

## Insights

# REMINDER OF THE PRINCIPLES OF ASSIGNMENT

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## SUMMARY

In this Insight, Katharine Tulloch takes a look at the case of *Grove Construction (London) Limited v Bagshot Manor Limited* [2025] EWHC 591 (TCC) which provides a welcome reminder of the care which should be taken when drafting contractual assignment provisions.

## WHAT HAPPENED?

Grove entered into a contract in April 2020 with Bagshot Manor Developments Limited (BMDL) to design and build 79 residential dwellings by way of refurbishment of a building known as Bagshot Manor.

## KEY CONTRACTUAL PROVISIONS

The contract made provision for adjudication at Article 7 and also for assignment as follows:

*"Article 7*

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

*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."*

Works practically completed on 11 February 2022 and the retention period ended a year later on 11 February 2023 which triggered the entitlement to retention release.

Unfortunately the retention was not released because BMDL had entered into administration. Furthermore on July 2023 it had entered into a deed of assignment with the Defendant, Bagshot Manor Limited (Bagshot).

## KEY DEED OF ASSIGNMENT PROVISIONS

Clause 3:

*"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."*

Clause 4:

*"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."*

Grove asked Bagshot to release the retention monies. Bagshot refused and so Grove commenced a first adjudication in October 2024. The adjudicator declined jurisdiction, but a second adjudication was commenced immediately afterwards and Grove was successful. However, Bagshot did not pay the awarded sums.

In December 2024, Grove issued Part 7 proceedings seeking summary judgment against Bagshot and enforcement of the second adjudication. Bagshot opposed the Part 7 claim and also brought a Part 8 proceedings seeking various declarations.

## ISSUES

Grove argued that for the purposes of liability to pay the retention monies, Bagshot stood in the shoes of BMDL.

It's worth taking a look at the arguments of the parties in more detail.

## BAGSHOT'S ARGUMENTS

The crux of Bagshot's argument was that the assignment only transferred the benefits of the contract to Bagshot, not the burdens (ie the obligation to release the retention monies). Bagshot was not party to the contract and so Grove had no right to bring an adjudication against it.

## GROVE'S ARGUMENTS

Described by the Court as “...*somewhat tortuous and on occasion impenetrable...*” Grove’s case in essence was as follows: on interpretation of the contract and deed of assignment, Bagshot essentially stood in the shoes of BMDL. Grove asked the Court to find that the effect of the deed was to transfer sufficient rights held by Grove to permit the adjudication to be enforced describing it as “a transfer of burdens by the Backdoor...”.

Noting the specific description applied to the assignment, namely “*of Construction Documents*” rather than more specifically the interests conferred by those documents, Grove argued that clause 3 assigned BMDL’s interests in **all** rights of action, not just those of the BMDL, to include defending any claim arising out of a burden or an obligation originally on BMDL. This also meant that Bagshot had an obligation to pay Grove the retention monies.

## JUDGMENT

The Court ruled in favour of Bagshot. It held that the adjudicator lacked jurisdiction because Bagshot was not the party the contract under which the adjudication was commenced. The adjudicator had erred in law in finding that Bagshot had stepped into the shoes of BMDL, when no such obligations, burdens or liabilities under the contract had been transferred by the deed. Therefore the application was dismissed and the Bagshot was entitled to a Part 8 declaration, it being unconscionable not to recognise the adjudicator’s error at this stage.

## SOME THOUGHTS

This judgment provides a welcome reminder of the basics of the law of assignment, namely: assignment transfers the benefits of the contract NOT the burden.

If parties want to transfer both benefit and burden then the usual route is by novating the contract. While novation can in rare instances be deemed this process can be fraught with complications, so best practice remains for the parties to the contract and the party to whom the contract will be novated to enter into a deed of novation with appropriate provision for novation having originally been made in the underlying contract (see our Insight for more tips on drafting for a successful novation). Then everyone is clear where they stand.

This case also serves as a reminder of the impact of an insolvency risk. As the judge observed, “... 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.”

## RELATED PRACTICE AREAS

- Commercial Construction & Engineering

## MEET THE TEAM



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