Neutral Citation Number: [2025] EWHC 3155 (Comm)

Case No: LM-2024-000139

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29/01/2026

Before :

His Honour Judge Bird sitting as a Judge of this Court

- -

Between :

HENDERSON & JONES LIMITED **Claimant**

- and –

TYSERS INSURANCE BROKERS LIMITED **Defendant**

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- -

James Pickering KC and Angus Groom (instructed by Weightmans) for the Claimant
Alex Potts KC and Katy Handley (instructed by Clyde & Co) for the Defendant

Hearing dates: 7 October 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 29 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS COURTHIS

His Honour Judge Bird :

Introduction

1. The Claimant is the apparent assignee of various claims against the Defendant, an insurance broker. In short, 3 of the assignors had an insurable interest in a number of serviced apartments in Liverpool. Those apartments are in 2 blocks close to the Liverpool Arena, known as East Block and South Block. They became unusable by reason of damages indirectly caused by a nearby fire in December 2017. Claims against an insurance policy issued by NIG in respect of lost rents on those flats were rejected and subsequently compromised as part of a larger settlement of a range of insurance claims. The applications before me necessarily proceed on the basis that the rejection was justified, or that the policy failed to provide unambiguous cover. I note however that the Defendant will in due course assert that the claims should have been honoured.

2. Proceedings were issued on 11 October 2023. Between the accrual of the cause of action and issue there were 6 standstill agreements. The parties to the first were the assignors on the one part and the Defendant on the other. The parties to the remaining 5 were the Claimant and the Defendant.

3. A number of concerns have been raised about the Claimant's pleaded case and standing. Those points have led to an application to strike out some or all of the claim or in the alternative for summary judgment. That application in turn was met by an application to amend the Particulars of Claim. In summary the headline points raised are these:

    a. The claim to damages is inconsistent and incoherent to the extent that it should be struck out or it has no real prospect of success;
    b. The schedule of loss (required by an order made at the CCMC) is not verified by a compliant statement of truth and I should exercise my power to strike it out;
    c. The amendment should not be allowed;
    d. The assignment is of no effect.

Strike out and summary judgment

4. The test for summary judgment and for strike out is not in dispute. I can therefore state my approach shortly:

    a. I remind myself that by CPR 3.4(2), I may strike out all or part of a Statement of Case if it appears that (amongst other reasons) the Statement of Case discloses no reasonable grounds for bringing or defending the claim or it is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings. CPR PD 3 notes that where a party believes that a claim is bound to fail because of a point of law an application to strike out may be made under CPR 3.4.

b. By CPR 24.3 summary judgment against a claimant may be awarded where the claimant has no real prospect of succeeding on the claim and there is no other compelling issue for the matter to be disposed of at trial.

c. In considering strike out I should only consider the content of the relevant Statement of Case, and I should not have regard to other evidence. In considering summary judgment I am entitled to consider evidence.

The non-assignment points

5. There is an overlap between the damages claim point, the statement of truth point and the amendment point. I deal with those points against the following background:

   a. The contractual terms governing the relationship between the assignors and the Defendant were set out in a Client Service Agreement ("CSA");

   b. In 2016 (in fact from 1 September 2013 to 31 August 2016 see para.12.1 of the Defence) the assignors' interests were insured by Travelers Insurance Company ("TIC"). The Defendant was then instructed to find an insurer who would provide cover on a "*like for like basis*" to the cover provided by TIC in the previous year (see the PoC at para.13). That would, in certain circumstances, cover loss of rent on the serviced apartments. Cover was placed with NIG for 2016 and 2017;

   c. There was a fire at the Echo Arena in Liverpool on 31 December 2017. The fire service used the blocks as a staging post to fight the fire. That involved causing property damage by knocking out windows and breaking down doors. The serviced apartments became unusable;

   d. There is a dispute as to whether the NIG policy in fact covers loss of rent on the serviced apartments. NIG refused to cover the loss of rent in respect of the serviced apartments. On 6 February 2020, the assignors (and others) settled the claim with NIG for a total of £6.3m which included £150,000 in respect of loss of rent on some of the serviced apartments;

   e. The Particulars of Claim plead (paragraph 3 and 4) that there were 48 serviced apartments, all situated in the East Block.

   f. Paragraphs 45 and 46 of the Particulars of Claim plead the Claimant's case on loss:

      i. The main claim (paragraph 45) is for £2.45m "*being the difference between the amount of the settlement attributed to loss of rent and the level of indemnity cover provided under the Policy for loss of rent (£2.6m)*"
      ii. Paragraph 46 pleads a claim based on an inability to make use of the funds that would have monies been available earlier. The claimant seeks to withdraw this part of the claim by amendment.

g. The original pleadings do not include a schedule of loss.

h. At a CCMC held on 4 November 2024, Paul Mitchell KC (sitting as a Deputy High Court Judge) ordered the claimant to file and serve a schedule of loss by 20 December 2024 (later extended to 17 January 2025).

6. The schedule of loss appears to have little to do with the then pleaded claim. The amount claimed as set out on the schedule is £2,736,000. That is a substantial increase of £286,000 over and above the pleaded case. The schedule also references 8 further serviced flats (in the South Block so the total number of serviced flats is now 56 not 48) and it explains that the loss is calculated by reference to a monthly loss of rent on each flat of £750 over a period of 69 months (for the original 48 flats in the East Block) and 67 months for the additional 8 flats in the South Block after allowance is made for the £150,000 settlement sum.

the Statement of Truth

7. The schedule is verified by a statement of truth as follows:

Statement of Truth

The Claimant believes that the information in this Schedule of Loss is true.
The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly Authorised to sign this statement on behalf of the Claimant.

Henderson & Jones

Lauren Hughes
Associate
Claimant
17th January 2025

8. The relevant rules are these:

a. The statement of truth must be signed by a party or the party's legal representative (CPR 22.1(6)(a)).

b. Where the statement of truth is signed by a legal representative it should refer to the client's belief not the belief of the legal representative (CPR 22 PD para.3.6) and it should be signed in the name of the legal representative not the name of the firm (CPR 22 PD para.3.9).

c. By CPR 22 PD 3.7(1) the signature of a legal representative will be taken as verification that they are authorised to sign the statement on behalf of their client.

d. Where the statement of truth is signed by a party and the party is a company (as here) the signature must be of a person holding a senior position and that person must state the position they hold (CPR 22 PD para.3.1).

e. A legal representative is defined in CPR 2.3(1) (see CPR 22 PD 3.10(2) and (3)) as a person who "*has been instructed to act for a party in relation to proceedings*".

9. The statement of truth fails to comply with the rules and PD for a number of reasons:

    a. Whilst I accept Lauren Hughes is a solicitor, she had not (in the sense intended by the PD) been instructed to act for the Claimant. Rather, she is an employee of the claimant.

    b. If she was signing for the claimant and not as a legal representative, whether she is a person of sufficient seniority to sign the statement of truth must in the first instance be gauged by the description she gives herself when signing. The use of "***associate***" suggests that she believed that she was signing as a legal representative. The position of "***associate***" is well understood in a legal practice, but in a company is unclear and unexplained. I cannot see that it is a senior role.

    c. Further, the statement of truth should (whether signed as a legal representative or by the party) be signed with the name of the signatory not the name of the organisation.

    d. The statement confirms the truth of the "information" contained in the schedule. It should confirm the "facts."

10. By CPR 22.2 the schedule nonetheless remains effective unless struck out. I accept I have the power, on the application of the Defendant, to strike out the schedule of loss on the ground that there has been a failure properly to verify it.

11. I also have the power to strike out the schedule because it is inconsistent with the case pleaded in the Particulars of Claim. Before considering either basis I remind myself that strike out is a remedy of last resort and must be "*a proportionate means of achieving the aim of controlling the process of the court and deciding cases justly*" (see ***Summer v Fairclough Homes*** [2012] 1 WLR 2004 cited at paragraph 75 of ***Ashraf v Attarian*** [2023] EWHC 2800 (Ch)). It follows that I should consider what steps the claimant has taken to correct the statement of truth and what steps they have taken to synchronise the schedule and the Particulars of Claim. The latter requires me to consider the application to amend, the former requires me to consider an updated statement of truth. Permission is not needed to produce a compliant statement of truth. Permission is required to amend.

12. As to the first basis, a new statement of truth has been provided by a director of the Claimant, Mr Elliott. Save that the statement refers again to "information" and not "facts" I am satisfied it is compliant. In those circumstances I am not prepared to strike out the now (broadly) correctly verified schedule of loss under CPR 22.

    Ashraf abuse

13. The Defendant suggests that the present and proposed state of the pleadings is such that the proceedings are an abuse of process because of the scattergun and inconsistent approach the pleadings adopt. It relies in particular on ***Ashraf*** where Smith J struck out the claim as an abuse on the basis of the doctrine of "approbation and reprobation." That doctrine was described by Edwin Johnson J in the connected case of ***Ashraf v Lester Dominic Solicitors*** [2022] EWHC 621 (Ch) as one that "*usually*

applies where one party pursues a particular case in proceedings, and then seeks to do an about face, in the same proceedings or in other proceedings, for the purposes of pursuing an inconsistent case."

14. The facts of ***Ashraf*** (in 2023) are extreme, Constable J described them in ***Lloyds Developments v Accor*** [2025] EWHC 464 (TCC) as follows:

> "*It is difficult to consider a more extreme example of vacillation, which had continued for over 7 years and was continuing, than Ashraf. There had been five versions of actual or draft pleadings through which the facts had changed. Joanna Smith J specifically found that the confusing and muddled nature of the pleadings was 'apparently designed' to preserve Ashraf's ability to advance any case against any one of the defendants: it was a deliberate strategy. There had also been prior judicial comment as to previous 'flip-flopping' which had given rise to 'last chances'. Moreover, the application to strike out was made in the teeth of the application to amend. It did relate to a pleading, as here, which has been in place for 16 months. The vacillation referred to by Joanna Smith J was, therefore, just one element of a much broader set of concerns identified when striking the claim out. Whilst this case has had its own troubling history, it has not been one of vacillating pleadings and constant flip-flopping on the facts which underpin the claim*."

15. It is in my judgment clear that this type of abuse is likely to be very rare and likely to arise only in extreme cases. A deliberate strategy to plead a claim in a way that permits a claimant "*to advance any case against any one of the defendants*" is plainly abusive.

16. In my judgment the present claim (taking into account the proposed amendments) falls far short of the high hurdle this form of abuse requires. The better approach in my judgment (which is in accordance with general principles, with the approach in ***Summers*** and with the authorities on dealing with amendments referred to below) is to consider if permission to amend should be given.

the Proposed Amendment

17. I turn then to the proposed amended Particulars of Claim and consider the second basis for strike out. An application to amend was required because the Defendant refused to consent. The proposed amendments relating to the schedule of loss (not relating to the assignment claims, I deal with those claims below) can be briefly summarised as follows:

    a. The number of serviced flats affected by the claim is increased from 48 to 56 (paras 3 and 4)
    b. It is explained that the assignors received £750 per month rent for each flat from managing agents ("TBK") under the terms of a "Management Arrangement" (paras. 4A and 4B)
    c. The Defendant was aware of the terms of the Management Arrangement or ought to have been aware of it (para.19A)
    d. The indemnity period in respect of losses was open ended under the TIC policy (see para.13)

e. For serviced apartments in the East Block the period over which losses were suffered was 69 months and for the serviced apartments in the South Block the period was 67 months (paras.27 and 28)
f. As a result of the Defendant's breach, the assignors had lost £750 per serviced apartment per month (paragraphs 28A, 29A, 42(2),(3),(4) and 43(4)).
g. The loss suffered is calculated at £2,736,000 after allowance for the £150,000 compromise in respect of the serviced apartments reached with NIG (para.45).
h. An alternative case is advanced at para.45A, that if the Management Arrangement "did not have contractual effect" the assignors would have lost at least the amount of £750 per serviced flat over the period when losses were suffered.
i. Paragraph 46 is removed.

18. There is a further proposed amendment the effect of which is that the Defendant is estopped from denying the validity of the assignment either because of a contractual estoppel or because of a general estoppel (paras. 8A to 8M).

19. It is necessary to consider whether some or all of the proposed case would fall at the summary judgment hurdle.

The Indemnity Period

20. The NIG policy limited the indemnity period to 36 months. The Claimant asserts (para.13 of the proposed amended Particulars of Claim) that if the Defendant had secured a "like for like" policy, the indemnity period would have been open ended. This opens the way to make the claim set out in the schedule of loss over considerably more than 36 months. The point is further explained at paragraph 60.3 of Ms Kraja's witness statement of 29 July 2025. She explains that the TIC policy in place before the NIG policy provided for (at least on a literal interpretation) an open-ended indemnity period in respect of rental loss on the serviced apartments. She asserts that the Defendant was obliged to provide a "like for like" (and so open ended) policy.

21. The Defendant submits that "*as a matter of commercial common sense and contractual interpretation*" that the open ended liability argument cannot succeed. They rely on the fact that TIC's quote for insurance cover over the period first covered by NIG made it clear that was to be a 36-month indemnity period. They also rely on the fact that for the year in which the loss was suffered NIG was the only insurer prepared to offer "a competitive quote."

22. I have a good deal of sympathy for the Defendant's position in respect of the 36-month indemnity point. However, the argument on the correct interpretation of the last TIC policy in place (on the Claimant's pleaded case that policy rather than the last TIC quote appears to be the relevant comparator) is a matter that cannot in my judgment fairly be resolved now. As a matter of law, commercial common sense can guide the exercise of interpretation where a provision is ambiguous. Where there is no ambiguity the words chosen by the parties to reflect their bargain prevail. It follows that the call to follow common sense is not necessarily apposite. Whilst I was not addressed in any detail on the law the principles set out in ***Rainy Sky v Kookmin Bank*** [2011] UKSC 50 (at paragraph 23) are clear and well established. It is at the very least arguable at this stage that the words of the relevant contract, providing for

open ended cover, are unambiguous. Further, to interpret the contract, it would be necessary (see paragraph 14 of ***Rainy Sky***) to consider the context and background to the agreement. That may require evidence from TIC. Yet further there may be issues of rectification to deal with.

23. The Claimant will need not only to show that TIC was in fact offering open-ended cover (the interpretation point), but that at renewal insurers would have been prepared to offer such cover at a premium the Claimant was prepared to pay. The fact, as the evidence shows, that TIC was not offering such cover at renewal and that a number of insurers refused to offer any terms for any cover given the poor claims record of the insured, may present a formidable hurdle to the success of the claim.

the contractual limitation on losses

24. The Defendant referred to para.60.1 of Ms Kraja's evidence and asserts that a significant part of the losses claimed in the schedule of loss appear to be consequential losses of a type excluded by the CSA between the relevant assignors and the Defendant. The relevant terms provide that the Defendant's liability to the relevant assignors is limited "*in respect of…. Loss of revenue, loss of opportunity, loss of profits, loss of anticipated savings or any other indirect or consequential loss we will have no liability in any circumstances.*"

25. The precise scope of this limitation is in my view a matter for trial. The Defendant argues that the damages sought by the Claimant are properly categorised as loss of revenue or loss of profits and so are excluded entirely. In my view it is (at the very least) strongly arguable that the pleaded losses should be regarded as primary losses which (if the Claimant's pleaded case is made out) arise as a direct result of the breach of contract. Such losses are the very losses the Defendant (on the Claimant's case) should have been mindful of when recommending insurance.

pleading points

26. The Defendant submitted that a number of points raised by the proposed amended pleading are unsupported by evidence and inconsistent with the reply. In my judgment there is nothing in these points. It is likely that the reply will need to be amended as a consequence of what might be pleaded in an Amended Defence.

27. The absence of evidence in respect of some of the pleaded matters is, as demonstrated by the Claimant, to some extent cured by the fact that witness statements have been exchanged and some of the matters dealt with (for example at paragraph 11 of the witness statement of Mr William Jones deals with the £750 payment under the arrangement pleaded at paragraphs 4A and 4B of the proposed amended Particulars of Claim).

determination of the application to amend

28. When deciding whether to grant or refuse permission to amend, I bear in mind the following questions derived from ***Su-Ling v Goldman Sachs*** [2015] EWHC 759 and ***Scott v Singh*** [2020] EWHC 1714 (Comm)):

a. does the amendment give rise to a new claim, does it simply provide better particulars of an existing claim, or does it amount to the discontinuance or withdraw of an existing claim?

b. does each aspect of the proposed amendment comply with the requirements of the CPR and is it sufficient as it stands without the need for further clarification (the "form" question);

c. if the amendment raises a new claim (the "substance" question)

   i. does it have a real prospect of success in the sense that it could survive a summary judgment application?
   ii. if the new claim represents a wholesale change of case or a claim that is diametrically at odds with the originally pleaded case then the need for scrutiny of the new case is heightened

d. is the amendment such that the trial date is likely to be lost?

29. There is no suggestion that the trial date will be lost if any part of the amendments is allowed. The format of the proposed amendments raises no issues. In my view, most of the amendments are clarifying a case that is already pleaded. Taking the summary descriptions at paragraph 17 above, those amendments referred to at (a), (b), (c) and (f) are in my view properly treated as clarification. The amendment at (i) is in substance a discontinuance of the alternative damages claim. The amendments at (d), (e) and (h) are, on any view, new in the sense that they set out a new basis (and timeframe) for calculating the Claimant's losses and the amendment at (g) follows on from (d), (e) and (h).

30. In my view the amendments referred to a paragraph 17(a), (b), (c), (f) and (i) must be allowed because each is either clarification of an existing case that would need to be dealt with at trial or is the effective withdrawal of a claim.

31. As they give rise to new matters, the merits of the amendments referred at paragraph 17(d), (e) and (h) (the open-ended claim point) need to be considered. Those amendments in my view represent a wholesale change of case, so that the merits need to be considered with extra care. Whilst the claim is not straightforward, I am satisfied that I cannot (as explained above) at this stage conclude that the claim is so weak that it should not be permitted by amendment.

The assignment

32. The remaining issue relates to the assignment of claims. The proposed amendments are set out at paragraphs 8A to 8M of the proposed amended Particulars of Claim. The amendments are in my view clarification or particularisation of the Claimant's case on the validity of the assignment. Absent the amendment, the issue of validity will still need to be ventilated.

33. The proposed amendments plead that the Defendant is estopped from denying the validity of the assignment based on a contractual estoppel, estoppel by representation

or estoppel by convention. In essence, the factual core of each is that the Defendants entered into standstill agreements with the Claimant assignee (after a deed of assignment had been executed and notice of assignment had been served) which expressly acknowledged the validity of the assignment.

34. In particular, clause 1.6 of each standstill agreement entered into after the assignment recorded that the fact that an assignment had been taken.

35. However, the estoppel (if indeed the inability to deny the contractual declaration is properly characterised as an estoppel) would not preclude denial of the assignment if it was contrary to "*some principle of law or statute*" (see ***Springwell Navigation Corp v JP Morgan Chase Bank*** [2010] EWCA Civ 1221 at paragraph 143 per Aiken LJ). If the assignment is a lawful assignment then the estoppel arguments raised before me for the purpose of this application fall away.

The assignment

36. The Defendant submits that the assignment is contrary to public policy.

37. The assignors are Artisan H (Kings Waterfront) Limited ("Artisan"); Topart Limited ("Topart"); CATJ Solutions LLP ("CATJ"); CATK Solutions LLP ("CATK"), TBK Liverpool Limited ("TBK") and the LPA Receivers of CATJ Properties and CATK Properties. At the time of the assignment, Artisan and Topart were in Administration. CATJ and CATK had LPA receivers appointed.

38. The assignee was the Claimant. It is described in the deed as being "*in the business of purchasing legal disputes from insolvent estates*."

39. The Defendant submits the assignment is invalid for a number of reasons:

    a. The insolvency exception does not apply;
    b. The Claimant has no genuine or legitimate interest in the subject matter of the dispute and so the assignment is void as being champertous;
    c. The insurance brokerage contract with the Defendant was a contract for personal services and therefore rights that arise under it (including the right to sue for damages after breach) are not assignable;
    d. There is no legal assignment

40. The first issue concerns statutory insolvency exceptions to the bar on champertous assignments. An Administrator, liquidator, and Administrative Receiver each has the statutory power to sell or otherwise dispose of the property of the company. A Law of Property Act receiver has no directly equivalent statutory power.

41. The power to deal with the "property of the company" applies only to assets which were the property of the company at liquidation, including rights of action which arose and might have been pursued by the company itself prior to liquidation. Rights which only came into being after the liquidation of the company and were recoverable only by the liquidator pursuant to statutory powers conferred on him were not "*property of the company*" (see ***Re Oasis Merchandising Services Limited*** [1998] Ch. 170). This rule has since been reversed by statute (see section 246ZD of the

Insolvency Act 1986).

42. Artisan had a right of action against the Defendant in respect of losses suffered in respect of 8 serviced flats at the date of Administration. I can see no reason why those claims (properly classed as "property of the company") could not be assigned free of any argument that the assignment falls foul of the public policy. I accept that the insolvency exception does not apply to Law of Property Act receivers.

43. I will deal next with champerty.

44. A bare cause of action can only be assigned where the assignee has a legitimate interest in the claim.

45. The authorities show that there is a range of relevant potential legitimate interests. The categories are not closed, but the main examples appear to be (see for example ***Billabong Gold*** at paragraphs 125 and 126) a genuine commercial interest and an interest based on "community" (***Martell v Consett Iron Co Ltd*** [1955] Ch 363).

46. The general direction of travel of the law in this area reveals a general willingness to find a genuine interest. Such instances appear to include situations where an assignee takes an assignment of a cause of action to "***support and enlarge***" a right already acquired (see ***Trendtex*** at page 703) and where the assignment is of a property right or interest and the cause of action is ancillary to that right or interest (also ***Trendtex*** at page 703).

47. In ***Tactus Holdings v Philip Mark Jordan*** [2025] EWHC 133 (Comm) (a decision of Mr Peter MacDonald Eggers KC sitting as a Deputy Judge of the High Court), the Deputy Judge noted (paragraph 72) the need to consider the totality of the relevant transaction and its surrounding circumstances and to consider if the assignment tends towards the corruption of public justice (***Trendtex Trading Corporation v Credit Suisse*** [1982] AC 679, 703; ***Giles v Thompson*** [1994] 1 AC 142, 164). In doing so, any interest that arises from the assignment itself is to be ignored.

48. The rule that any interest arising from the assignment itself is ignored, is explained in ***Billabong Gold PTY Ltd v Vango Mining Ltd*** (No.2) [2023] WASCA 58 as follows:

> *".....the rule [against assignment] does not apply if the assignee of the subsisting cause of action itself has a genuine and substantial interest, or a genuine commercial interest, in enforcing the claim that is otherwise distinct or separate from the interest merely derived from the assignment itself. The requirement that the commercial or other interest be 'distinct or separate' exists because, were it otherwise 'the exception would swallow the rule because the assignment itself would always provide the commercial interest'.*

49. The Claimant submits that the Court's approach to the question of whether an assignment tends towards a corruption of justice has evolved over time. In ***Giles*** it was pointed out that in the 12 years since ***Trendtex*** was decided, the law on champerty had not stood still but had "*accommodated itself to changing times*". The Claimant relies on the decision of Cockerill J (as she then was) in ***Recovery Partners***

GB Ltd v Rukhadze [2018] EWHC 2918 (Comm).

50. The following points can be taken from that decision (in particular paragraphs 459 to 463):

    a. There has been a considerable relaxation of the approach taken by the Courts to questions of assignment and champerty (para.459)
    b. The Court should be focussed on ensuring that transactions which are genuinely contrary to public policy (transaction which amount to "***wanton and officious intermeddling***") are weeded out.
    c. A narrow focus on "***genuine commercial interest***" is contrary to the modern authorities.
    d. In any event, where an assignee is seeking to "***support and enlarge***" existing rights, that itself is likely to amount to a sufficient commercial interest (see para.464(i) and ***Trendtex*** page 703)

51. Applying these principles, I am satisfied that the Claimant has a sufficient interest in the assigned claims to avoid any successful plea of champerty. It has a clear and legitimate assigned right to deal with the claims of Artisan. The claims of other assignors (in particular CAT J Solutions LLP and CAT K Solutions LLP) are essentially very similar. Those claims in my view support and enlarge the Artisan claims. Looking (as I must), at the totality of the relevant transaction and its surrounding circumstances, it is in my judgment plain that the assignment does not tend towards the corruption of public justice.

52. The principle that the legitimate interest must arise outside of the assignment does not impact my decision. The principle is directed to a case where an assignee relies on the fact that it has entered into a potentially unlawful assignment to justify the lawfulness of that very assignment. That is not the case here. Here, the claimant is (at least in part) relying on claims that have been lawfully assigned to it. The reliance is different. The fact that the lawful assignment arises out of the same assignment equally in my view cannot make a difference.

personal services

53. I accept that the brokerage contract (the "customer service agreement" or "CSA") should, at least for the purposes of this judgment, be regarded as a contract of personal service. It follows that "*rights which depend on [the skill, judgment or other qualities of a party] are incapable of assignment*" (see *Benjamin's Sale of Goods* 12th ed at para.3-041). Whilst I accept this principle, I am satisfied it does not operate as a bar to the present assignments.

54. The bar is on an assignment of the rights to benefit from performance. If A engages B to write a book for example, A cannot discharge his obligation to perform by asking someone else to write the book for him. The assignment in the present case is not of such a right. Here I am concerned with an assignment of rights that arise following performance, namely the right to sue for damages. The right to sue for damages is not a right that depends on the skill, judgment, or other qualities of a party.

55. The Defendant submits that this approach would run contrary to the decision of the House of Lords in ***Linden Gardens Trust Ltd v Lenesta Sludges Disposals Ltd*** [1994] 1 AC 85. I do not accept that argument. Linden Gardens concerned the meaning of an express contractual bar on assignment in a JCT contract. The relevant term prohibited assignment of the contract without consent. The Court of Appeal had decided that the prohibition related only to future performance and not to the right to sue. That decision was overturned in the House of Lords.

56. There is no express prohibition in the present case of the right to assign "the contract." No question of construction arises because the parties have not applied their minds to the issue of assignment.

57. The House of Lords in ***Linden*** refer to a case note by Professor Roy Goode, dealing with the decision in ***Helstan Securities Limited v Hertfordshire County Council*** [1978] 3 All ER 262 entitled "*Inalienable rights?*" (1979) 42 MLR 553. At page 13, of the report, Lord Browne-Wilkinson notes that Professor Goode deals with the separation of performance rights and rights arising from breach in two respects: first, dealing with the effect of a contractually prohibited assignment (as in the ***Linden*** case), and secondly dealing with contracts for personal services (as in this case). Dealing with the second category. Lord Browne-Wilkinson says of Professor Goode's note: ***"he rightly points out that, although an author who has contracted to write a book for a fee cannot perform the contract by supplying a book written by a third party, if he writes the book himself he can assign the right to the fee - the fruits of performance. He expressly mentions that such right to assign the fruits of performance can be prohibited by the express terms of the contract***."

58. In the present case, the parties could easily have prevented the present assignment by including a term to that effect. It is plain from Lord Browne-Wilkinson's discussion of the case of the author, that in cases of personal services (as on the facts of the case before me) there is a clear distinction between assigning performance rights and rights arising out of breach.

section 136 of the Law of Property Act 1925

59. In my view, the assignment operates as a legal assignment and is compliant with section 136. I do not accept that the assignment is a mere equitable assignment. It assigns the whole of the claim not part of it. The fact that the fruits of the litigation will be shared does not change that.

60. Compliance with section 136 would in any event not bypass the need to consider whether the assignment is contrary to public policy.

Conclusion

61. The amendments are clear and allow the matter to proceed to a fair determination of the issues between the parties. There can be no doubt the Defendant completely understands the case against it, is able to plead to that case, disclose the documents which are relevant and prepare or perhaps supplement its witness statements. The Claimants' pleaded case is neither vague nor incoherent. The amended pleading

allows the court to understand the case so that it can be fairly and expeditiously decided (see generally ***Towler v Wills*** [2010] EWHC 1209 (Comm) a decision of Teare J at paragraph 18).

62. For the reasons set out in this judgment I grant the Claimant's application for permission to amend and refuse the application for strike out or summary judgment.