purposes of the present application, the issue is a narrow one. It concerns the proper construction of the contractual definition of "New Revenue" in Schedule 7 to the SPA and whether the Defendant has a real prospect of successfully defending the claim in this respect.

Applicable legal principles

33. The application is made under CPR Part 24. The court may give summary judgment against a claimant or defendant if it considers that the relevant party has no real prospect

of succeeding on the claim or issue, and there is no other compelling reason why the case or issue should be disposed of at trial.

34. The applicable principles are well established. In *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch), Lewison J summarised the authorities and explained, amongst other things, that the court must distinguish between a case which is merely arguable and one which carries a real, as opposed to fanciful, prospect of success. The court should not conduct a mini trial, but equally it is not required to accept without analysis assertions which are unsupported or contradicted by contemporaneous documents.

35. The Court of Appeal approved that summary of principle in *AC Ward & Son Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098. The question is whether the Defendant's case has a realistic prospect of success, in the sense of carrying some degree of conviction, rather than merely being arguable.

36. In *Easyair*, Lewison J also observed that where a summary judgment application raises a short point of construction and the court is satisfied that it has before it all the evidence necessary for the proper determination of the issue, the court should ordinarily determine the point rather than postpone it for trial. The often-cited formulation is that the court should *'grasp the nettle and decide it'*.

37. The present application falls squarely within that category. The issue turns upon the proper construction of a written agreement. The relevant contractual wording is before the Court. The underlying features of the Company's business, which provide the relevant objective factual matrix, are substantially common ground. The parties have had a full opportunity to address the issue both in writing and orally.

38. As to contractual interpretation, the modern principles are not in dispute. The task of the court is to ascertain the objective meaning of the language which the parties have chosen to use in the contract. The Court considers the language of the provision, the contract as a whole, and the relevant background known or reasonably available to the parties at the time of contracting.

39. In *Arnold v Britton* [2015] AC 1619, Lord Neuberger emphasised that the court is concerned to identify what a reasonable person having all the background knowledge available to the parties would have understood the language of the contract to mean. Particular importance is ordinarily attached to the natural and ordinary meaning of the words used. Commercial common sense remains relevant, but it cannot be invoked retrospectively or used to undervalue the language which the parties have chosen.

40. In *Wood v Capita Insurance Services Ltd* [2017] AC 1173, Lord Hodge explained that interpretation is a unitary exercise in which textual analysis and consideration of context are not competing approaches but tools to be used together. The court adopts an iterative process, checking rival interpretations against the language of the agreement and its commercial consequences.

41. The principles stated in *Arnold* and *Wood* reflect and build upon earlier authority, including *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900. Where contractual language is capable of more than one meaning, the court may prefer the construction that is most consistent with business common sense. However, where the language is

clear, the court's task is to give effect to the bargain which the parties have made, not to rewrite it in a manner which appears more reasonable or more advantageous to one side.

42. Equally important are the limits of the admissible background. As Lord Hoffmann explained in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, evidence of the parties' pre-contractual negotiations and their subjective intentions is generally inadmissible on a question of contractual interpretation. Such material may be relevant to a separate rectification claim, but it forms no part of the objective interpretative exercise.

43. Accordingly, in determining the issue raised by this application, I proceed by reference to the language of the SPA, considered in its contractual and factual context, and without regard to disputed evidence concerning the parties' subjective intentions or alleged pre-contractual understandings. I also leave out of account the draft defence of the Part 20 Defendant's solicitors.

44. Against that legal background I turn to the proper construction of the definition of 'New Revenue' in Schedule 7 of the SPA.

Construction of the definition of "New Revenue"

45. In my judgment the Claimant's construction is plainly correct. The language used by the parties is clear, coherent and unambiguous. Read objectively, and in the context of the Company's business model which was known to both parties at the time of contracting, the definition of "New Revenue" is apt to capture the entirety of the revenue generated by the Company during the Stretch Value Period.

46. The starting point is the wording of the definition itself. Paragraph 1.1 of Schedule 7 provides that "New Revenue" means any of four categories of business. Those categories comprise:

a) A new client or customer contracting with the Group;

b) An existing client contracting for new lines of business;

c) A portfolio of clients acquired following an introduction by the Seller; and

d) An existing client agreeing to renew its business with the Group or increase its business with the Group in respect of existing lines of business.

47. When that language is read against the agreed description of the Company's business, it becomes apparent that the definition was drafted to address all material ways in which revenue could be generated. New customers are dealt with by limb (a). New lines of business from existing customers are dealt with by limb (b). Portfolios of customers are dealt with by limb (c). Existing customers continuing or increasing business are dealt with by limb (d).

48. Of particular significance is limb (d). The parties did not choose language limited to increases in business. Instead, they expressly referred to an existing client agreeing *"to*

renew their business with the Group or increase the business with the Group". The word "or" plainly distinguishes two separate concepts. A renewal of business is one thing; an increase in business is another. To construe the definition as excluding revenue generated by the renewal of existing business would deprive the first part of limb (d) of independent content. Equally "renewal" is to be understood in the context of a business model in which the client exercised a choice to continue placing a line of business with the Company on each occasion when a "Requirement" document was submitted. There was no contractual relationship which was being maintained which is why the parties to the SPA did not use that term, preferring terminology which reflected commercial reality.

49. The Defendant's competing construction encounters a more fundamental difficulty. It requires the Court to imply into the definition a threshold mechanism whereby only revenue exceeding 25% of annualised turnover at completion is capable of constituting New Revenue. No such wording appears anywhere in the definition. Nor does any other provision of Schedule 7 contain language imposing such a threshold. The SPA nevertheless contains a term at 5.2 which serves a similar purpose albeit by a different route and in a way which does not impinge on the definition of New Revenue.

50. The SPA demonstrates that the parties were perfectly capable of defining financial metrics, percentages and thresholds when they wished to do so. The agreement contains numerous defined financial concepts expressed with precision. The absence of any threshold language, of the sort contended for by the Defendant, in the definition of New Revenue is therefore conspicuous.

51. Applying the guidance in *Arnold, Wood* and *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd* [2023] UKSC 2, the court must give effect to the words the parties actually chose. Commercial common sense cannot be used as a licence to re-write the bargain. Still less can it justify the insertion of a detailed financial threshold which the parties did not include.

52. Indeed, the Defendant's interpretation would require the court not merely to construe the contract but effectively to supplement it. The proposed threshold is not derived from any wording in Schedule 7. It is imported from alleged pre-contractual discussions and a spreadsheet said to reflect an earlier stage of negotiations. As a matter of contractual interpretation, such material is inadmissible: *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896.

53. I accept that the parties advance different cases concerning the course of negotiations and the circumstances in which the final wording came to be adopted. Those disputes may be relevant elsewhere in the proceedings, including in relation to the Claimant's alternative rectification claim and the Defendant's Part 20 claim against Fieldfisher LLP. They are not, however, relevant to the objective construction of the SPA. In both its written and oral submissions the Defendant was, in my view, unable to identify with any precision what admissible evidence might come to light which might alter the approach which the court is required to take in relation to the relevant issue of contractual construction. Ultimately the submission appeared to be that something might turn up so that the better course would be to wait and see if it did.

54. Once inadmissible material is put to one side, the Defendant is left with a construction which finds no support in the text of the agreement. It is impossible to identify any

wording from which the alleged threshold can properly be derived. Equally, it is impossible to reconcile the Defendant's contention that renewed business falls outside the definition with the express reference in limb (d) to an existing client agreeing to renew its business with the Group.

55. In my judgment a reasonable person, possessed of the background knowledge available to the parties when the SPA was executed, would understand the definition of New Revenue to encompass revenue generated through the Company's ordinary business activities, including revenue arising from existing clients renewing business with the Company by submitting Requirement documents. The definition does not incorporate a threshold of 25% of annualised turnover at completion, or any other threshold.

56. To the extent that such a threshold is sought to be introduced by reference to an "agreement" reached during the course of contractual negotiations with which the SPA should be "construed consistently" that is simply an impermissible approach to construction. The parties memorialised their agreement in the written SPA which does not reflect any such "agreement" and, in any event, contains an "entire agreement" clause in a standard commercial format:

"This Agreement, together with the Transaction Documents, constitutes the entire agreement between the parties relating to its subject matter and supersedes any and all previous agreements (whether written or oral) between the parties or any of them relating to that subject matter."

57. It follows that the proper interpretation of the SPA is the interpretation advanced by the Claimant. The Defendant's contrary construction is not merely doubtful, it is contrary to the language of the agreement and has no realistic prospect of succeeding at trial.

58. In respect of declaratory relief, in *Abaidildinov v Amin* [2020] 1 WLR 5120, at [47]-[50], the court helpfully explained that where such relief is sought as part of summary judgment this is to be approached in two stages:

i) First, whether the Defendant has a real prospect of success in respect of the declarations sought in respect of the underlying facts or matters relevant to the declaration sought, and not to the question, as a matter of discretion, whether a declaration should be granted.

ii) Secondly, if it is determined that the Defendant does not have a real prospect of success, the question whether a declaration should be granted is to be considered not by reference to the higher hurdle provided by CPR 24, but by reference to the usual approach under CPR 40.20 i.e. considering justice to both parties, whether the declaration would serve a useful purpose and whether there are any special reasons that might affect the court's decision.

59. I followed that approach in *Friend v Friend Media Technology Systems Limited* [2026] EWHC 43 and, in my view, it is the course which should be taken where a declaration is sought as a remedy in an application for summary judgment.

60. In this case the declaratory relief sort would clearly narrow the issues which fall to be determined in the litigation both in the main claim and in the Part 20 claim, if it proceeds, and would further the overriding objective. The Defendant's pleaded case in

fact suggests that it would be desirable for the court to give a declaration as to the proper construction of the SPA. I have no doubt that had there been an application, in the alternative, to determine a preliminary issue on the point it would have been granted.

61. The application for summary judgment therefore succeeds and I will make the declaration sought subject to the minor amendment canvassed in the course of argument and referred to earlier.

END