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## Contracts—Assignments

Maynard Schaus

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## THE COURT OF APPEALS, 1951 TERM

### Assignments

Parties to an agreement may often wish to restrict the assignment of rights or the delegation of duties therein. The effectiveness of such restraints as against third parties frequently depends upon the language used. In *Allhusen v. Caristo Construction Corp.*,<sup>39</sup> the defendant, a general contractor, subcontracted certain painting work, the agreement providing that the assignment by the subcontractor of any money due or to become due without the written consent of the defendant would be void. The subcontractor assigned to the plaintiff his rights to money due and to become due without written consent. The assignee sued to recover for work done by his assignor. The Court of Appeals held that where parties to an agreement expressly provide in clear and certain terms that the assignment of any rights therein shall be void, any assignment is ineffectual as against the obligor.

Previous to the instant case, New York courts had not construed the meaning of a non-assignment provision couched in such unequivocal terms. Where the terms of the clause merely prohibit the assignment of the "contract", the question remains whether the restriction refers to the assignment of the rights or the delegation of duties.<sup>40</sup> The law favors the free alienation of property, including the assignment of rights in contracts.<sup>41</sup> Thus the rule of interpretation states that where words prohibit the assignment of the "contract" they are to be construed as forbidding a delegation of duties but not invalidating an assignment of rights.<sup>42</sup> This interpretation limits the obligor to a claim for damages in the event of breach but does not void the assignment itself.<sup>43</sup> The rule is recognized by the Uniform Commercial Code.<sup>44</sup>

However, in *Rosenthal Paper Co. v. Nat. Folding Box & Paper Co.*,<sup>45</sup> it was noted in dictum that: "The general rule pre-

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39. 303 N. Y. 446, 103 N. E. 2d 891 (1952).

40. 2 WILLISTON, *op. cit.* § 442; 4 CORBIN *op. cit.* § 872.

41. *Portuguese-American Bank v. Welles*, 242 U. S. 7 (1916).

42. *Manchester v. Kendall*, 19 Jones & Sp. 460 (N. Y. 1886); *Sacks v. Neptune Meter Co.*, 144 Misc. 70, 258 N. Y. Supp. 254 (1932), *aff'd*, 238 App. Div. 82, 263 N. Y. Supp. 462 (1st Dep't 1933).

43. *Supra* n. 42.

44. UNIFORM COMMERCIAL CODE-SALES § 2-210 (1952): "(3.) Unless the circumstances indicate the contrary a prohibition of assignment of 'the contract' is to be construed as barring only the delegation to the assignee of the assignors' performance." Unlike the Restatement, this section does not state that the parties may prohibit the assignment of contract rights. It merely states a rule of construction. See n. 51.

45. 266 N. Y. 313, 325, 123 N. E. 766, 777 (1919).

vailing . . . that any property right, not necessarily personal, is assignable, is overcome by agreement of the contracting parties . . .” Thus, the rule that parties may prohibit the assignment of contract rights by mutual agreement has long been recognized in dictum in New York,<sup>46</sup> and where the prohibition is for the sole benefit of the obligor the assignment has been held void.<sup>47</sup> The tendency, however, has been to treat the clause as relating to the delegation of performance alone,<sup>48</sup> unless the assignee has actual notice of the restriction.<sup>49</sup> Clear and unequivocal language is required to lead to the conclusion that the rights are not assignable.<sup>50</sup> The general rule is recognized by the Restatement.<sup>51</sup>

The court in the instant case found the terms of the restrictive clause sufficiently clear to indicate an intent that any assignment of rights was ineffectual and void. A new section to the Uniform Commercial Code<sup>52</sup> is intended to deny effect to any agreement prohibiting the assignment of accounts and contract rights (including sums due and to become due) under contracts of sale, construction and the like. It would overrule the present case.

### *Arbitration*

Arbitration agreements are often inexpensive and expeditious means for settling future disputes between parties to a contract. In *Alpert v. Admiration Knitware*,<sup>53</sup> the plaintiff (buyer) petitioned for an order directing the defendant (seller) to submit to arbitration issues alleged to be in controversy. Beside containing an arbitration clause,<sup>54</sup> the contract provided that if in the sole

46. *Devlin v. Mayor of New York*, 63 N. Y. 8 (1875).

47. *Fortunato v. Patton*, 147 N. Y. 277, 281 (1895).

48. 2 WILLISTON, *op. cit.* § 442.

49. *Snyder v. City of New York*, 74 App. Div. 421, 77 N. Y. Supp. 637 (1st Dep't 1902).

50. *State Bank v. Central Mercantile Bank*, 248 N. Y. 428, 435, 162 N. E. 475, 477 (1928).

51. RESTATEMENT, *op. cit.* § 151: "A right may be the subject of effective assignment unless . . . (c) the assignment is prohibited by the contract creating the right."

52. UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS § 9-318 (1952): "(4) A term prohibiting assignment of an account or contract right is ineffectual." Section 151 of the RESTATEMENT, *supra* n. 51, mentions nothing indicating that agreements making wages non-assignable are any different from agreements making other rights non-assignable. Section 9-318 (4) of the COMMERCIAL CODE would make ineffectual any agreement prohibiting the assignment of rights even as against an assignee with actual notice.

53. 304 N. Y. 1, 105 N. E. 2d 561 (1952).

54. The arbitration clause provided that: "All other controversies arising out of or relating to this contract, or breach thereof, shall be settled by arbitration . . ." 304 N. Y. at 5, 105 N. E. 2d at 563.