



[2025] EWCA Civ 1643

**(1) LUNAK HEAVY INDUSTRIES (UK) LIMITED AND (2) LUCASFILM LTD  
LLC -v- TYBURN FILM PRODUCTIONS LIMITED**

**Appeal No.: CA-2024-002183**

**PRESS SUMMARY**

**Important note for press and public: this summary forms no part of the court’s decision. It is provided to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are publicly available document and can be found at: <https://caselaw.nationalarchives.gov.uk>**

The Court of Appeal (The Baroness Carr of Walton-on-the-Hill (Lady Chief Justice), Sir Colin Birss (Chancellor of the High Court) and Lord Justice Zacaroli) today handed down judgment, allowing the appeal by Lunak Heavy Industries (UK) Limited and LucasFilm Ltd LLC. References in square brackets are to numbered paragraphs of the judgment.

1. This appeal concerns whether the claim by Tyburn Film Productions Limited (“**Tyburn**”) against Lunak Heavy Industries Ltd (“**Lunak**”) and Lucasfilm Ltd LLC (“**Lucasfilm**”) in unjust enrichment is sufficiently arguable that it should proceed to trial.

**Background**

2. The actor, Peter Cushing, appeared in the original 1977 Star Wars film. Mr Cushing died in 1994. His likeness was recreated as Grand Moff Tarkin in the 2016 film, ‘Rogue One: A Star Wars Story’ (“**Rogue One**”), produced by Lunak. Lunak was granted permission to do so by Mr Cushing’s estate (the “**Estate**”) under an agreement dated 10 February 2016 (the “**2016 Agreement**”). Tyburn contend that the Estate’s entry into the 2016 Agreement was in breach of

Tyburn's 1993 contract (the "**Letter Agreement**") with Mr Cushing and Peter Cushing Productions Limited ("**PCPL**").

3. In 1993, Tyburn had engaged Mr Cushing to appear in a television film (the "**TVM**"). The Letter Agreement was entered into on the basis that, given his terminal illness, Mr Cushing might be unable to complete the filming. Clause (e) provided that Tyburn could utilise various methods to supplement Mr Cushing's performance in the TVM. Clause (h) provided that if the TVM was not made, his likeness would not be reproduced in another programme without Tyburn's consent. In the event, the TVM was never made. Lucasfilm then recreated Mr Cushing's likeness in 2016 for Rogue One without Tyburn's consent.

#### **The claim and judgments below**

4. Tyburn brought a claim in unjust enrichment against Lunak and Lucasfilm. It claimed: (i) the appellants were enriched by reproducing Mr Cushing's likeness without Tyburn's consent; (ii) that enrichment was at Tyburn's expense; and (iii) that it was unjust because Tyburn was unaware of the circumstances leading to the enrichment and it believed the Executors were intending to involve Tyburn in any arrangement with respect to the reproduction of Mr Cushing's likeness.
5. On 25 May 2022, the appellants applied to strike out/for summary determination of the claim against them. On 8 December 2023, Master Kaye dismissed the application because three-party claims in unjust enrichment are difficult and fact sensitive. On 9 September 2024, Tom Mitcheson KC (sitting as deputy High Court Judge) dismissed the appeal against this decision for the same reason.

#### **The Court of Appeal's reasoning**

6. The issue before the Court of Appeal was narrowed to the single question of whether the appellants were enriched at Tyburn's expense.

7. The Court of Appeal referred to the fact that the law of unjust enrichment could fairly be described as an uncertain and developing area of the law (see [25]). However, the court should not shy away from determining summarily any question raised in an unjust enrichment claim if appropriate. For the reasons then developed, this was a claim which lay clearly beyond the margin, and so ought to be dismissed summarily (see [26]).

#### The primary case

8. On its primary case, Tyburn submitted that the appellants were directly enriched at their expense, because there was a direct transfer to them of Tyburn's rights which were akin to property rights.
9. The Court of Appeal found no legal basis for this. It is impossible to identify anything that belonged to Tyburn which was transferred to the appellants (see [37]). Tyburn only had contractual rights under the Letter Agreement (see [39]). It is impossible to characterise the appellants' use of Mr Cushing's intellectual property in making Rogue One as exploiting those contractual rights (see [40]). At most, the Estate breached its contract with Tyburn (see [41]). This conclusion could not be avoided by characterising Tyburn's contractual rights as a right of "primacy" (i.e. the right to be the first to resurrect Mr Cushing). There is nothing in the contract which grants such a right; in any event, there was still nothing done between the Estate and the appellants in 2016 that resulted in anything being transferred from Tyburn to the appellants (see [43] to [45]).

#### The alternative case

10. In the alternative, Tyburn submitted that the appellants were enriched at its indirect expense, in that it benefited through a series of co-ordinated transactions.
11. The Court of Appeal also rejected this submission – the transactions were 23 years apart and the 2016 Agreement could not possibly have been in contemplation at the time of the Letter

Agreement (see [50]). Co-ordinated transactions must together effect the transfer of value from the claimant to the defendant – value must have left the claimant by one transaction and arrived at the defendant by another (see [51]). Nothing left Tyburn under the Letter Agreement: it only gained rights granted to it by Mr Cushing (see [52]). There is also no sustainable argument under the “interceptive subtractions” type cases, where a defendant obtains benefits from a third party which were destined for the claimant. The fundamental flaw remains that the rights which the Estate granted to the appellants in the 2016 Agreement were not those that were within the grant of rights to Tyburn under the Letter Agreement (see [54]).

### **The Decision**

12. The Court of Appeal therefore found that Tyburn’s claim is not sustainable as a matter of law, a finding unaffected by any outstanding question of fact (see [57]). Accordingly, the appeal was allowed and Tyburn’s claim was struck out.

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