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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CAMPBELL LAW GROUP CHARTERED, *Plaintiff/Appellant*,

v.

MONICA JAGELSKI, et al., *Defendants/Appellees*.

No. 1 CA-CV 17-0032
FILED 8-14-2018

Appeal from the Superior Court in Maricopa County
No. CV2014-009920
The Honorable James R. Morrow, Judge *Retired*

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

S W A N N, Judge:

¶1 This is a judgment collection case. The creditor, Campbell Law Group Chartered (“CLG”), appeals from a judgment determining that it was not permitted to substitute itself as a member in the debtor’s LLCs, denying a request for an order to show cause regarding alleged violations of a charging order, and awarding attorney’s fees against it in garnishment proceedings. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 This appeal arises from the collection efforts of judgment creditor CLG against its former client, judgment debtor Monica Jagelski, for breach of contract arising out of a failure to pay attorney’s fees. The judgment amount included a principal sum, attorney’s fees incurred in the collection efforts, and taxable costs and sanctions under Ariz. R. Civ. P. 68(g), each carrying various rates of interest. The present amount of the judgment is no less than \$454,000.

¶3 At all relevant times, Jagelski was the sole member of Empire Vista, LLC and Southwest Mancor, LLC. At the time of the judgment, Empire Vista owned a one-third interest in real property worth approximately \$550,000.

¶4 In an effort to collect on the judgment, CLG obtained a charging order under A.R.S. § 29-655 against Jagelski’s interest in Empire Vista. The charging orders provided that Jagelski’s interest “is charged with payment of the unsatisfied amount of the JUDGMENT plus interest, and to the extent so charged, CLG has the rights of an assignee of JAGELSKI’s interest.”

¶5 The day CLG obtained the Empire Vista charging order, it filed articles of amendment for Empire Vista with the Arizona Corporation Commission to remove Jagelski as a member and to substitute CLG in her place as the “100% member.” The articles of amendment claimed that

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Jagelski was adjudicated insolvent and therefore ceased to be a member of Empire Vista by operation of law under A.R.S. § 29-733(4)(c).

¶6 CLG also contacted the co-owners of Empire Vista's real property, claiming to be Empire Vista's new owner. CLG noted that the real property was in escrow and directed that all proceeds of the pending sale be sent to "CLG in its capacity as the new sole member and manager of Empire Vista, LLC, as well as the assignee of Monica Jagelski's interest in that LLC."

¶7 Soon after CLG obtained its charging order, Southwest Mancor was formed with Jagelski as the sole member. Empire Vista then transferred the real property to Northern Mancor, LLC, an LLC owned by Jagelski's children. Eight days later, Northern Mancor transferred the real property back to Empire Vista. That same day, Empire Vista transferred the real property to Southwest Mancor in exchange for a promissory note in the amount of \$550,000 and a deed of trust. Jagelski admits the purpose of the transfer from Empire Vista to Southwest Mancor was to "protect the assets of Empire Vista" from CLG.

¶8 CLG later obtained a charging order against Jagelski's interest in Southwest Mancor, and moved for a declaration of ownership in Southwest Mancor and "any other LLC in which Jagelski is the sole member." The court denied CLG's motions and clarified that CLG, as a judgment creditor of Jagelski, "only has the rights of an assignee of the member's interest in the limited liability company as provided in § 29-655(A) and . . . [CLG] is *not* substituted as a member of the limited liability company in place of [Jagelski]."

¶9 Alleging that it "believes that garnishee holds nonexempt property or money other than wages owed or belonging to" Jagelski, CLG also obtained writs of garnishment against Jagelski (trustee of Empire Vista), Empire Vista, Northern Mancor, and Southwest Mancor. The garnishees answered, contending they held no personal property or money belonging to Jagelski. CLG objected to Empire Vista, Southwest Mancor, and Jagelski's answers, arguing that Empire Vista violated the charging order against Jagelski's interest in Empire Vista by fraudulently transferring the real property and that Jagelski ceased to be a member of her LLCs because she was insolvent, which caused CLG automatically to become a member of her LLCs.

¶10 After an evidentiary hearing, the court overruled CLG's objections, finding that because the real property "was an asset of the LLC,

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and not an asset of [Jagelski], the LLC was free to transfer the [real property] as it saw fit to do. [Jagelski]’s asset — its membership in the LLC — remained the same both before and after the transfer” of the real property between the garnishees.

¶11 The day the court ruled, CLG moved for an order to show cause regarding an alleged violation of the Empire Vista charging order. CLG argued that Jagelski was insolvent and that the transfers of the real property among her LLCs constituted fraudulent transfers under A.R.S. § 44-1005. CLG requested a hearing at which Jagelski, individually and as the sole owner of Empire Vista, could explain why she should not be sanctioned for violating the Empire Vista charging order.

¶12 CLG also filed a motion for new trial, alleging that the court committed “fundamental errors of law” in connection with its rulings concerning CLG’s status as a member and overruling its objections to the garnishees’ answers. The court denied both CLG’s motion for order to show cause and its motion for new trial. In its ruling, the court specifically found that (1) the rights flowing from a charging order against an LLC membership do not permit CLG “to step into the shoes” of Jagelski, (2) no fraudulent transfer occurred, and (3) the transfers of the real property did not violate the charging order. The court awarded the garnishees their attorney’s fees. CLG appeals.

DISCUSSION

¶13 We review garnishment proceedings and denials of motions for new trial for abuse of discretion. *See Cota v. S. Ariz. Bank & Tr. Co.*, 17 Ariz. App. 326, 327 (1972) (reviewing the trial court’s refusal to quash writs of garnishment for abuse of discretion); *see also Summers v. Gloor*, 239 Ariz. 222, 225, ¶ 10 (App. 2016). We review the interpretation and application of statutes de novo. *Schwarz v. City of Glendale*, 190 Ariz. 508, 510 (App. 1997).

I. CLG IS NOT A MEMBER OF EITHER EMPIRE VISTA OR SOUTHWEST MANCOR.

¶14 CLG argues it automatically became a member of Empire Vista and Southwest Mancor by virtue of the charging orders. Specifically, CLG argues that it should be recognized as a member under A.R.S. §§ 29-731(B)(3) and (4), and -733(4)(c). We disagree.

¶15 Section 29-733(4)(c) provides that, unless otherwise provided in an operating agreement, a member is withdrawn if she is “adjudicated

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as bankrupt or insolvent." Jagelski has not been adjudicated as bankrupt or insolvent. By its literal terms, § 29-733(4)(c) does not apply.

¶16 Likewise, § 29-731(B)(3) and (4) fail to provide a mechanism by which CLG could become a member of Empire Vista or Southwest Mancor. Section 29-731(B)(3) provides only that an assignee may be admitted as a member *if* a member with the power under an operating agreement to grant the assignee membership exercises that power. First, the charging orders do not make CLG an assignee of Jagelski. Rather, the orders correctly provide that CLG "has the rights of an assignee of Jagelski's interest" in Empire Vista and Southwest Mancor. Second, under the operating agreements for Empire Vista and Southwest Mancor, no new member can be admitted to the companies without unanimous consent of all members and managers. While Jagelski is the sole member, both Empire Vista and Southwest Mancor have managers other than Jagelski. Jagelski did not have the sole power to grant CLG the right to become a member.

¶17 Section 29-731(B)(4) provides that a person may become a member of a limited liability company if "there are no members and all of the assignees consent in writing to the admission of one or more persons as a member or members, unless otherwise provided in the operating agreement." Here, Jagelski is a member of Empire Vista and Southwest Mancor, so the statute is inapplicable. The court correctly held that no mechanism exists under §§ 29-655, -731, or -733 to cause CLG to become a member of Empire Vista or Southwest Mancor over Jagelski's objection.

II. THE REAL PROPERTY TRANSFERS CONSTITUTED FRAUDULENT TRANSFERS.

¶18 CLG argues that the transfers of the real property from Empire Vista to Northern Mancor and back, and then from Empire Vista to Southwest Mancor were fraudulent under A.R.S. §§ 44-1004 and -1005. We agree.

¶19 Under § 44-1004(A)(1) a "transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation . . . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor." A "transfer" is defined as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset." A.R.S. § 44-1001(9). The broad statutory definition of a "transfer" includes any transaction in which a property interest was relinquished. *State ex rel. Indus. Comm'n v. Wright*, 202 Ariz. 255, 257, ¶ 8 (App. 2002).

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¶20 We conclude that Jagelski indirectly parted with her interest in an asset when she caused Empire Vista to transfer the real property to Northern Mancor. After the real property was transferred back to Empire Vista, Jagelski again indirectly parted with her interest in the real property when she caused Empire Vista to transfer the asset to Southwest Mancor. And Jagelski admits the transfer from Empire Vista to Southwest Mancor was done “to protect the assets of Empire Vista” from CLG. It is undisputed that Jagelski took measures to render membership interests worthless with the intent to hinder CLG’s ability to collect a judgment. The transfers from Empire Vista to Northern Mancor, and then from Empire Vista to Southwest Mancor were classic fraudulent transfers under § 44-1004(A)(1).

¶21 Though arguably undertaken as a practical means of thwarting CLG’s own unlawful efforts to take over control of the LLCs, the transfers were no less fraudulent. The fraudulent transfer statutes contain no exceptions for debtors faced with malfeasant creditors. Debtors faced with unlawful attempts at collection may seek emergency relief from the court—they may not violate the law in the name of self-help. Accordingly, the court erred when it determined the transfers of the real property were not fraudulent transfers.

III. THE REAL PROPERTY TRANSFERS DID NOT VIOLATE THE CHARGING ORDERS.

¶22 CLG obtained charging orders under A.R.S. § 29-655(A) against Empire Vista and Southwest Mancor. In its motion for new trial and motion for order to show cause, CLG argued that Empire Vista violated the charging orders when it transferred the real property to both Northern Mancor and Southwest Mancor. While the transfers of the real property were fraudulent, we agree with the court that they did not violate the charging orders.

¶23 Under Arizona law, a court “may charge the member’s interest in the limited liability company with payment of the unsatisfied amount of the judgment plus interest.” A.R.S. § 29-655(A). In such a case, “the judgment creditor has only the rights of an assignee of the member’s interest.” *Id.* The assignee of a member’s interest is not entitled to participate in the LLC’s management. A.R.S. § 29-732(A). Instead, the assignee “is only entitled to receive, to the extent assigned, the share of distributions, including distributions representing the return of contributions, and the allocation of profits and losses, to which the assignor would otherwise be entitled with respect to the assigned interest.” *Id.* A

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charging order is the exclusive remedy by which a judgment creditor may satisfy a judgment out of a member's interest in a LLC. A.R.S. § 29-655(C).

¶24 In this case, there is no evidence on the record to support a finding that the fraudulent transfers resulted in a distribution to Jagelski; therefore, the charging orders were not violated. As the court correctly determined, no interest in the subject property was transferred from a charged LLC to Jagelski.

ATTORNEY'S FEES AND COSTS

¶25 Jagelski requests her attorney's fees and costs incurred in this appeal in accordance with A.R.S. § 12-1580(E) and ARCAP 21. Because we hold that the transfers of the real property from Empire Vista to Northern Mancor and Southwest Mancor were fraudulent, we decline to award Jagelski her attorney's fees and costs. We vacate the superior court's award of attorney's fees against CLG with respect to the garnishment proceedings and remand the issue to the court for further proceedings.

CONCLUSION

¶26 For the foregoing reasons, we affirm in part, reverse in part, and remand for further proceedings consistent with this decision.



AMY M. WOOD • Clerk of the Court
FILED: AA