



Commercial and Insolvency Update

August 2017

[Emmott v Michael Wilson & Partners Ltd \[2017\] EWCA Civ 367](#)

The Court of Appeal recently considered when the court would make a payment to a judgment creditor from monies paid into court by a third party under CPR r 72.10. Mr Emmott, the respondent judgment creditor, wanted the defendant's judgment debt to be met from sums paid into court by a third party in an unrelated action which were owed to the appellant defendant.

The appellant argued that the fund in court was the subject of a charge in favour of a company to which it was indebted. At first instance the judge had held, *inter alia*, that the sums paid into court were not an asset over which a charge could be made.

The Court dismissed the appeal. CPR r. 72.10 governed this situation. Simon L.J. applied CPR Part 72 and held that in court was not some special fund which rendered it immune from all other claims. On an application under CPR r 72.10 the court was not bound to make an order in favour of the judgment creditor. The judgment debtor became entitled to the sums in court on the date of the order for payment to him, when it became money standing to its credit in court. The Judge at first instance was satisfied that there was no reasonable prospect of establishing that there was in fact a charge over the sums in court and therefore the appeal failed.

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