



Case Nos: HT-2025-LIV-000002  
HT-2025-LIV-000005

[2025] EWHC 591 (TCC)

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN LIVERPOOL**  
**TECHNOLOGY AND CONSTRUCTION COURT (KBD)**

Date 13<sup>th</sup> March 2025

**Before:**

**DISTRICT JUDGE BALDWIN**

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**Between:**

**GROVE CONSTRUCTION (LONDON)  
LIMITED**

**Part 7**  
**Claimant / Part 8**  
**Defendant**

**-and-**

**BAGSHOT MANOR LIMITED**

**Part 7**  
**Defendant / Part 8**  
**Claimant**

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**Mr William Charlesworth** (instructed by **Bexley Beaumont Limited**)  
for the **Part 7 Claimant / Part 8 Defendant**  
**Mr Max Twivy** (instructed by **K & L Gates LLP**)  
for the **Part 7 Defendant / Part 8 Claimant**

Hearing date: 25<sup>th</sup> February 2025  
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# Judgment (Approved)

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*[ I shall continue to refer to the Part 7 Claimant as “the Claimant” and the Part 8 Claimant as “the Defendant” and I shall refer to the pages from the hearing bundle thus: [x] ]*

## **Introduction – the matters before the Court**

1. By Part 7 proceedings dated 3<sup>rd</sup> December 2024 and an accompanying application supported by the witness statement of Brandon Silver of the same date, the Claimant seeks summary judgment against the Defendant in the sum of £112,337.16 plus VAT, through the procedure approved of by the TCC, by way of enforcement of the decision of Anthony Bingham acting as adjudicator in a construction dispute, that decision being dated 18<sup>th</sup> November 2024. By Order dated 13<sup>th</sup> January 2025 Waksman J transferred the proceedings to the TCC at Liverpool and certified that they are suitable for disposal by a District Judge.
2. Although the Defendant opposes the application in what might be described as a traditional way, by means of arguing that the adjudicator acted outwith his jurisdiction, by way of additional and, indeed, connected opposition to the application, the Defendant has brought Part 8 proceedings for declarations, dated 29<sup>th</sup> January 2025, the parties having agreed on 17<sup>th</sup> January 2025 that the nature of this Part 8 claim was such that it would fall within the limited grounds of suitability to be heard at the same time as the above application.
3. The Claimant, nevertheless, attempted to resile from this position today, on the grounds that it now felt that factual evidence was required in the context of clause 7.1 of the construction contract, namely whether the Defendant falls within the category of assignee referred to therein, “company... providing finance in connection with the Works”. I refused, by way of preliminary issue, to adjourn the Part 8 claim on that basis and I have heard the application and the claim simultaneously, being grateful to both Counsel for their assistance.
4. I have taken into account, inter alia, the witness statements provided in the hearing bundle, the deed of assignment (“the deed”) [177ff], the adjudication documentation including the decision [33ff] and the oral submissions of Counsel.

## **Background and the adjudication decision**

5. The Claimant was employed by Bagshot Manor Developments Limited (“BMDL”) pursuant to a construction contract (“the contract”), which provided

for adjudication, to design and construct 79 residential dwellings by way of refurbishment of a building known as Bagshot Manor. The contract was dated 20<sup>th</sup> April 2020 and the works were certified as practically complete on 11<sup>th</sup> February 2022. The retention period ended on 11<sup>th</sup> February 2023 and the Claimant accordingly claims entitlement to the residual sum. However, BMDL entered into administration and subsequently entered into a deed of assignment on 21<sup>st</sup> July 2023 with the Defendant. The deed was described as “Assignment of Construction Documents for Bagshot Manor”, those construction documents being the documents listed in the Schedule to the deed, including the contract.

6. Clause 3 of the deed provides:-

“On the date of this Assignment, in consideration of the sum of £1 exclusive of VAT now paid by the Assignee to the Assignor... the assignor... assigns... whatever right title and interest (if any) the Assignor has in the Construction Documents together with all rights of action arising under them, including any rights that have already arisen, to the Assignee, to the extent in both cases such are assignable.”

7. Clause 4 provides:-

“As soon as reasonably practicable, and in any event within 10 days of the date of this Assignment, the Assignee will give written notice of the assignment to each of the parties to the Construction Documents in accordance with the terms of the Construction Documents and will send a certified copy of each notice to the Assignor.”

8. Such notification was, in fact, not given until much later (22<sup>nd</sup> February 2024) and an unredacted copy of the deed (the redaction only having been as to the sum paid in consideration of the assignment) was only supplied to the Claimant shortly before the hearing.
9. The Defendant (not BMDL) was requested, but refused, to pay the retention monies to the Claimant and the Claimant commenced a first adjudication on 11<sup>th</sup> October 2024. The adjudicator declined jurisdiction, but a second adjudication was commenced the following day on 17<sup>th</sup> October 2024 and on this occasion the Adjudicator rejected the Defendant’s objections and proceeded to make his award in favour of the Claimant, as above. The sums awarded remain unpaid.
10. It is the Claimant’s contention, accepted by the Adjudicator, that the Defendant stands in the shoes of BMDL for the purposes of liability to pay the retention monies and accordingly summary judgment is requested, to enforce the adjudicator’s decision, together with the dismissal of the Part 8 claim.
11. The Defendant asks the Court for the opposite outcome, on the basis that the adjudicator’s decision was contrary to the accepted law on assignment, that

accepted position giving rise not only to no liability on the Defendant to pay anything to the Claimant pursuant to the contract (the Part 8 claim), but also giving rise to no statutory or contractual right to adjudicate as between the Claimant and the Defendant (as opposed to the Claimant and BMDL) in any event (the opposition to summary judgment).

### **The Defendant's arguments**

12. Mr Twivy took me comprehensively through the law on the effects of assignment, with which Mr Charlesworth, for the Claimant, did not demur.
13. As such it is to be taken as accepted (and rightly so, in my judgment) that it is trite law that only rights and benefits and not burdens, obligations and liabilities under a contract may be transferred by an assignment. Further, the contractual relationship pursuant to the original contract is not affected by the assignment, beyond the transference of such rights to the assignee (*Law of Assignment* (3<sup>rd</sup> edn.) @ para. 26.03) and the assignee does not become a party to any contract which contains or gives rise to the rights, unless there has been a novation (which is not directly argued by the Claimant here) (*Bexhill UL Ltd v Razzaq* [2012] EWCA Civ 1376 @ [44]).
14. More recently in *Energy Works (Hull) v MW High Tech Projects* [2020] EWHC 2537 (TCC), [2020] BLR 747, 192 ConLR 79, O'Farrell J @ 62 identified the following:-
  - “(i) ... a party to a contract can assign the benefit of a contract, but not the burden, without the consent of the other party to the contract.
  - (ii) In the absence of any clear contrary intention, reference to assignment of the contract by the parties is understood to mean assignment of the benefit, that is, accrued and future rights [...].”
15. Finally, novation, were it to be argued, would require the consent of all three parties, which is not the case here.
16. Mr Twivy submits it is abundantly clear that, whilst the adjudication was between the Claimant and the Defendant, the contract is between BMDL and the Claimant (BMDL not being a party to the adjudication), and separately there is a conventional deed of assignment between BMDL and the Defendant. In order for the Claimant to have a right to adjudicate under the contract (and thus for the adjudicator to have jurisdiction) the Defendant would have to have become a party to that contract (which cannot be the case in the absence of a novation) and in order to defeat the Part 8 claim, the Claimant would have to show that BMDL's contractual obligations had become the Defendant's obligations, which is not demonstrable here.

17. Adopting the accepted objective approach for construing the deed, Mr Twivy contends that it is clearly intended to effect an assignment in a perfectly standard way, through clause 3, and that there can be no doubt as to the intended effect of that clause, namely the transfer to the Defendant of whatever right, title and interest BMDL had in the Construction Documents including the contract together with all BMDL's rights of action arising under them, to the extent that assignment of the same is permitted.
18. Pre-empting the Claimant's argument that somehow the rights of action arising can include the burden of the Claimant's rights of action against BMDL, Mr Twivy makes three cogent points:-
- (a) It was not within BMDL's power or gift to assign the Claimant's rights of action (and thus, as such, this interpretation would be caught by the last phrase of clause 3);
  - (b) It makes no sense to assign the Claimant's rights to the Defendant;
  - (c) If the Claimant's rights were somehow able to be assigned in this way, it would not only be an absurdity, but also of no assistance whatsoever to the Claimant.
19. Further, in similar fashion in relation to any argument that clause 4 somehow imports BMDL's obligations arising under the contract fixing them on the Defendant, he urges that a proper construction is that it is simply the deed creating a new obligation to provide notice, to be effected in accordance with i.e. consistent with (but not as a result of any obligation of the Defendant under) the contract.
20. Mr Twivy further points out that, whatever the contended for effect of clauses 7.1 or 7.2 of the contract [167]:-
- “7.1 ... The Employer may, without any further consent of the Contractor being required, by written notice to the Contractor, assign in whole but not in part its entire rights under this Contract to any company, bank or institution providing finance in connection with the Works.
- 7.2 The Contractor hereby consents to the Employer assigning by way of absolute legal assignment to a party without the Contractor's consent the Employer's rights under and benefit in this agreement.”,
- these clauses still refer to assignment and of BMDL's rights and benefits, not any burdens, obligations or liabilities.
21. Therefore, says Mr Twivy, the application must fail as the Claimant has no right to adjudicate against the Defendant, not being a party to the contract and the Part 8 claim must succeed, the Defendant having inherited none of the burdens, obligations or liabilities under the contract.

### **The Claimant's arguments**

22. I have to confess, with no disrespect to Mr Charlesworth, to finding the Claimant's arguments to be somewhat tortuous and on occasion impenetrable, no doubt almost inevitably resulting from the inescapable concession as to the applicable law.
23. He asks the Court to note the specific description applied to the assignment, namely "of Construction Documents" rather than more specifically the interests conferred by those documents.
24. He asks the Court to interpret clause 3 as assigning BMDL's interests in all rights of action, not just those of the assignor, namely to include defending any claim arising out of a burden or an obligation originally on BMDL.
25. I was also asked to find some sort of selective behaviour on the part of the Defendant, seemingly based upon its view that it could not make a reference to adjudication, not being a party to the contract, whereas the Claimant was asserting that both parties could. I may have misunderstood the point, but I don't believe it takes me anywhere in any event.
26. The Claimant seems to be drawing some conclusion in this regard in connection with clause 7.1 of the contract, Mr Charlesworth asking the Court to find that we are in a "7.1" rather than a "7.2" situation here, namely an assignment of the "whole...entire rights" from BMDL to the Defendant. Mr Twivy's response was that whatever the situation, we are still concerned in those clauses with BMDL's or the Defendant's rights and not the rights of the Claimant, which the Claimant has to rely upon here to establish jurisdiction.
27. The Claimant asks me to interpret clause 4 of the deed as somehow creating an obligation under the Construction Documents not just importing a consistent mechanism.
28. Mr Charlesworth referred me to Article 7 of the contract, namely the right of either party to refer any dispute to adjudication.
29. A complaint was raised about the failure of the Defendant to comply with the notice period in clause 4 of the deed, but, again, I fail to see where this takes me. Additionally the Claimant noted the £1 consideration paid for achieving substantial benefits and postulated that success for the Defendant here might have far-reaching impacts upon the intended purpose of statutory adjudication, a position rejected by Mr Twivy.
30. In summary, the Claimant asks the Court to find that the effect of the deed is to transfer sufficient rights held by the Claimant to permit the adjudication to be enforced. This was described by Mr Twivy as a transfer of burdens by the backdoor.

## Discussion

31. I can see no merit in the Claimant's position.
32. Mr Twivy's case was carefully and clearly argued and his analysis, in my view, is without flaw. On the other hand, to accede to the Claimant's position would be to reject the accepted approach of objective analysis and plain reading.
33. I am entirely persuaded that the parties to the deed intended to assign to the Defendant no more and no less than BMDL's benefits accrued and to accrue in future under the contract. It would be quite wrong, in my judgment, to construe clause 3 as somehow importing a burden in addition cloaked as a general "right of action". This would be a backdoor importation of something impermissible.
34. Clause 4 is of no benefit to the Claimant. Again, by way of plain reading, the reference to accordance with the terms of the Construction Documents is no more and no less a means of identifying that the notice period agreed to by way of the deed is intended to be consistent with existing terms, inter alia, under the contract.
35. I also find no comfort for the Claimant in anything arising out of clauses 7.1 or 7.2 of the contract. If 7.1 were to apply, BMDL would have the contractual right to assign the whole of its rights under the contract, including the right to refer to adjudication. However, in this instance, I am being asked to consider the Claimant's right to refer this dispute to adjudication. This takes me back to Article 7 [53] of the contract:

"If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2."

In agreeing with Mr Twivy that the original contract continues to subsist between BMDL and the Claimant, in my judgment the Claimant's rights are unaltered. In other words, the Claimant only has a right to refer a dispute arising under the contract and, it therefore follows, only a dispute where BMDL is the other party to the adjudication. A dispute with the Defendant is not, in my view, to be interpreted as a dispute arising "under the contract", see *MG Scaffolding (Oxford) Ltd v Palmloch Ltd* [2019] EWHC 1787 (TCC), 185 ConLR 210 @ [25] – [26] and *Steve Ward Services (UK) Ltd v Davies & Davies Associates Ltd* [2022] EWCA Civ 153, [2022] BLR 268, 203 ConLR 57 @ [42] as cited by Mr Twivy.

36. I am far from persuaded, from a policy perspective, that there is anything unconscionable or far-reaching flowing from my decision. It seems to me that if a party to a contract becomes insolvent as BMDL appears to have become in this case, then the assignment of contractual benefits is permissible, whilst the impact of insolvency upon a party in the position of the Claimant is simply one of the hazards of contracting, not least within the construction industry. Further

and in any event, parties are able to protect themselves against such matters by negotiating amended terms to cover such situations, in the same way that clauses 7.1 and 7.2 were inserted here.

37. In conclusion, I decide that the adjudicator lacked jurisdiction, the parties to this Claimant-brought adjudication not being the parties to the contract. I also find that the adjudicator erred in law in finding that the Defendant had, in effect, stepped into the shoes of BMDL, when no such obligations, burdens or liabilities under the contract had been transferred by the medium of the deed or otherwise. Accordingly the application falls to be dismissed and the Defendant is entitled to a Part 8 declaration, it being unconscionable not to recognise the adjudicator's error at this stage.

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