

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGIONS BANK, <i>as Successor</i>	:	
<i>Trustee of the Carl T. Martin</i>	:	
<i>Estate-Trust Part One, and the</i>	:	
<i>Carl T. Martin Estate-Trust</i>	:	
<i>Part Two, as established under</i>	:	
<i>the last will and testament of</i>	:	
<i>Carl T. Martin, deceased,</i>	:	CIVIL ACTION 10-0145-M
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
DAVID STEWART,	:	
	:	
DEFENDANT.	:	

MEMORANDUM OPINION AND ORDER

Plaintiff has filed a Renewed Application for Charging Order pursuant to the Fed.R.Civ.P. 69(a)(1) and Alabama Code § 10-12-35 (Doc. 63). Defendant has filed a response (Doc. 65) to which Plaintiff has replied (Doc. 66). After consideration of the pleadings of record, Plaintiff's Renewed Application for Charging Order is **GRANTED** (Doc. 63).

The Court notes that on November 8, 2010, the undersigned found that Plaintiff Regions Bank had demonstrated a breach of contract against ZLM Acquisitions, LLC, an Alabama limited liability company which is not a party to this action, and that Defendant Stewart was liable, pursuant to his Personal Guaranty, for damages of seven hundred eighty-six thousand, one hundred eighty-four dollars and thirty-nine cents (\$786,184.39) as of

November 8, 2010 (Doc. 53). Judgment was entered on that same date in favor of Regions Bank and against Stewart (Doc. 54).

Plaintiff has now filed a Renewed Application for Charging Order, moving for an Order from this Court "against Judgment Debtor David Stewart [], attaching Stewart's membership interest in ZLM Acquisitions, LLC, Shimmering Sand Development Company, and P&P Acquisitions, LLC" pursuant to the Fed.R.Civ.P. 69(a)(1) and Alabama Code § 10-12-35 (Doc. 63). Plaintiff notes that Defendant did not appeal the judgment and asserts that the judgment is still not satisfied (Doc. 63, ¶¶ 7-8).

The Rules of Civil Procedure state that "[a] money judgment is enforced by a writ of execution unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located." Fed.R.Civ.P. 69(a)(1) (2011). The law of Alabama, where this Court is located, provides for the following:

On application to a court of competent jurisdiction by any judgment creditor of a member or assignee, the court may charge the interest of the member or assignee with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of financial rights. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

Ala. Code 10-12-35(a). The Court notes that this Court has previously issued a charging order pursuant to this statute, see *Vision Bank v. Swindall*, C.A. 09-442-CG-M (S.D. Ala. November 30, 2010 (Doc. 71)), and that other federal courts have done so as well under the state statutes of their jurisdiction. See, e.g., *The First National Bank of Louisville, N.A. v. Young*, 1995 WL 549128, *3 (D. Mass. 1995); *Wooten v. Lightburn*, 2009 WL 2424686, *2-3 (W.D. Va. 2009); *General Electric Capital Corp. v. JLT Aircraft Holding Co., LLC*, 2010 WL 3023316, *3 (D. Minn. 2010); and *Lumbermens Mut. Cas. Co. v. Luciano Enterprises, LLC*, 2005 WL 2340709, *1 (D. Alaska 2005).

Plaintiff has asserted that Stewart has admitted in post-judgment discovery that he owns interest in three different limited liability companies (hereinafter *LLC*) in Alabama (Doc. 63, pp. 6-77). Those interests are as follows:

(1) Eighty percent (80%) in ZLM Acquisitions, LLC, with its principal place of business located at 3145 Gulf Shores Parkway, Gulf Shores, Alabama 36542. The registered agent is Daniel G. Blackburn, located at 110 Courthouse Square, Bay Minette, Alabama 36507. There are two other LLC members: Tom Steber, 6397 E. Quarry Drive, Elberta, Alabama 36530; and Maurice J. Fitsimons, 190 Country Club Drive, Daphne, Alabama 36526.

(2) Fifty percent (50%) in Shimmering Sands Development Company, LLC. The

registered agent is The Corporation Company, 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109. The only other LLC member is TDTM Investments, LLC.

(3) Fifty percent (50%) in P&P Acquisitions, LLC. The registered agent is Daniel G. Blackburn, 110 Courthouse Square, Bay Minette, Alabama 36507. The only other LLC member is Terry Stewart.

(Doc. 63, pp. 6-7).

Defendant has urged that this Application be denied because the LLC's have not been notified of the Application or given any opportunity to respond. Stewart further argued that granting the Application would "make Regions Bank a participating member of each LLC" (Doc. 65, ¶ 2). Defendant references no legal authorities for these arguments, however.

The Court finds that the Application should be **GRANTED** (Doc. 63) as federal law and state law both allow it. With regard to Stewart's arguments, the Court notes that the LLC's have been put on notice in that all have a member with, at least, a fifty percent interest in the company. Furthermore, Defendant's argument that granting the application would make Regions Bank a participating member of each LLC is unsupported in that the law, and this Court, will only allow Plaintiff to step into Stewart's shoes as "an assignee of financial rights."

Therefore, after consideration of the relevant pleadings, the Court **GRANTS** Plaintiff's Renewed Application for Charging

Order (Doc. 63) and will enter a separate Order to effectuate the decision in this memorandum.

DONE this 10th day of May, 2011.

s/BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE