Neutral Citation Number: [2025] EWCA Civ 1643

Case No: CA-2024-002183

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS LIST (ChD)
Tom Mitcheson KC (sitting as a deputy High Court Judge)
[2024] EWHC 231 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2025

Before :

THE LADY CARR OF WALTON-ON-THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
SIR COLIN BIRSS, THE CHANCELLOR OF THE HIGH COURT
and
LORD JUSTICE ZACAROLI

- -

Between :

(1) LUNAK HEAVY INDUSTRIES (UK) LIMITED	**Appellants**
(2) LUCASFILM LTD LLC	
- and -	
TYBURN FILM PRODUCTIONS LIMITED	**Respondent**

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Edmund Cullen KC and Jonathan Hill (instructed by **Wiggin LLP**) for the **Appellants**
Tom Moody-Stuart KC and Joshua Marshall (instructed by **Mishcon de Reya LLP**) for the **Respondent**

Hearing date: 3 December 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill, CJ, Sir Colin Birss, C and Lord Justice Zacaroli:

1. The question raised by this appeal is whether a claim pleaded in unjust enrichment by the claimant respondent, Tyburn Film Productions Limited ("**Tyburn**"), against the defendant appellants, Lunak Heavy Industries (UK) Ltd ("**Lunak**") and Lucasfilm Ltd LLC ("**Lucasfilm**"), is sufficiently arguable that it should be allowed to proceed to trial.

2. For the reasons developed below, we consider that the claim is not sufficiently arguable, and should therefore be struck out.

The facts in brief

3. The actor, Peter Cushing, appeared in the original Star Wars film (now known as "**Episode IV**"), released in 1977, as the admiral of the Empire's space fleet, Grand Moff Tarkin. Mr Cushing's appearance in the film was pursuant to an agreement dated 20 May 1976 between Peter Cushing Productions Limited ("**PCPL**") and Star Wars Productions Limited (the "**1976 Agreement**").

4. Mr Cushing died in 1994. His likeness, however, was recreated as Grand Moff Tarkin in a further Star Wars film made in 2016 entitled 'Rogue One: A Star Wars Story' ("**Rogue One**"). This was achieved by altering the appearance of an actor, Guy Henry, using digital special effects.

5. Rogue One was produced by Lunak, using intellectual property relating to the Star Wars series of films owned by Lucasfilm. Pursuant to a memorandum of agreement dated as of 10 February 2016 (the "**2016 Agreement**"), Lunak was granted permission by the executors of Mr Cushing's estate (the "**Executors**") (the "**Estate**") to reproduce the likeness of Mr Cushing in and in connection with the production, exhibition, exploitation, advertising, promotion and merchandising of Rogue One.

6. Tyburn contends that the Executors' entry into the 2016 Agreement was a breach of contract. The contract said to have been breached was set out in a letter dated 2 August 1993 from Tyburn to Mr Cushing and PCPL (the **"Letter Agreement**").

7. Tyburn's senior executive, Kevin Francis, had a long-standing personal and professional relationship with Mr Cushing. Tyburn had made a number of films in which Mr Cushing appeared. By an agreement dated 2 August 1993 between Tyburn and PCPL (the "**Services Agreement**"), Tyburn engaged Mr Cushing to appear in a television film (the "**TVM**"), entitled 'A Heritage of Horror', and PCPL granted Tyburn the exclusive services of Mr Cushing for a period of six weeks, plus any further period required in order to complete the TVM.

8. The Letter Agreement was entered into in view of the fact that Mr Cushing was, at that time, terminally ill and there was therefore uncertainty as to whether he would be able to complete filming for the TVM. By clause (e) of the Letter Agreement, as a result of Mr Cushing's illness, PCPL and Mr Cushing agreed that:

> "in connection with the production, completion and exploitation of the TVM, we may utilise:
>
> (i) Doubles;
> (ii) Stand-ins;

> (iii) Stunt performers;
> (iv) Other actors;
> (v) Prosthetic and/or any other forms of make-up;
> (vi) Extracts from other films and/or programmes in which Mr Cushing has previously appeared (subject only to our obtaining the consent of the copyright owners of such films and/or programmes);
> (vii) Back projection;
> (viii) Front projection;
> (ix) All forms of special effects;
> (x) Computer Generated Imagery; and
> (xi) All and any successors to or replacements of all and/or any of the above, including any processes or techniques which may hereafter be created, discovered or invented,
>
> to supplement and/or to compliment and/or to facilitate and/or to complete and/or to exploit Mr Cushing's performance in the TVM, to an unlimited greater extent than would be customary with an actor of Mr Cushing's standing."

9. Clause (h) of the Letter Agreement provided as follows:

> "If, as a result of the Illness, Mr Cushing's demise or any other reason without limitation whatsoever or howsoever, the TVM is not produced and/or completed and/or exploited, PCP and Mr Cushing hereby warrant, undertake and agree that neither of them will permit Mr Cushing's participation in any film or programme whereby Mr Cushing appears, either in whole or in part (other than in person) in or out of any character, by way of Mr Cushing being reproduced by all or any combination of the processes and techniques referred to in sub-paragraphs (i) through (xi) of paragraph (e) hereof, without our express prior written consent – which consent we may grant or withhold at our sole and absolute discretion."

10. By clause (i) of the Letter Agreement, Mr Cushing agreed to make all arrangements to ensure that his successors, administrators, beneficiaries and executors were bound by the agreement in clause (h).

11. In the event, the TVM was never made, and Mr Cushing did not carry out any of the services envisaged in the Services Agreement.

12. When Tyburn discovered that Lucasfilm was embarked upon making Rogue One and intended to recreate Mr Cushing in the role of Grand Moff Tarkin, it wrote to Lucasfilm, claiming that it was not permitted to do so without Tyburn's consent. Tyburn contended in that letter that it had incurred a substantial loss as a result of Lucasfilm's actions/intended actions. The losses were said to comprise approximately £250,000 expended on the TVM together with consequential damages for deprivation of the commercial benefit of being "first out of the gate" with a film starring Mr Cushing after his death. It sought to reach an accommodation with Lucasfilm. No such

accommodation was reached. Rogue One was completed and went on to be a major commercial success.

The elements of Tyburn's claim

13. This claim was issued by Tyburn on 2 August 2021.

14. The first two defendants named in the claim form, Mr and Mrs Broughton, were the Executors. Mr Broughton has died since the commencement of the action, and has been replaced as Executor by the current first defendant, Mr Connor. The claim against Mr Connor was settled in 2024. The claim against Mrs Broughton was settled in 2022. As against the Executors, Tyburn claimed damages for breach of contract (being the breach of clause (h) of the Letter Agreement).

15. The third defendant, Associated International Management LLP, is a theatrical agent that represented Mr Cushing during the latter part of his career. Tyburn claims against it damages for inducing the breach of contract by the Executors.

16. Lunak and Lucasfilm are, respectively, the fourth and fifth defendants. Tyburn's only claim against them is in unjust enrichment. The pleaded elements of this claim are:

    (1) The appellants were enriched by: (i) the purported right/licence to reproduce the likeness of Mr Cushing in and in connection with the production etc of Rogue One; and/or (ii) the exploitation and/or use of the right/licence for commercial purposes in connection with Rogue One; and/or (iii) (alternatively) the matters pleaded in (i) and (ii) above, without seeking Tyburn's permission;

    (2) Those benefits/enrichments were at Tyburn's direct expense and/or were obtained "as part of a coordinated or closely related transactions" between Tyburn, the Executors and the appellants;

    (3) That enrichment at Tyburn's expense was unjust because: (i) Tyburn was unaware of the fact of, and the circumstances surrounding and leading up to, that enrichment; and/or (ii) Tyburn was operating under a (reasonable, though mistaken) belief that the Executors and the third defendant were co-operating with and intended to involve Tyburn in any arrangement in respect of the reproduction of Mr Cushing's likeness in Rogue One;

    (4) Tyburn accordingly claimed restitution "in respect of the value of the right(s) obtained and/or exploited by [the appellants] at [Tyburn's] expense in a sum to be assessed."

17. The formulation of the claim reflects the well-established structure for establishing a claim in unjust enrichment formulated by Lord Steyn in *Banque Financiere de la Cite v Parc (Battersea) Ltd* [1999] 1 AC 221 at 227: (a) Has the defendant benefited, in the sense of being enriched? (b) Was the enrichment at the claimant's expense? (c) Was the enrichment unjust? (d) Are there any defences?

The strike out/summary judgment claim

18. On 25 May 2022, the appellants issued an application seeking to strike out, or summarily determine, the claim as against them. On 8 December 2023, Master Kaye

dismissed that application, essentially because claims in unjust enrichment, particularly three-party cases or indirect benefit cases, are some of the most difficult and fact-sensitive cases of unjust enrichment (falling at the "far reaches of the current scope of unjust enrichment claims"), and it was not possible to say that the claim was certain to fail or was entirely fanciful.

19. That decision was appealed and, in a judgment dated 9 September 2024, Tom Mitcheson KC, sitting as a Deputy Judge of the High Court, dismissed the appeal, principally (see [48] of his judgment) for the same reasons as the Master, adding: "in the words of Peter Gibson LJ, in a field of law which is not yet settled, I cannot be certain that the claim is bound to fail." That was a reference to *Richards (t/a Colin Richards & Co) v Hughes* [2004] EWCA Civ 266, where Peter Gibson LJ quoted the following passage from the speech of Lord Brown-Wilkinson in *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at 557:

> "[I]n an area of the law which was uncertain and developing (such as the circumstances in which a person can be held liable in negligence for the exercise of a statutory duty or power) it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out."

The ground of appeal

20. The appellants appeal to this Court with the permission of Arnold LJ on a single ground:

> "The Judge erred in law in failing to conclude that, on the facts pleaded and agreed, there was no real prospect of the Claimant establishing that any enrichment of the Fourth and Fifth Defendants was at the expense of the Claimant and that, accordingly, the Particulars of Claim failed to disclose a cause of action against the Fourth and Fifth Defendants and the claim against them was bound to fail."

21. We observe that, as often happens on appeal, the scope of the issues raised for decision has narrowed considerably and in this respect we have the advantage over each of the judges below. The Master was faced with a number of different bases on which it was said that the case was bound to fail. These were narrowed somewhat before the Deputy Judge, but before us the appellants have focused on a single element of the claim against them. We are required to assume, for the purposes of this appeal, that Tyburn will be able to establish at trial that the appellants were, by reason of the 2016 Agreement, enriched, that the enrichment was unjust and that there are no defences (such as the defence of bona fide purchaser for value) available to them. The sole issue, therefore, is whether the appellants were enriched *at the expense of Tyburn*.

The legal principles governing strike out

22. The principles applicable to an application to strike out a claim under CPR 3.4(2)(a), or to give summary judgment under CPR Part 24, on the grounds that it discloses no reasonable grounds for bringing the claim, are well-known and not in dispute, being

those summarised by Lewison J in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at §15.

23. For present purposes, it is sufficient to note that the court must consider whether the claim has a realistic prospect of success, meaning it must have some degree of conviction and be more than merely arguable. Where, as here, the issue is one of law, Lewison J said this, at [15(vii)]:

> "…if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better."

24. On the other hand, it is necessary to bear in mind the need for caution, in the words of Lord Browne-Wilkinson in *Barrett v Enfield London Borough Council* (above), when the court is asked to make a decision on a strike out application in an area of law which is uncertain and developing.

25. It may fairly be said that the law of unjust enrichment is one such area of law. On the sole issue that arises on appeal, Lord Reed JSC, in *Investment Trust Companies v Revenue & Customs Commissioners* [2017] UKSC 29; [2018] AC 275 (***"ITC"***) stated, at [37]:

> "Decisions concerning the question whether an enrichment was "at the expense of" the claimant demonstrate uncertainty as to the approach which should be adopted."

26. That does not mean, however, that the court should shy away from determining summarily any question raised in an unjust enrichment claim if appropriate. However difficult it may be to identify whether a defendant's enrichment was at the expense of the claimant in cases which lie at the margin, the court should do so if the particular case clearly lies beyond the margin. For the reasons we develop below, that is an apt description of this case.

<u>Enrichment "at the expense of" the claimant</u>

27. Both parties cited the Supreme Court decision in *ITC* as the leading case on the meaning of "at the expense of". The simplified facts in that case were as follows. The claimant paid management fees inclusive of VAT to investment managers. The managers accounted to HMRC for such VAT, as output tax, albeit that the payment made by the managers to HMRC was reduced by an offset in respect of available input tax. For illustrative purposes, for £100 of VAT paid by the claimant to the managers, the managers deducted £25 in respect of input tax and paid the net balance of £75 to HMRC. It subsequently transpired that VAT was not payable on the fees. The managers reclaimed the tax paid to HMRC, recovering the £75 actually paid. That was passed on to the claimant. The claimant sought recovery of the additional £25 from HMRC via a

claim in unjust enrichment. The Supreme Court concluded, among other things, that HMRC had been enriched only to the extent of the payment actually received from the managers (i.e. £75), and that it was not in any event enriched at the expense of the claimant.

28. The question of whether any enrichment of HMRC was at the expense of the claimant was addressed at [32], and following, of the judgment of Lord Reed, with whom the other members of the court agreed. Having pointed out the uncertainty on this issue in the decided cases (see 25] above), Lord Reed set out to provide more precise criteria, making the following observations of a general nature in relation to personal restitutionary claims:

(1) A claim based on unjust enrichment does not create a judicial licence to meet the perceived requirements of fairness on a case-by-case basis: legal rights arising from unjust enrichment should be determined by rules of law which are ascertainable and consistently applied ([39]);

(2) Although judicial reasoning based on modern theories of unjust enrichment is in some sense novel, the courts should not be reinventing the wheel represented by centuries' worth of relevant authorities, whose value should not be underestimated ([40]);

(3) Lord Steyn's four questions (quoted above) are no more than broad headings for ease of exposition, and do not constitute legal tests in themselves ([41]).

29. Specifically, the words "at the expense of" do not express a legal test, and a test cannot be derived by interpretation of those words as if they were a statute. At [42] to [43], Lord Reed emphasised the relevance of the purpose of unjust enrichment, namely to "correct normatively defective transfers of value". Understood in light of that purpose:

> "…the various legal requirements indicated by the "at the expense of" question … are designed to ensure that there has been a transfer of value, of a kind which may have been normatively defective: that is to say, defective in a way which is recognised by the law of unjust enrichment (for example, because of a failure of the basis on which the benefit was conferred)."

30. Even "transfer of value" is too general to serve as a legal test. It means that in the first place, the defendant has received a benefit, and that the claimant has suffered a loss through the provision of this benefit, albeit that "loss" in this context does not have the meaning as in the law of damages but connotes the giving up of something of value through the provision of the benefit: see [43] to [45] of *ITC*.

31. Lord Reed noted (at [46]) that in most examples of enrichment at the expense of the claimant the parties have dealt directly with one another, but (at [47]) that there are situations where that is not so, albeit these are situations in which the difference from the direct provision of benefit is more apparent than real. Examples (see [48] and [49]) are: agency (where the agent is proxy for the principal); where the right to restitution is assigned; where an intervening transaction is held to be a sham; where a set of co-ordinated transactions has been treated as forming a single scheme; where the defendant

receives property into which the claimant can trace an interest (where the property is, in law, the equivalent of the claimant's property); and where the claimant discharges a debt owed by the defendant to a third party. At [51], Lord Reed said:

> "Where, on the other hand, the defendant has not received a benefit directly from the claimant, no question of agency arises, and the benefit does not consist of property in which the claimant has or can trace an interest, it is generally difficult to maintain that the defendant has been enriched at the claimant's expense."

32. That is not to say, however, that a claim in restitution would in that case be impossible. At [50], having accepted the utility of a general rule that the claimant must have directly provided a benefit to the defendant, possibly subject to exceptions (which should be understood as being situations which the law treats as equivalent to a direct transfer), Lord Reed said:

> "It may nevertheless require refinement to accommodate other apparent exceptions, and it would be unwise at this stage of the laws' development to exclude the possibility of genuine exceptions, or to rule out other possible approaches."

Tyburn's primary case

33. Tyburn's primary case is that the appellants were *directly* enriched at its expense, because there was a direct transfer to them of the rights granted to Tyburn under the Letter Agreement.

34. In its skeleton argument, the value of those rights is said to reside in their primacy (in the sense that Tyburn had the right to be the first to 'resurrect' Mr Cushing), their utility (because it engaged Mr Cushing's rights as performer and other rights, e.g. passing off), and their breadth (being a "purposive restriction" on the exploitation of Mr Cushing's performance rights and potentially relevant copyright).

35. Tyburn relies on [46] of Lord Reed's judgment in *ITC* where he said that direct enrichment covers situations where a party deals with another's property. It does not claim that any rights which it says were "usurped" by the appellants are property rights, but contends that they are "akin" to property rights, because they impinge on the intellectual property rights of the Estate. Accordingly, the benefit obtained by the appellants in exercising the permission granted by the Estate to 'resurrect' Mr Cushing is "akin to dealing with the property rights" of Tyburn.

36. Finally, Tyburn characterises what the Estate did as "wrongly exercising" its right to veto or block the appellants from resurrecting Mr Cushing, thus depriving Tyburn of that right: the appellants, it is said, "took the benefit" of Tyburn's rights under paragraph (e) of the Letter Agreement to be the first to do the same.

37. There is in our view no legal basis for Tyburn's primary claim. It suffers from the fatal defect that it is impossible to identify anything at all that belonged to Tyburn which can be said to have been transferred to the appellants. Whatever else may be required in order to establish that B was unjustly enriched at the expense of A, Lord Reed's purposive analysis of restitution at [42] to [43] of *ITC* (see above at 29]) demonstrates

the need for something which amounts to a transfer of value from A to B, in the sense of a loss suffered by A through the provision of the relevant benefit to B.

38. As Tyburn acknowledges, there is no question here of any proprietary right belonging to it having been transferred to the appellants: the only relevant proprietary rights are those that belong to the Estate, being the performance rights, image rights and other intellectual property rights that belonged to Mr Cushing.

39. All that Tyburn acquired under the Letter Agreement was, first (by clause (e)), a positive contractual right by way of licence to utilise various methods to supplement, complement, facilitate, complete or exploit Mr Cushing's performance in the TVM and, second (by clause (h)) a negative contractual right – if the TVM was not made – to block others from doing the same thing.

40. It is impossible to characterise the appellants' actions in making use of intellectual property that belonged to Mr Cushing (and is now vested in the Estate) in making Rogue One as exploiting either of the rights granted to Tyburn under the Letter Agreement. The positive contractual right granted to Tyburn under clause (e) was solely for the purpose of making or exploiting the TVM. The appellants have used the right to recreate Mr Cushing's likeness, granted to them by the Estate, for the entirely different purpose of making Rogue One. In no sense have they used or interfered with the right granted to Tyburn by paragraph (e) of the Letter Agreement. For the same reason, it is impossible to characterise what happened as a transfer to the appellants of Tyburn's right to 'resurrect' Mr Cushing in order to make the TVM.

41. Similarly, it is impossible to characterise what happened as a transfer by Tyburn of its negative right to block any third party from using Mr Cushing's likeness in any of the ways set out in the Letter Agreement. The suggestion that there has been a transfer because the Estate has "wrongly exercised" that right, is hopeless. The Estate has not exercised any right belonging to Tyburn. At most, it has (on the facts we need to assume on this appeal) breached the obligation it owed to Tyburn under clause (h) of the Letter Agreement.

42. Mr Moody-Stuart KC, who appeared with Mr Marshall for Tyburn, sought to escape that conclusion by characterising the right granted to Tyburn under clauses (e) and (h) of the Letter Agreement as a right of "primacy", i.e. the right to be the first to 'resurrect' Mr Cushing.

43. There are considerable difficulties in this characterisation. There is nothing in clause (e) which grants such a right and, on its face, the blocking right in clause (h) only arises *if* (due to Mr Cushing's illness or demise or for any other reason) the TVM is *not* made.

44. Mr Moody-Stuart submitted that on its true construction clause (h) should, however, be read differently, so that it applied *while* the TVM remained unproduced, uncompleted and/or unexploited. He submitted that, notwithstanding that Rogue One was made 22 years after Mr Cushing's death and the TVM had not been made by then, Tyburn was still entitled to rely on a contractual right to be the *first* (albeit only through the TVM) to recreate Mr Cushing's likeness in a film.

45. Putting aside the fact that Tyburn has not pleaded that clause (h) is to be read in that way, we do not see that this would make any difference. As it was put by Mr Cullen

KC, who appeared with Mr Hill for the appellants, and as was acknowledged in Tyburn's skeleton, the fact that, if the TVM was made, it would be the first time that Mr Cushing's likeness had been recreated in film after his death, was the reason why the blocking right created by clause (h) possibly had commercial value. It does not change the legal character of the rights granted by the Letter Agreement, and does not change the analysis above - that nothing done between the Estate and the appellants in 2016 resulted in anything at all being transferred from Tyburn to the appellants.

46. It does not help to label the rights as "akin" to property rights. The only relevant property rights here belong to the Estate. The fact that the rights granted to Tyburn related to the same intellectual property rights now vested in the Estate does not render the rights granted to Tyburn a "thing" that has been the subject of a transfer to the appellants. The only characterisation available (assuming all other matters in favour of Tyburn, for the purposes of the appeal) is that the grant of rights by the Executors to the appellants in the 2016 Agreement was done in breach of Mr Cushing's promise to Tyburn that he would not do so. The law has a well-established remedy for such a case, namely the cause of action of inducing breach of contract. Tyburn has not pleaded any such claim against the appellants.

47. Accordingly, we conclude that Tyburn's claim that there was any direct transfer of value from it to the appellants sufficient to give rise to an argument that the appellants were enriched at its expense is wrong in law.

Tyburn's secondary case

48. In the alternative, Tyburn contends that the appellants were enriched at its *indirect* expense, in the sense that the benefit received by the appellants has come about "through a series of co-ordinated transactions", such that there is a "clear causal connection" between the rights conferred on Tyburn (under the Letter Agreement) and the benefit exploited by the appellants (under the 2016 Agreement). The alleged co-ordination is said to arise because the transactions involve the same parties and the exercise of the same rights (akin to property rights) granted to Tyburn, in two respects: (a) the Estate exercised Tyburn's right of veto; and (b) the appellants exercised Tyburn's right to be the first to 'resurrect' Mr Cushing.

49. In this respect, Mr Moody-Stuart emphasised [50] of Lord Reed's judgment in *ITC*, to the effect that it would be unwise, at this stage of the law's development, to rule out other examples of indirect benefit than those to which he referred (summarised at [31] above).

50. In our judgment, however, Tyburn's argument based on co-ordinated transactions simply does not get off the ground. The transactions in this case are unlikely candidates, given that 23 years separate them, and that the 2016 Agreement cannot possibly have been in the contemplation of any of the parties to the Letter Agreement when it was made in 1993. More fundamentally, however, Tyburn's argument misunderstands the role of co-ordinated transactions as referenced in *ITC*.

51. In all of the examples given by Lord Reed in *ITC*, the co-ordinated transactions in question are co-ordinated in the sense that *together* they effect the *transfer* of value from the claimant to the defendant. The analysis is necessary because, strictly speaking, value has left the claimant by one transaction and arrived at the defendant by another.

Where, on any of the bases identified by Lord Reed, there is sufficient reason to look through the separate transactions, it is possible to identify the value that reaches the defendant as having done so at the expense of the claimant.

52. That has nothing to do with the transactions in question in this case. Nothing of any relevance at all *left* Tyburn under the 1993 Agreement. The direction of travel was the other way, in that Tyburn was the recipient of rights granted to it by Mr Cushing. Taking Tyburn's case at its highest, the only transaction which can conceivably have played any part in the movement of value from it to the appellants is the 2016 Agreement.

53. Of potentially more relevance is a class of case Mr Moody-Stuart cited involving what are sometimes characterised as "interceptive subtractions". In such cases, a claimant is afforded a restitutionary remedy against the defendant in respect of a benefit which the defendant obtained from a third party, but which was destined for the claimant. Examples include where D has usurped an office to which C was entitled, and received sums from X to which C was entitled as of right as the lawful office holder: see Goff & Jones, The Law of Unjust Enrichment, 10th ed at 6-124 and 8-115. He submitted that this might constitute a modest extension to the general "direct enrichment" rule.

54. We are nevertheless unpersuaded that this line of cases assists on the facts of this case. It is still necessary to identify the transfer of some "thing" of value from the claimant to the defendant. In the interceptive subtraction cases, that is the thing to which the claimant was entitled but which has wrongly been intercepted by the defendant. It does not overcome, therefore, the fundamental flaw that we have identified above, namely that the rights which the Estate granted to the appellants in the 2016 Agreement were rights that belonged only to the Estate, and cannot be said to have consisted of anything which was within the grant of rights to Tyburn under the Letter Agreement.

Conclusion

55. For the above reasons we consider that Tyburn's claim against the appellants is not sustainable as a matter of law.

56. While acknowledging that unjust enrichment is a developing area of law, it is nevertheless important that this is not used as a blanket cover for declining to determine summarily points arising within that field of law when it is clear that they are without legal basis. It remains true that the question of when a defendant's enrichment is at the expense of the claimant is subject to uncertainties, so that it is often not straightforward to identify where the line is drawn between effective and defective claims. This is clearly not the occasion to attempt to do so. Our decision is based, however, on the fact that, wherever the line is to be drawn, Tyburn's claim is clearly on the wrong side of it.

57. In reaching that decision, we have taken Tyburn's case at its highest, assuming that all other elements of its claim are satisfied. Contrary to Mr Moody-Stuart's submission, we do not accept that it is necessary to defer determining this question until all of the facts are established. He suggested that the point ought not to be decided until it is known precisely how, and using what processes, the appellants recreated Mr Cushing's likeness in Rogue One. We disagree. Our assumption of matters in favour of Tyburn includes that such processes came within one, more or all of the matters set out in paragraph (e) of the Letter Agreement. The answer to the question of law we need to decide is the same, irrespective of the processes used by the appellants.

58. Accordingly, we allow this appeal and strike out Tyburn's claim against the appellants.