

IN THE COURT OF APPEALS OF IOWA

No. 2-431 / 11-1285
Filed August 8, 2012

**WELLS FARGO BANK, NATIONAL
ASSOCIATION,**
Plaintiff,

vs.

**CONTINUOUS CONTROL SOLUTIONS,
INC., DMITRY KHOTS, ALEX KOMM,
ILYA MARKEVICH, BORIS G. PUSIN,
VADIM SHAPIRO, ALEX SHCHARANSKY,
BORIS SHCHARANSKY and ZOYA
STAROSELSKY,**
Defendants.

**ALEX KOMM, ILYA MARKEVICH, BORIS G.
PUSIN, VADIM SHAPIRO, and DMITRY KHOTS,**
Cross-Claim Plaintiffs/Counter Cross-
Claim Defendants-Appellees,

vs.

**CONTINUOUS CONTROL SOLUTIONS, INC.,
n/k/a CONTINUOUS CONTROL SOLUTIONS, L.L.C.,
and ALEX SHCHARANSKY,**
Cross-Claim Defendants/Counter
Cross-Claim Plaintiffs-Appellants, and
BORIS SHCHARANSKY and ZOYA STAROSELSKY,
Cross-Claim Defendants/Counter
Cross-Claim Plaintiffs,

**ALEX KOMM, ILYA MARKEVICH, BORIS G.
PUSIN, and VADIM SHAPIRO,**
Cross-Petition Plaintiffs-Appellees,

vs.

**LEONID SHCHARANSKY and
SLAVA STAROSELSKY,**
Cross-Petition Defendants-Appellants,

**GLOBAL ENERGY INVESTMENTS, L.L.C. and
ZORASS NEWCO, L.L.C.,**
Third Parties in Interest-Appellants.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Appellants appeal the provisions of charging orders directing the limited liability companies to provide cash flow statements to appellees. **AFFIRMED IN PART AND VACATED IN PART.**

Stanley J. Thompson of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, and David J. Butler and Bryan M. Killian of Bingham McCutchen, L.L.P., Washington, D.C., pro hac vice for appellants.

Todd A. Strother and Tony L. James of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees Alex Komm, Ilya Markevich, Boris G. Pusin, Vadim Shapiro, and Dmitry Khots.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

The district court entered charging orders under Iowa Code section 489.503 (2011) against judgment debtors' economic interests in three limited liability companies (LLCs). On appeal, the LLCs challenge the provisions of the charging orders which require the LLCs to provide to the judgment creditors, or the court, periodic cash flow statements. We vacate the challenged disclosure provisions of the charging orders.

The facts and history of the underlying case are set forth in great detail in a previous opinion of this court and need not be repeated here in view of the discrete issue presented. See *Wells Fargo Bank, N.A. v. Continuous Control Solutions, Inc.*, No. 10-1070, 2011 WL 2695269, at *1–4 (Iowa Ct. App. July 13, 2011). Alex Komm, Ilya Markevich, Boris Pusin, Vadim Shapiro, and Dmitry Khots (collectively judgment creditors) obtained a judgment against Alex Shcharansky, Leonid (Lenny) Shcharansky, and Slava Staroselsky (collectively judgment debtors). In an effort to collect on the judgment, the judgment creditors applied for charging orders pursuant to Iowa Code section 489.503 against the judgment debtors' economic interests in three LLCs: Zorass Newco, L.L.C., owned by the three judgment debtors, and Global Energy Investments, L.L.C. and Continuous Control Solutions, L.L.C., owned in part by Alex Shcharansky. The judgment creditors also requested an order requiring the LLCs to disclose their cash flow statements or other documentation "in order to verify no distributions have been made to the judgment debtors or any other entity or person with an ownership interest in these limited liability companies."

The LLCs filed a limited resistance to the application, not generally challenging the application for the issuance of a charging order, but resisting the request for disclosure of quarterly cash flow statements. After briefing and a hearing, the district court granted charging orders against each judgment debtor. Additionally, the court ordered the LLCs to provide to counsel for the judgment creditors or to the court “a cash flow statement every six months, beginning August 1, 2011, specifically outlining any and all disbursements, distributions, inflows, or payments in order to ensure compliance with this charging order.” The court later granted a stay of the disclosure provisions of the charging orders pending appeal. The LLCs and judgment debtors appealed.¹

On appeal, the LLCs argue there is no statutory authority for the disclosure orders issued by the district court. We agree.

Application for a charging order by a judgment creditor against the transferable interest of a judgment debtor is a post-judgment equitable proceeding. See Iowa Code § 630.16. Our review is therefore de novo. Iowa R. Civ. P. 6.907.

A charging order is a lien on a judgment debtor’s “transferable interest” in an L.L.C., i.e., his or her right as a member to receive a “distribution” of money or property from the L.L.C.² See Iowa Code §§ 489.503(1), .102(5), .102(24)

¹ The judgment creditors have not filed an appellate brief.

² The limited liability company or “L.L.C.” as it is now known is a hybrid business entity that is considered to have the attributes of a partnership for federal income tax purposes and the limited liability protections of a corporation. Matthew G. Doré, 5 *Iowa Practice: Business Organizations* § 1.6, at 18–19 (2004) [hereinafter Doré]. As such, it provides for the operational advantages of a partnership by allowing the owners, called members, to participate in the management of the business. See *id.* § 1.6, at 20–21. Yet, the members and managers are protected from liability in the same manner shareholders, officers, and directors of a corporation are protected. *Id.* § 1.6, at 21.

(defining “charging order,” “distribution,” and “transferable interest”). Iowa Code section 489.503 provides, in relevant part:

1. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor’s transferable interest and *requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.*

2. To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may do all of the following:

a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made.

b. Make all other orders necessary to give effect to the charging order.

...

7. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor’s transferable interest.

(Emphasis added.)

Charging orders have been described as “nothing more than a legislative means of providing a creditor some means of getting at a debtor’s ill-defined interest in a statutory bastard, surnamed ‘partnership,’ but corporately protecting participants by limiting their liability as [] corporate shareholders.” In short, “[a] charging order gives the charging creditor only limited access to the partnership interest of the indebted partner.” Consequently, the judgment creditor does not unequivocally step into the shoes of a limited-liability member. . . . A judgment creditor, or assignee, is only entitled to the judgment debtor’s share of the profit and distributions, takes no interest in the LLC’s assets, and is not entitled to participate in the management or administration of the business. After the entry of a charging order, the debtor member no longer has the right to future LLC distributions to the extent of the charging order, but retains all other rights that it had before the execution of the charging order, including managerial interests.

Weddell v. H2O, Inc., 271 P.3d 743, 750 (Nev. 2012) (internal citations omitted).

Under the guise of Iowa Code section 489.503(2)(b), the judgment creditors requested the district court to enter an order requiring the LLCs to turn over quarterly cash flow statements “to verify no distributions have been made to the judgment debtors or any other entity or person with an ownership interest in these limited liability companies.” The court included the requested disclosure provision in its charging orders, citing specifically to section 489.503(2)(b). Although section 489.503(2)(b) authorizes the court to “[m]ake all other orders necessary to give effect to the charging order,” it does not specifically authorize the requested disclosure provision. For the following reasons we do not believe the statutory provision can be read as broadly as the judgment creditors argued to the district court.

Section 489.503(2)(a) authorizes the court to appoint a receiver “with the power to make all inquiries the judgment debtor might have made.” This Code section mirrors section 503(b)(1) of the Revised Uniform Limited Liability Company Act (RULLCA). The receiver contemplated by this section is not a receiver for the L.L.C., but a receiver for the distributions. See RULLCA § 503, 6B U.L.A. 499 cmt. 503(b)(1) (2008). “The principal advantage provided by this paragraph is an expanded right to information.” *Id.* But it appears no such expanded right to information is contemplated under Iowa Code section 489.503(2)(b). Unlike section 489.503(2)(a), section 489.503(2)(b), the provision relied upon by the judgment creditors, does not specifically include a right to information as a remedy to effectuate the collection of distributions. Nor is an expanded right to information mentioned as an example “to give effect to the charging order” in RULLCA’s comment to section 503(b)(2), which mirrors Iowa

Code section 489.503(2)(b). RULLCA § 503, 6B U.L.A. 499–500 cmt. 503(b)(2). This provision authorizes ancillary orders that affect only economic rights, not governance rights.³ See *id.* We thus conclude this expanded right to information (“power to make all inquiries the judgment debtor may have”) is limited to a receiver appointed by the court under Iowa Code section 489.503(2)(a) and is not authorized under section 489.503(2)(b).

Our conclusion is further supported by Iowa Code section 489.502(1)(c)(2), which provides a transferee of a L.L.C. member’s interest is not entitled to, except upon the L.L.C.’s dissolution and winding up, “access to records or other information concerning the company’s activities.” Iowa Code § 489.502(1)(c)(2), (3); accord *id.* § 489.410(6) (right to access an L.L.C.’s business and financial information do not extend to a person as a transferee). A charging order constitutes a mere lien upon the judgment debtor’s transferable interest (the member’s economic interest) in the L.L.C. *Id.* § 489.503(1). If a transferee of a member’s economic interest is not entitled to access to the L.L.C.’s records, the holder of a lien upon the member’s economic interest should be similarly denied access to the L.L.C.’s records or other information concerning the company’s activities, unless otherwise authorized by statute.

To effectuate a charging order, Iowa Code section 489.503 authorizes a court to order an L.L.C. to disclose financial information to a court-appointed receiver only. We conclude there is no statutory authority for the disclosure

³ “A member’s rights in a limited liability company are bifurcated into economic rights (the transferable interest) and governance rights (including management rights, consent rights, rights to information, rights to seek judicial intervention).” RULLCA § 502, 6B U.L.A. 497 cmt.

orders the district court issued in this case. We therefore vacate the parts of the orders which require disclosure to the judgment creditors' counsel or to the court and affirm the remaining portions of the orders. In fairness to the district court, we note there is no case law directly on point from which the court could have drawn some guidance.

AFFIRMED IN PART AND VACATED IN PART.