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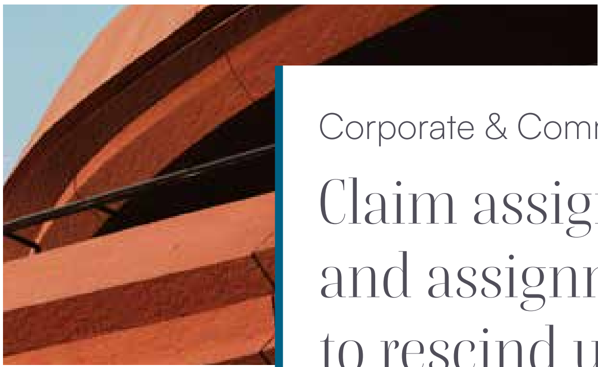
ANALYSIS



Corporate & Commercial

Claim assignment and assignment of right to rescind underlying contract

Contrary to previous case law, Supreme Court holds contract cannot be rescinded by claim assignee.

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1. Four judgements

1.1. *Supreme Court Judgment 131/1984 of 23 October*

The assignee's right to unwind the sale of certain properties under Article 1124 of the Civil Code was upheld when the seller, having fulfilled the obligation to deliver them, had assigned the claim relating to the deferred payment of the price, as well as 'all rights and remedies held or arising in favour of [the seller], as a consequence of the sale of the properties', with the effects of the assignment extending 'in particular to those relating to the properties in question that lie with [the seller], including title of ownership in the event of rescission of contract'. In this case, in accordance with the agreement, the assignee's right to unwind the contract of sale and demand the return of the properties was recognised.

1.2. *Supreme Court Judgment 192/2003 of 6 March*

In a case involving the assignment of the seller's rights under a contract of sale in which payment of the price by the buyer was still outstanding (payment secured by an express condition subsequent), the Court rejected the notion that it was necessary to force an interpretation that an assignment of the contract had taken place (for which the consent of the other party would have been required, but was not given) and held that the claim had been assigned with all its guarantees, which entitled the assignee to unwind the contract of sale and request the handover of the properties ('irrespective of any residual financial effects').

1.3. *Supreme Court Judgment 94/2011 of 14 February*

The defendant acquired, by virtue of a barter agreement, ownership of a plot of land in exchange for construction of a building on the transferred plot and delivering the finished dwellings within the agreed timeframe. The agreement included a condition subsequent in the event of a breach of this obligation, and the original owner of the properties assigned the right to invoke the condition subsequent to a third party. In this case, the assignee's right to bring the action to cancel the agreement and claim transfer of fee simple absolute in possession of the bartered plot of land was upheld.

1.4. *Supreme Court Judgment 888/2026 of 9 June*

AA sells plot of land to BB in exchange for handover of flats to be finished and other monetary consideration. Various events happen and AA assigns flat-related debt-claim to CC and, as the obligation can no longer be fulfilled, CC requests rescission ab initio.

The Supreme Court judgment quashes the judgment of the Provincial Court and does not recognise the assignee's right to rescind the contract, on the following grounds:

— In this case, AA assigns a claim that forms part of a bilateral contractual relationship; and the consideration owed by the assignor has already been given. However, the assigned claim relates solely to one consideration which the parties to the contract of sale agreed upon (first in the deed of sale, and subsequently in the deed of payment in kind) as a means of the buyer fulfilling payment of the price.

— The buyer, in addition to handing over the flat referred to in the assignment agreed between the seller and the claimant (now the respondent), undertook other obligations as a method of payment.

— AA, by assigning the rights in the aforementioned 'flat xx', was not assigning the contract of sale (the entire contractual position arising from the contract); consequently, it was not released from any potential liabilities should there be any unfulfilled obligations towards BB. Nor, however, did it assign its entire creditor position under the contract, since, as payment for the price, BB was required not only to hand over the aforementioned flat xx but also to give other consideration, part of which had already been delivered.

— Added to this is the absurdity that the claimant, invoking the assigned right, should have the power to rescind a contract whilst disregarding all the consequences that would arise from such rescission, such as the buyer's obligation to return the property to the seller (who is not a party to these proceedings), the return by the seller of the sums received, as well as the consequences of the rescission with regard to the defendant's commitments to deliver other flats. There is no doubt that the claimant, as the assignee of the claim invoked, could demand performance from the defendant, that is to say, the delivery of the flat (or its equivalent in the event of repudiatory breach).

— The assignment of the rights resting with AA in respect of the flat would include the transfer of the rights relating to the conditions and characteristics of the flat, but in no way the power to unwind the sale and purchase and the acknowledgement letters for receipt of payment issued by AA and BB. Consequently, the Court does not find that the claimant has a legitimate interest and considers that the same is not entitled to the power to unwind the contract or the acknowledgement letters for receipt of payment issued by AA and BB.

2. Opinion

§ 1. Let 'Ced' be the assignor of the claim; 'Ces', the party acquiring it by assignment; and 'DC', the debtor of the assigned claim.

§ 2. Ces cannot act in relation to the underlying relationship in such a way that its conduct produces external effects vis-à-vis Ced, which Ced has not consented to. Consequently, Ces cannot rescind if Ced received part or all of the consideration paid by DC, which Ced would have to return to DC if Ces were able to rescind. Ces would not be able to rescind if the contract giving rise to the assigned claim is a continuing contract from which other claims and debts of Ced and DC might arise in the future.

§ 3. Ces cannot rescind with external effects vis-à-vis Ced and DC if the bilateral relationship between Ced and DC extends beyond the single claim being assigned.

§ 4. Ces cannot rescind the contract where such rescission would have the effect of extinguishing the claim of which Ces is now the holder and on which Ces had based its right of rescission.

§ 5. Ces cannot rescind if CED is to retain future debt flows.

§ 6. Ced will not be able to rescind, even if the claim it acquires is secured by a condition subsequent, provided that, as a result of invoking that condition, Ced has something to return or something to waive.

§ 7. The above rules do not apply if Ced clearly indicated consent to such external effects or if Ces were able to internalise ALL the external effects resulting from the rescission.

§ 8. If Ces were to acquire all of Ced's assets and liabilities, this would constitute a transfer of contract. This is what must be presumed in such cases where external effects would arise. A transfer of the contract as such is only possible when the relationship has not yet been consummated. In any event, DC's consent would be required.

§ 9. There is a specific situation in which Ced does not, strictly speaking, have any liabilities: when the purchase price, together with all its ancillary elements, is assigned and a condition subsequent has been agreed. Assuming that Ced has received nothing from the underlying contract (everything is assigned) and has no liability, once the subject matter has been delivered, it may be proposed as a rule of interpretation that the condition subsequent is also assigned. If this were not the case, the assignment of the claim would be of little value.

§ 10. And, despite all of the above, it seems to us that Supreme Court Judgment no. 888/2026 of 9 June does not reach the correct conclusion. Indeed, in the complex forward purchase-and-barter transaction involving a future asset, DC was obliged, amongst other obligations, to deliver a flat, and the value of the flat was set at 100,000 euros in the deed. The 'step' from the flat to money does not require a contractual rescission in the strict sense, in which the assignee had no interest. What mattered to the assignee was the step from the specific consideration to the *id quod interest* in money for specific performance that was no longer possible. That money was not equivalent to the rescission value of the contract as a whole, but to the value of the performance in kind: it remained an 'action for specific performance', albeit in respect of the *id quod interest*. It is clear that Ces was entitled to this; otherwise, the assigned claim would become devoid of substance.