



Construction appointments: can you really assign a claim?

High Court dismisses application by substitute claimant following a purported assignment of the benefit of a professional appointment.

In *Goldkorn v MPA (Construction Consultants) Ltd & Anor [2025]*, the Technology and Construction Court (“TCC”) ruled that a director of an insolvent company could not bring a claim against a consultant because the original employer was prevented from assigning the appointment to him.

The case turned on the language of a fairly typical assignment clause, with implications for anyone dealing with, or relying upon, an assignment of a claim.

Key takeaways:

- The typical contractual wording that an assignee must have acquired the client’s ‘interest in the project’ means a stake in the physical works.
- Precise drafting is needed to separate an assignment of “future performance” (i.e. ongoing project work) from an assignment of accrued claims (i.e. the right to sue for past breaches, the “fruits” of the contract). The Courts won’t assume such a split.
- Ultimately, the Court will interpret assignment restrictions strictly. You can’t sidestep a restriction on assignment by calling a contract problem “negligence” or by using a side agreement like a trust.

Background

The dispute involved a failed restaurant development at 61-63 Beak Street, London. In November 2016, Kazu Restaurants 1 Limited (“Kazu 1”) engaged MPA (Construction Consultants) Limited (“MPA”) to provide project management services for the sum of £29,500 (the “Appointment”).

Kazu 1 was a special purpose vehicle. Its parent company was Kazu Restaurants Limited (“Kazu”).

The Appointment consisted of two documents: a proposal letter dated 10 November 2016, and MPA’s Terms and Conditions of Appointment (the “T&Cs”).

Clause 16.2 of the T&Cs was a standard non-assignment clause that sought to limit assignments to just two instances (other than to bankers). It provided (emphasis added):

“The benefit of this Appointment may be assigned by the Client by way of an absolute legal assignment to any person providing finance or refinance to the Client in connection with the Project or to any person (A1) acquiring the Client’s interest in the Project and by (A1) to another person (A2) acquiring A1’s interest in the Project. No further or other assignment is permitted and, in particular, A2 is not entitled to assign this Appointment.”

The T&Cs also contained a standard exclusion of third-party rights clause:

“Nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it. Only the Client (and the Client’s permitted assignees) and the Consultant can take action to enforce the terms of this Appointment.”

Purported Assignment of Rights to Goldkorn

In January 2018, Kazu 1 discontinued the project and subsequently went into liquidation.



Kazu 1 maintained it had a potential claim for breach of contract and negligence against MPA, and purported to assign its alleged claim to Mr Benjamin Goldkorn, a former director of Kazu 1.

On 22 December 2020, Kazu 1 and Kazu entered into a deed of assignment (the “**Deed of Assignment**”) to assign Kazu 1’s rights in the alleged claim against MPA to Mr Goldkorn. Later, on 14 February 2022, Kazu 1 and Kazu entered into a declaration of trust (the “**Declaration of Trust**”), holding Kazu 1’s right to claim against MPA on trust for the benefit of Mr Goldkorn.

On 22 August 2023, Mr Goldkorn issued proceedings against MPA. Mr Goldkorn accepted that he had no claim in his own right but sought to bring a claim either as the assignee of Kazu 1’s claims against MPA pursuant to the Deed of Assignment, or alternatively as the beneficiary of such claims pursuant to the Declaration of Trust.

The question before the Court was whether Mr Goldkorn was a permitted assignee under the Appointment and therefore entitled to bring a claim against MPA.

Held

The Judge, Jonathan Acton Davis KC, held that Mr Goldkorn could not sue MPA because he was neither a permitted assignee nor a beneficiary. He gave the following reasons for his decision:

- **Mr Goldkorn had not acquired “the Client’s interest in the Project”**: Under Clause 16.2, only a person who acquired Kazu 1’s interest in the “Project” would be a permitted assignee. The Appointment defined the “Project” as the construction works at the restaurant premises. In reality, Mr Goldkorn had not acquired any interest in those works which had in any event been abandoned.
- **There was no distinction between “future performance” and “the right to the fruits of**

performance”: Mr Goldkorn argued that the bar on assigning the “*benefit of this appointment*” in Clause 16.2 only prohibited transfers of future rights (e.g., ongoing project work) but not past claims (e.g., suing for damages already owed). The Court did not accept this argument, saying there would need to be “*careful and intricate drafting*” to draw such a distinction.

- **MPA’s negligence duties were exactly the same as its contractual duties**. Mr Goldkorn argued that Kazu 1 had a separate claim in negligence against MPA, which was not prohibited by Clause 16.2. The Court disagreed. Since MPA’s negligence duties (doing its job properly) were exactly the same as its contractual duties, the assignment clause blocked Mr Goldkorn from pursuing both claims – the Court treated them as one package.
- **The Declaration of Trust did not entitle Mr Goldkorn to bring the claim in his own name**. Mr Goldkorn tried to rely on the Declaration of Trust and a mechanism called the Vandepitte procedure (a rule letting beneficiaries sue if the trustee won’t) to bring the claim in his own name. The Court dismissed this argument, on the basis that the Appointment prevented anyone other than Kazu 1 or its permitted assignees (which Mr Goldkorn was not) from bringing a claim.

Analysis

The key wording in this case, that an assignee must have acquired the client’s interest in the project, is relatively standard language in construction appointments. This case is helpful in clarifying the extent of this requirement.

The Court also made it clear that language of the contract trumped everything. You can’t sidestep a restriction on assignment clause by calling a contract problem “negligence”, nor by using a side agreement (like a trust) to avoid the non-assignment clause.

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Construction Law Update

Ultimately, the Court will interpret assignment restrictions strictly, which may prevent a potential claim from being validly assigned. It is important to check that the assignment clause in question allows the transfer of the benefit of the contract and that any pre-conditions or qualifications are met otherwise the assignment may be deemed invalid.

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