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2014 921 Ole Lando, Eric Clive, André Prüm & Reinhard Zimmermann eds., *Principles of European Contract Law, Part III*, Kluwer Law International, 2003, p. 99.
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2004 27 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/zh/ctc-assignment-convention-c.pdf>

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Parties: Third Party Beneficiaries and Assignment, Martinus Nijhoff, 1992, p. 91.

Hein Kötz, *Rights of Third*

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2014 921 Ole Lando, Eric Clive, André Prüm & Reinhard Zimmermann eds., *Principles of European Contract Law, Part III*, Kluwer Law International, 2003, p. 99.

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The Effectiveness of Prohibiting Assignment of Claims in the Perspective of Guarantee Law

YANG Ruihe

Abstract: The purpose of including a non-assignment clause in a guarantee contract is to solidify the guarantee relationship and avoid adverse effects on the guarantor due to the assignment of the creditor's rights. Whether a non-assignment clause can break through the principle of contractual relativity and create legal binding force on third parties depends on the type of rights subject to non-assignment and the subjective status of the assignee. When the rights subject to non-assignment are monetary, the non-assignment clause is only legally binding between the parties to the clause, and the guarantor is obligated to the assignee. When the rights subject to non-assignment are non-monetary, an analysis framework based on the subjective status of the assignee should be applied. The guarantor can assert the existence of the non-assignment clause against malicious third parties and refuse to assume guarantee responsibilities towards both the assignor and the assignee.

Keywords: Guarantee Rights; Prohibition Against Assignment; Guarantee Responsibility; Type of Claim; Subjective Status