James Bond and the Law

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David Foxton

I've been expecting you, Manchester Business and Property Courts Forum.

And like the millions of cinema goers who have paid over $14 billion for a night out with James Bond over the last 50 years, you have come here with certain expectations as well. They no doubt include:

- A pre-title sequence.
- The James Bond theme.
- A super-villain.
- A glamorous heroine.
- A titanic struggle across continents featuring a sea-going car.
- And then a soaring ballad to send you home.

I can promise you all of that. And I can also promise you every lame James Bond joke there is. With my licence to thrill, I guarantee to send you home both shaken and stirred, after your evening with the man with the golden pun.

The pre-title sequence

At this point, and at the risk of introducing an unhelpfully bathetic note, I must confess that, for the purposes of this speech, this *is* the pre-title sequence. I accept it lacks the visceral drama of Rick Sylvester's parachute jump off Mount Asgard in *The Spy Who Loved Me*,[1] although James Bond and Felix Leiter arriving by parachute at the latter's wedding in *Licence to Kill* does not set a particularly high bar. What I normally do in this stage of a talk is to explain why I have chosen this particular subject for this particular location. But the links between Manchester and James Bond are so numerous, and so legendary, that I would not want to insult you all by reciting them. Instead, I wanted to mention a theory as to Bond's origins mentioned to me by the late Edmund King QC, a very talented and popular lawyer who tragically died on 24 December 2020, who first made me think about what links there might be between the worlds of James Bond and the law, and to whom this talk is dedicated. Edmund thought that Ian Fleming had based Bond, on a character created by another writer. No, not Victor Blakely, the hero in Michael Flatley's surprise cult hit *Blackbird*. But Hubert Bonisser de La Bath, the creation of the French writer Jean Bruce who plied his craft as a secret agent under the code name "agent one-one-seven." And for those who find that plotline too fantastic even for a Bond film, we shall soon discover that Fleming was willing to take inspiration from at least one unacknowledged source when producing a Bond novel, something which was to generate litigation over four decades.

[1] See Matthew Field and Ajay Chowdury, *Some Kind of Hero: The Remarkable Story of the James Bond Films* (2018) ("*Hero*"), 301.

The James Bond Theme

And now to the twanging guitar riff and punchy brass which has opened every Bond film since 1962, the guitar riff being played by the appropriately named Vic Flick. There is no dispute that both Monty Norman and John Barry worked on the music for *Dr No*, and each received writing credits for the film's soundtrack. Norman's included the piece we know as *The James Bond Theme*, for which Barry received an arranging credit. However, over time stories began to circulate that the theme had in fact been written by Barry, and that Norman's composing credit was undeserved. It has long been said that "where there's a hit, there's a writ", and so it proved. As you might expect for a man named Monty, Norman did not take these suggestions lying down. His El Alamein came when *The Sunday Times* published an article in 1997, under the headline "Theme tune wrangle has 007 shaken and stirred", saying that it was Barry who was really the composer. Norman sued for defamation, and the newspaper ran a defence of justification. Lord Justice Warby, who as Mark Warby was counsel for *The Sunday Times*, has kindly provided me with his copy of the article from the case.

The case proved very slow in coming on for trial. In December 2000, Mr Justice Eady noted at an interim hearing that "this libel action appears to me to be stale. If it was necessary to resolve it by means of a contested hearing, it should have been so resolved some time ago."[2] He suggested that "a round table meeting would be the sensible way of sorting it out", saying he could not "believe … that it is either in the interests of the parties or in the public interest for further time and money to be taken up in resolving this dispute as it stands."

However, what sort of a Bond film would it be if it ended after an hour, with Bond and the Super-villain engaging in a successful mediation, the villain deciding that the world *was enough* after all. The case came on for trial in March 2001, before Mr Justice Eady and a jury of eight women and four men. James Price QC appeared for Norman, leading the now Mr Justice Nicklin. The jury were treated to Norman singing from the witness box, and to Lord Justice Warby singing from counsel's row. History does not record which was the more painful experience. They also heard evidence from Norman's ex-wife, Diana Coupland, who had sung *Underneath the Mango Tree* on the *Dr No* soundtrack, and who said that she had heard Norman composing the theme at the piano. Norman revealed he had earned £485,000 from the tune up to 1999.[3] Barry, who had been paid a mere £250 for his work back in 1962, gave evidence for *The Sunday Times*. As the factual evidence was concerned with events which had occurred more than 35 years' before, it was understandably pretty vague in parts, and Barry had a difficult time in cross-examination. The jury were sent out on a Friday. After four hours of deliberations, they found for Norman and awarded him £30,000. The order, drafted by Mr Justice Nicklin, appears here. Norman found himself hailed as "the Man with the Golden Tune", and *The Sunday Times* was left licking its wounds, and complaining about mango tree justice. Lord Justice Warby was left with the consolation prize of a CD of Vic Flick's finest moments.

The Villain

Now what of our villain? There are many memorable Bond villains to choose from. However, I am going to stick with, in film terms at least, the first – Dr No, played by Joseph

[2] *Norman v Times Newspapers* [2000] WL 33122400.
[3] *Hero*, 76.

Wiseman. Now true he risked a third world war by seeking to disrupt the US space programme by means of a laser operated from his Crab Key lair. However, to be set against that in the credit column is the fact that he has made a major contribution to European intellectual property law. That came in the form of the Court of Justice decision in *Danjaq, LLC v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*.[4] A German company had applied for a Community word mark for the name "Dr No", to be used for bags, clothing, food and drink. They found their application opposed by Danjaq LLC, the company Broccoli and Salzman had formed to hold their intellectual property relating to the James Bond franchise.[5] Danjaq's opposition was on the basis that there was a likelihood of confusion between the German company's products, and those licensed by the James Bond film franchise, which included a set of James Bond watches. That contention was rejected by the Office for Harmonisation, on the basis that "Dr No" was not a well-known mark, and the purpose of Danjaq's own use of "Dr No" was not to indicate the commercial origin of the James Bond films, but merely to distinguish one film in that series from the others. That was also true of the use of "Dr No" in licensed comics, model cars and watches. The court held:

> "The use of those signs is merely descriptive, indicating to consumers that the car in question is a model of the one used in the film Dr. No, or that the watch is the one for the film Dr. No in a collection of watches produced to commemorate the fortieth anniversary of the films in the 'James Bond' series."[6]

Rather it was the expressions "James Bond" and "007" which indicated the films' commercial origin. The decision, which has become known as "the Dr No" case, was reported under a number of inventive headlines, my favourite being "James Bond fails to keep Dr No captive". The distinction drawn in the case remains an important one in European patent litigation, and it was recently applied by Mr Justice Michael Green in a claim by DC Comics challenging a trademark for "Wonder Mum" by reference to its character "Wonder Woman".[7]

Now very often in the early parts of a Bond film, a character will put in a brief appearance and you are left wondering whether they are simply some randomer who have just had their moment of glory, or whether they have are going to play a more significant role later in the plot. If any of you are wondering which category Mr Justice Michael Green falls into, you will not have to wait long to find out.

The glamorous heroine

The actress Eva Green was born in France of French-Swedish ancestry. In 2006, she fought off strong competition to secure the part of Vesper Lynd in *Casino Royale*, with other names under consideration including Olivia Wilde, Rachel McAdams, Thandiwe Newton, Angelina Jolie and Charlize Theron.[8] Vesper Lynd was perhaps the first serious attempt at a three-

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[4] *Danjaq, LLC v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Dr. No)* (T-435/05) [2009] E.C.R. II-2097.
[5] The named was derived from the names of their wives, Dana Broccoli and Jacqueline Saltzman.
[6] Ibid, [27]-[28].
[7] *DC Comics (Partnership) v Unilever Global IP Ltd* [2022] EWHC 434 (Ch), [2022] E.C.C. 18.
[8] *Hero*, 574.

dimensional female character in a Bond film, and Green's performance received very favourable reviews.

In April 2018, it was announced that Green was to star in a science-fiction thriller called *A Patriot*. The film was never made, and Green brought proceedings in the Chancery Division against the production company, White Lantern Films, alleging that it had refused to pay her a $1 million fee due when the project was abandoned. They in turn alleged that she was in repudiatory breach of contract and/or not ready, willing or able to perform her obligations.

Running what might be termed "the Diva Defence", White Lantern alleged that "Ms Green's expectations for the Film were, right from the start, incompatible with its budget" and that "accordingly she made unreasonable demands in relation to the hiring of crew members."[9] Ms Green had taken particular objection to the involvement in the film of a Mr Jack Seal, to whom she took an instant dislike, and to the change in production venue from Ireland to Black Hangar Studios in Hampshire, which one witness described as "like a morgue". As the studio had been used to film *Jeepers Creepers: Reborn*, that was not all bad news. So far as Mr Sears was concerned, the Judge offered a pithy assessment of him, of which James Bond would have been proud. He said

> "It was difficult to see how there could be so much vitriol directed at Mr Seal by Ms Green and her witnesses, particularly as she only met him once, and the others on only a few occasions … But I have to say that, having heard him give evidence, I can see how it might be possible to take an instant dislike to him."

The legal and factual issues in the case were, as the Judge stated, straightforward.[10] He rejected the Defendants' case that Ms Green had renounced the agreement to make the film, and awarded her $1 million. However, the case provides an important reminder of the centrality of electronic disclosure in modern litigation, sometimes with good reason and sometimes less so. The Defendants' renunciation case took a serious hit very shortly before the trial, when "a number of audio recordings made on Mr Merrifield's mobile phone were discovered", Mr Merrifield being a former director of the first Defendant who had switched sides. Ms Green's counsel alleged that these blew the Defendants' renunciation case "*out of the water*", and the Judge agreed. Ms Green's team too also had failed to disclose relevant electronic communications held by her agent, which delayed the trial and closing submissions, albeit they did not undermine her case. And finally, a major part of the trial involved the defendant cross-examining Ms Green about a number of strongly worded personal messages, referring for example to "peasant crew members from Hampshire". Ms Green offered various explanations for her choice of language, including her "Frenchness", and her own James Bond anecdote:

> "There is the famous example of Daniel Craig saying: 'I would rather slash my wrists than do another Bond movie.' But did he slash his wrists? No, he made another Bond movie and didn't slash his wrists."

These exchanges attracted a lot of press attention, but the Judge described of all this as "froth", and cut through it. And it's probably time I did as well.

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[9] *Green v White Lantern Films (Britannica) Ltd & anr* [2023] EWHC 930 (Ch), [5].
[10] Ibid, [11].

McClory v Fleming: Round 1[11]

Our trans-continental titanic struggle arose from Ian Fleming's difficulties in bringing his James Bond novels to the screen. Unhappy with his own efforts at scriptwriting, he provided a film option to a company set up with the involvement of an Irishman called Kevin McClory, who in turn retained a script writer Jack Whittingham. Whittingham had written scripts for Ealing Studios, a career he had turned to after doing a law degree. His involvement with James Bond combined both interests. Whittingham produced a screenplay in which Bond battled an organisation of supervillains called SPECTRE, defeated an attempt at nuclear blackmail and defeated the enemy after a series of underwater adventures in exotic locations. It was called *Thunderball*. The film would have been prohibitively expensive to make at the time, and the option expired before the cameras began rolling. McClory and Whittingham may well have thought that that would be that. But back in his Jamaican villa, Fleming found himself struggling for inspiration as he sat down to write the next Bond novel. In the event, he found his inspiration in Whittingham's script. To McClory and Whittingham's surprise, they learned three weeks before publication day that the next James Bond novel was to feature an organisation of supervillains called SPECTRE, a plot of nuclear blackmail, a series of underwater adventures and was to be called *Thunderball*. McClory sued Fleming, his publishers and another company for breach of copyright, retaining a young lawyer at the firm of Oswald Hickson Collier & Co called Peter Carter-Ruck. Thus began what Carter-Ruck, in a statement which one feels says much, described as "an exciting and demanding relationship of friendship, litigation and much travelling which continued for over twenty years."[12]

McClory applied to Mr Justice Wilberforce in the Chancery Division for an injunction restraining publication of the novel. His counsel, the leading libel lawyer F.E. Skone-James, told the judge that Bond was "a Sherlock Holmes type, except that he is not a detective". He outlined the plot, telling Wilberforce "then there is a girl", which apparently elicited the judicial response "Ah, I was waiting for that".[13] However, the injunction was refused, because the steps towards publication were too far advanced. Fleming told waiting reporters that the experience had been "quite ghastly", and that he was sure "Bond never had to go through anything like this". The book was published to great acclaim, with no acknowledgment of McClory's or Whittingham's contribution.

However McClory did not go away. An attempt to kill the case off by seeking security for costs was thwarted when Carter-Ruck persuaded McClory to buy a flat in London.[14] The case came on for trial before Mr Justice Ungoed-Thomas on 30 November 1963, *The Sunday Times* announcing that "the setting for Bond's newest adventure will be … the Chancery Division." Skone-James was now led by the future Mr Justice Foster and also by William Mars-Jones QC. McClory's team was opposed by Sir Andrew Clark QC, the future Mr Justice Whitford and the future Lord Justice Leggatt.

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[11] See Robert Sellers, *The Battle for Bond* (2008) ("*Battle*") and Matthew Field and Ajay Chowdury, *Some Kind of Hero: The Remarkable Story of the James Bond Films* (2018) ("*Hero*") and Peter Carter-Ruck, *Memoirs of a Libel Lawyer* (1990) ("*Carter-Ruck*") for the following account of the McClory battle with Fleming and the Eon Films James Bond franchise.
[12] *Carter-Ruck*, 151.
[13] *Battle*, 95.
[14] *Carter-Ruck*, 153.

The case was opened for a week and a half, and then McClory was called. The evidence for the claimant was devastating. Fleming, who was seriously ill, attended court every day, taking a table at The George over the short adjournment. Nine days, in the case adjourned, and intense settlement discussions took place over the weekend. The defendants agreed to pay McClory damages of £50,000, all of his costs, and to cede the film rights to *Thunderball* to him. Fleming later said about the case "I feel Bond would have done something to liven it up … Like shooting the judge."[15] McClory, too, claimed to have been unhappy with the outcome, refusing to pay Carter-Ruck's bill.[16]

On 9 December 1963, Whittingham issued his own claim against Fleming. As he had assigned his copyright in *Thunderball* to McClory, he could not sue for breach of copyright and so he brought proceedings in libel and malicious falsehood, on the basis that Fleming had falsely denied his involvement in the project and this had damaged reputation as a screenwriter. But Fleming died of a heart attack on 12 August 1964, while proceedings were still ongoing. In a twist of which Fleming the novelist would have proud, the effect of s.1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 was that Whittingham's libel action died with him.

McClory agreed to co-produce the *Thunderball* film with the producers of the official Bond franchise, Cubby Broccoli and Harry Salzman, giving them a 10 year exclusive licence. The script which had been too expensive to film in the late 1950s was eminently filmable after the success of the first three Bond films. Carter-Ruck advised McClory in relation to the deal, once visiting him at his home in the Bahamas to deliver the film scripts. McClory picked him up at the airport in a rather unprepossessing car, and they set off. Half way through the journey, to Carter-Ruck's horror, McClory suddenly drove the car down the beach and into the sea, arriving at McClory's house on Paradise Island by water.[17] Yes - we have reached the floating car in our story. McClory's depiction on the titles for *Thunderball* remained a matter of controversy right up until preview night, Carter-Ruck abandoning his wife at the preview for fraught last-minute negotiations with Salzman and Broccoli.[18] When he returned to his wife, she said "it's a pity you missed the last half-hour. It's been so exciting." He told he that "it was nothing like the excitement which I have been experiencing in Harry Salzman's office."[19] McClory had a 20% profit share in *Thunderball* which proved one of the most successful films in the Bond franchise.

As we shall see, however, that was not the end of the battle between McClory and Broccoli and Salzman. Because that 1963 settlement had given McClory the film rights to *Thunderball* in perpetuity, and there was nothing which prevented him from exploiting them more than once. And McClory was intent on living twice, or even three times, off that *Thunderball* script.

McClory v Fleming: Round 2

At the end of 1975, the 10-year moratorium on McClory's rights to remake *Thunderball* expired, and he began writing a new James Bond script, together with Sean Connery and the British spy novelist Len Deighton. The proposed film was called, at various times, *James*

[15] *Battle*, 115.
[16] *Battle*, 203.
[17] *Battle*, 15.
[18] *Carter-Ruck*, 157.
[19] *Carter-Ruck*, 157-158.

Bond of the Secret Service and *Warhead*. McClory and Connery obtained a copy of *The Spy Who Loved Me* script, which they believed infringed upon their script. In June 1976, McClory instructed Carter-Ruck again, starting proceedings for an injunction.[20] In the event the injunction was not proceed with it.[21] However, Danjaq removed references to SPECTRE and Blofeld from *The Spy Who Loved Me* script.[22] The film was released to much acclaim in 1977. McClory gave Carter-Ruck a gold watch as a token of his appreciation. History does not relate whether it contained a buzz saw (*Live and Let Die*), a printer (*The Spy Who Loved Me*), a laser (*Never Say Never Again* and *Goldeneye*) or an EMP device (*No Time To Die*).

In 1977, McClory announced that shooting on his new Bond film would soon begin in the Bahamas, with backing of $22m from Paramount Studios. In 1978, he announced that Sean Connery would star in it. The Fleming estate, funded by Broccoli, Saltzman and MGM Studios,[23] responded by issuing proceedings against McClory and others in November 1978 alleging breach of the 1963 settlement agreement and various ancillary claims. The proceedings against McClory moved very slowly, as the Irishman danced around the issue of whether or not his *Warhead* script was actually going into production. Connery initially distanced himself from the project, suggesting "perhaps some lawyer will play the part".[24] We are still waiting.

However, in 1982 word reached Eon and MGM that McClory had done a deal with Paramount Studios to make a Bond film based on *Thunderball*, starring Sean Connery and to be called *Never Say Never Again*. Connery's agent got his martial arts tutor, a certain Steven Seagal, to ready Connery for the part.[25] The new impetus for McClory's project led to litigation under a title which would have done credit to a Bond novel – *The Right Honourable Raymond Arthur Clanaboy O'Neill v Paramount Pictures Corporation.* In a "clash of the titans" worthy of any Bond film, it pitted Sam Stamler QC for the estate against the-then Leonard Hoffmann QC for Paramount. Broccoli is reported to have observed of the timing of the application that "the opera isn't over until the fat lady sings", leading a Paramount executive to respond "we're just wondering if the fat lady hasn't already finished her aria".[26]

Indeed she had. The estate's application for an injunction preventing the distribution of the film failed after what seems an extraordinarily long 12-day hearing before Mr Justice Goulding. He rejected the application on two grounds. First, that the estate had delayed too long before seeking the injunction. Second, he held that it was not arguable that the 1963 settlement agreement impose the conditions on McClory for which the estate was contending. That last point reflected a construction argument spotted for the first time by Mr Hoffmann QC, leading Mr Stammler QC to comment:

> "Nobody will deprive Mr Hoffman of the kudos of thinking of it first, but none the less we will find that the agreement has been through the Courts and views have been expressed by Lord Justice Templeman and Mr Justice Nourse which are views in support of what Mr Justice Goulding has found as an unarguable construction. But

[20] *Carter-Ruck*, 215.
[21] *Battle*, 177.
[22] *Battle*, 178.
[23] *Battle*, 199.
[24] *Hero*, 382.
[25] *Hero*, 384.
[26] *Hero*, 395.

> they may well have been hopelessly wrong because their minds were not directed to the point. That is not my best point, but that explains why I say it is surprising. "

The future Lord Hoffmann was neither shaken nor stirred, replying:

> "My Lord, I must confess that on this particular point I feel conscious of what must have been felt by the little boy who ventured to point out that the emperor had no clothes."

Late runner it may have been, but the point carried the day in the Court of Appeal as well. They refused the injunction, holding that the estate's only pleaded claim was demurrable. [27] Further interlocutory skirmishing followed,[28] but the estate did not manage to stop the film coming out, and it competed head-to-head with *Octopussy* in 1984. The case returned to the Court of Appeal the following year, to deal with an unresolved costs issue. Lawton LJ was now tiring of the dispute, and suggested that "the case is *Never Say Never Will it End*, is it not?" The court refused to be drawn when asked by counsel "I hope your Lordships have now seen and enjoyed the picture, which was released in this country in December last."[29] This marked the end of the James Bond litigation in the English courts, there being no climax in the form of a High Court trial of MGM's claim. Instead, the action moved from London to Los Angeles for the dispute's frantic finale.

McClory v Fleming: The Final Round

The denouement of a James Bond film usually involves the culmination of an audacious plot to take over the world, ending in an explosive failure. And so it proved for Kevin McClory. Not content with his 1963 routing of Fleming, and the successful remaking of *Thunderball* in *Never Say Never Again*, he decided on world domination. McClory entered into a deal with Sony Pictures Entertainment in October 1997 to produce an entire series of Bond films, on the basis of the rights afforded to him by the 1963 settlement. The announcement was made just as MGM were about to release *Tomorrow Never Dies*, Pierce Brosnan's second Bond outing and the nineteenth Bond film.

MGM responded by filing $25m infringement suit against both Sony and McClory. They in turn, no doubt with *A View to A Kill[ing]*, counterclaimed for a share of the profits of all the Bond films to date, arguing that the Bond screen persona and cinematic universe had effectively been created by that first *Thunderball* script. The counterclaim was valued at $3 billion. MGM applied for a preliminary injunction preventing Sony from preparing a script, hiring talent or entering into any agreement to produce a Bond film. In a first in the Bond legal universe, they got it. The injunction was granted by Judge Edward Rafeedie sitting in the U.S. District Court in Los Angeles, the Judge deciding that the rights Sony purchased from Mclory did not rise to the level of copyright protection under U.S. copyright law.[30] He

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[27] *The Right Honourable Raymond Arthur Clanaboy O'Neill v Paramount Pictures Corporation* [1983] 5 WLUK 77, 97, 122, 137, 157, 306.
[28] *The Right Honourable Raymond Arthur Clanaboy O'Neill v Paramount Pictures Corporation* [1983] 7 WLUK 194, 202; [1983] 7 WLUK 338, 341
[29] *The Right Honourable Raymond Arthur Clanaboy O'Neill v Paramount Pictures Corporation* [1984] WL 988993.
[30] *Danjaq, LLC v. Sony Corp.,* 1998 WL 957053, (C.D.Cal. July 29, 1998).

said that MGM/UA had shown a high likelihood of prevailing on the merits. Sony's appeal against that injunction was summarily rejected by the 9th Circuit Court of Appeals.[31]

While Sony claimed it was looking forward to the trial, it was actually looking for a way out. A March 1999 settlement between MGM and Sony left Sony out of the Bond business, paying $5m compensation to MGM, and also selling the rights to its only Bond title – *Casino Royale*. Those rights were owned by Sony's subsidiary, Columbia Pictures, which had made a truly bizarre James Bond spoof under that title starring David Niven as the retired 007 in 1967. That left McClory on his own, Sony assigning its claim to a share in the profits of the Bond franchise back to McClory. But McClory refused to see the *Writing's On The Wall*, placing an advert in *Variety* announcing his intention to proceed with the *Warhead* script.

A bench trial of MGM's claim was held by Judge Rafeedie in March 2000. McClory did not appear,[32] leaving his lawyer to undertake his defence without him. The court decided MGM's laches defence first – that McClory had simply waited too long before bringing his infringement claim. Despite what he described as the "Herculean" efforts of McClory's lawyers, MGM's laches argument succeeded, Judge Rafeedie finding that McClory had known of the alleged infringement since at least 1961 and that his only attempt to enforce any rights against Danjaq was the 1976 litigation, which was unrelated to the claims presented now. He concluded that Danjaq had presented "overwhelming and uncontroverted evidence of substantial prejudice due to McClory's delay." McClory appealed.

And so this titantic struggle reached its climax, as it came back to the 9th Circuit Court of Appeals again. Justice Margaret McKeown, who delivered judgment, had a field day.[33] Her judgment begins with two quotations. The first was "Epitaph for Mrs Bond in *For Your Eyes Only* (Danjaq Productions 1981) :

"we have all the time in the world" –

which was a reference to the pre-title sequence in which Bond visits Tracy Bond's grave, which bears that inscription. The second, attributed to "Anonymous", is that

"Equity aids the vigilant."

She then got fully into her stride, continuing:

> "Every so often, the law shakes off its cobwebs to produce a story far too improbable even for the silver screen — too fabulous even for the world of Agent 007. This is one of those occasions, for the case before us has it all. A hero, seeking to redeem his stolen fortune. The villainous organization that stands in his way. Mystery! International intrigue! And now, not least of all, the dusty corners of the ancient law of equity.
>
> More specifically, this case arises out of an almost forty-year dispute over the parentage and ownership of a cultural phenomenon: Bond. James Bond. We are confronted with two competing narratives, with little in common but their endpoint.

[31] *Danjaq, LLC v. Sony Corp.,* 165 F.3d 915, (9th Cir. Nov.19, 1998).
[32] *Danjag LLC v Sony Corp.,* Case 297-cv-08414-R-Mc.
[33] *Danjaq LLC v. Sony Corp.* 263 F.3d 942.

> All agree that James Bond — the roguish British secret agent known for martinis (shaken, not stirred), narrow escapes, and a fondness for fetching paramours with risque sobriquets — is one of the great commercial successes of the modern cinema. The parties dispute, however, the source from which Agent 007 sprang."

It turned out that McClory did not have all the time in the world, any more than Tracy Bond had had it in *On Hr Majesty's Secret Service*. There had been delay by McClory in asserting his alleged rights of between 19 and 36 years, that delay had been wholly unjustified, and Danjaq had acted to its prejudice during the delay by investing millions in bringing Bond films to the screen and in the loss of relevant witnesses and evidence. When commenting on the amount Danjaq had invested of "$1 billion", Judge McKeown includes what I suspect may be the only judicial citation to an Austen Powers movie. This was a subtle reference to the scene when Dr Evil, awaking from cryogenic suspension for a period which was even longer than that for which McClory had slept on his rights, asks for ransom of $1 million, to be told that was not a lot of money any more. The court also rejected McClory's contention that Danjaq had wilfully infringed his rights, which would have provided a legal answer to the delay claim.

Judge McKeown concluded with the heading "Closing Credits", stating:

> "So like our hero James Bond, exhausted after a long adventure, we reach the end of our story. For the foregoing reasons, we affirm the district court's determination that Danjaq established laches; that, as a matter of law, McClory is unable to establish willful infringement; and that laches bars McClory's claims in their entirety. We also conclude that the district court did not abuse its discretion by bifurcating the trial and by declining to grant a continuance."

In 2004, Sony bought MGM, and in 2006, MGM released *Casino Royale* as Daniel Craig's first Bond outing. McClory was left out in the cold, the money he had made from *Thunderball* and *Never Say Never Again* squandered in a succession of lawsuits. Four days after *Casino Royale* was released, McClory died peacefully in a nursing home in Ireland. Nothing in his life became him like the leaving of it, as he was given a Viking funeral. In November 2013, McClory's family sold his rights in relation to Bond to Danjaq, hopefully obtaining *A Quantum of Solace* in return, and McClory's part in the Bond narrative came to an end. The result was that the next Bond instalment could be entitled *SPECTRE*, and Blofeld was back.

The ballad

Finally to our closing ballad. Shirley Bassey is the only artist to have recorded more than one Bond theme. She has chalked up three: *Diamonds are Forever*, the rather forgettable *Moonraker*, and one of the best, *Goldfinger*. The only flaw in John Barry, Leslie Bricusse and Anthony Newley's masterpiece is the rather strange line, "such a cold finger" which rather suggests the eponymous villain was suffered from poor circulation. While Goldfinger is not an easy word to rhyme with, it is surprising that the film's star, former Edinburgh milkman Sean Connery, did not offer up that famous Scottish insult, "auld minger".

Dame Shirley has had more than one brush with litigation, some of it Bond-related. John Barry and Leslie Bricusse having concluded that writing a song called *Thunderball* was all but impossible, came up with an alternative called *Mr Kiss Kiss Bang Bang*, which was how

James Bond was referred to Italy. However, Broccoli and Salzman insisted the theme song use the film's title, and a song of that name was swiftly produced. Tom Jones recorded T*hunderball*, and Dame Shirley was asked to do a recording of *Mr Kiss Kiss Bang Bang*. When her recording was not used in the final version of the film, her production company SVB Ltd – for Shirley Veronica Bassey - sued the producers,[34] seeking an injunction to prevent the release of the film unless her recording was included, and in an appropriately prominent place. Eon must have begun to think *Thunderball* was cursed. They instructed Mr Andrew Leggatt who had appeared for the Fleming estate in the 1963 trial. In this case the setting for Bond's next adventure was not to be the Chancery Division, but what some might think to be the more appropriately glamorous Commercial Court. Eon successfully resisted the injunction application before Mr Justice Lyell. SVB appealed to the Court of Appeal, but the appeal failed, on the basis that damages were a sufficient remedy.[35]

Dame Shirley also brought a copyright claim against a defendant seeking to release recordings of her performing the entire Bond theme canon, in a studio on his boat, the *Tao Princess.*[36] Dame Shirley had a contractual right to approve the release of the recordings, and Sir John Vinelott held that the defendant's contention that she has given such approval was too vague and flimsy to justify the action proceeding to trial.

I want to finish with *Millar v Bassey.*[37] The claimants in that case were a record producer and musicians. They claimed that they had been retained by a record company to record an album with Dame Shirley, and that she had similarly signed a contract with the record company to do the album. The claimants alleged that Dame Shirley had refused to perform her contract, leading the record company to breach its contract with them, and they brought proceedings against her for inducing breach of contact. The judge struck out the claim, on the basis that there was no sufficient evidence that Dame Shirley's conduct was aimed at the claimants in any way. However, on appeal, the Court of Appeal held by a majority that it was arguable that mere foresight of the probable consequences of deliberate conduct was sufficient to constitute the tort. Now, unlike diamonds, but like men as Ms Bassey tells us in *Diamonds Are Forever*, the decision in *Millar v Bassey* did not stand the test of time. The point of law the Court of Appeal had held to be arguable has since been found to be wrong in *OBG v Allan*.[38]

Closing credits

By way of my closing credits, I would like to thank the Manchester Business and Property Courts forum and His Honour Judge Richard Pearce for organising this event, and Addleshaw Goodard LLP for hosting it. For a long time it was customary for the closing credits of a James Bond film to promise the audience that James Bond would return. Whether or not he or she will, I shall certainly look forward to coming back to Manchester.

Thank you for listening.

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[34] *Hero*, 145
[35] *SVB v Eon Productions Ltd* [1965] 1 WLUK 654.
[36] *Bassey v Icon Entertainment Plc* [1995] EMLR 596.
[37] *Millar v Bassey* [1994] EMLR 44.
[38] *OBG v Allan* [2008] 1 AC 1, [43].