

AOK PROPERTY INVESTMENTS, LLC

NO. 20-C-237

VERSUS

FIFTH CIRCUIT

DONALD J. BOUDREAUX, JR., ET AL.

COURT OF APPEAL

STATE OF LOUISIANA

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE FORTIETH
JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 72,900, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

December 09, 2020

MARC E. JOHNSON
JUDGE

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and John J. Molaison, Jr.

WRIT GRANTED; JUDGMENT REVERSED;
SUMMARY JUDGMENT RENDERED

MEJ
RAC
JJM

COUNSEL FOR PLAINTIFF/RESPONDENT,
AOK PROPERTY INVESTMENTS, LLC
Todd Fontenot

COUNSEL FOR DEFENDANT/RELATOR,
DONALD J. BOUDREAUX, JR.
Tyler J. Arbour
Ashley L. Belleau
Ryan M. Tucker

COUNSEL FOR DEFENDANT/RESPONDENT,
SOUTHERN CHEMICAL INDUSTRIES, LLC
Scott Falgoust

JOHNSON, J.

Relator, Donald J. Boudreaux, Jr., seeks review of the June 25, 2020 judgment that denied his motion for summary judgment, which was rendered in the 40th Judicial District Court, Division “C”. For the following reasons, we reverse the trial court’s judgment and render summary judgment in favor of Mr. Boudreaux.

According to the facts recounted by the trial court in its reasons for judgment, Mr. Boudreaux was the sole member of SCI Leasing, LLC (“SCI”), and he owned 100% of the limited liability company’s membership interest. On October 19, 2017, Mr. Boudreaux and his father, Donald Boudreaux, Sr. (“Boudreaux, Sr.”) executed an instrument transferring 5% of SCI’s membership interest to Boudreaux, Sr. On April 10, 2018, the 29th Judicial District Court rendered a judgment against Mr. Boudreaux and in favor of Respondent, AOK Property Investments, LLC (“AOK”). A few months later, on July 19, 2018, Mr. Boudreaux and Boudreaux, Sr. admitted Thomas LeBoeuf as a member with a 10% membership interest in SCI.

After the transfers were made, AOK filed its “Petition for Revocatory Action,” which sought to annul the transfers to Boudreaux, Sr. and Mr. LeBoeuf and restore Mr. Boudreaux as the sole member of SCI. The objective of restoring Mr. Boudreaux as the sole member of SCI is to seize his entire membership interest in the limited liability company (“LLC”) in satisfaction of the judgment rendered in the 29th JDC. The instant motion for summary judgment is being litigated prior to the trial on the revocatory action.

The parties limited the motion for summary judgment to one legal issue: whether a creditor is precluded by Louisiana charging order statutes from having a single-member LLC’s 100% membership interest in the LLC seized like any other non-exempt asset. The trial court found that the charging order statute is not

relevant in a single-member LLC. The court reasoned that there are no other members to protect in a single-member LLC when a creditor attempts to seize the entire membership interest, and a single-member judgment-debtor's membership interest should not be shielded from seizure by a judgment creditor.

To support its position, the trial court relied upon a Florida Supreme Court case, *Olmstead v. Federal Trade Commission*, 44 So.3d 76 (Fla. 2010), *superseded by statute* as stated in *Capstone Bank v. Perry-Clinton Enterprises, LLC*, 230 So.3d 970 (Fla. Dist. Ct. App. 2017). In *Olmstead*, the appellate court considered a question of law certified by the United States Courts of Appeals for the 11th Circuit concerning whether, pursuant to Florida law, a court may order a judgment-debtor to surrender all "right, title, and interest" in the debtor's single-member LLC to satisfy an outstanding judgment. The Florida court concluded that the statutory charging order provision did not preclude application of the creditor's remedy of execution on an interest in a single-member LLC, and found that Florida law, at that time, permitted a court to order a judgment debtor to surrender all right, title, and interest in the debtor's single-member limited liability company to satisfy an outstanding judgment. The court interpreted the language of its charging order provision, which is similar to Louisiana's charging order provision, to not suggest that the charging order was an exclusive remedy when compared with statutes for other entities. Although Florida's charging order provision is similar, our Louisiana Supreme Court has not interpreted Louisiana's charging order provision in the same manner.

Under Louisiana law, a member's interest in an LLC is personal property that is separate and distinct from the property of the LLC. *Channelside Servs., LLC v. Chrysochoos Grp., Inc.*, 15-64 (La. App. 4 Cir. 5/13/16); 194 So.3d 751, 758, citing La. R.S. 12:1329. Pursuant to La. R.S. 12:1331, a court of competent jurisdiction may charge the membership interest of the LLC's member with

payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the membership interest. *Id.* Furthermore, La. R.S. 12:1332 states that, except otherwise provided in the articles of organization or a written operating agreement, an assignee of an LLC shall not become a member or participate in the management of the LLC; and, until the assignee of an interest in an LLC becomes a member, the assignor shall continue to be a member and shall not be released from his liability to the LLC under La. R.S. 12:1322 and 1328.

According to La. R.S. 12:1330 through 1332, the assignment of a member's interest in the LLC effectively separates the membership interest into two sets of rights: financial and management rights. *Channelside Servs., LLC*, 194 So.3d at 759. The assignee is granted only the member's financial rights, while the original member retains management rights and powers, unless and until the assignee becomes a member. *Id.* A judgment creditor who obtains a charging order, thereby becoming an assignee of a member's interest, is entitled to share in the profits and losses and receive the distributions to which the member was entitled. *Id.*

While Louisiana's charging provision for LLCs does not contain the term "exclusive remedy," it does provide that a judgment creditor shall have "only" the rights of an assignee of the membership interest. Consequently, that language is all that the Louisiana Legislature provided us to rely upon, and it can be viewed as the only remedy allowed to judgment creditors. This rationale can be explained by the following excerpt:

The one feature of the LLC system that poses a special issue is its treatment of creditors. Judgment creditors of an LLC member may not cause the debtor's member's LLC interest to be seized and sold in the ordinary way that most assets of a judgment debtor may be seized. ***Judgment creditors are entitled only to obtain a "charge" against an LLC member's interest***, and this charge entitles the charging creditor only to be treated as an assignee.

Glenn G. Morris, Business Organizations § 44:20, in 8 Louisiana Civil Law Treatise (2020). (Emphasis added).

Because there has been no reverse piercing of the veil in this matter, we find that a plain reading of Louisiana’s charging provision for LLCs provides the exclusive remedy of a judgment creditor. Accordingly, we reverse the trial court’s June 25, 2020 judgment, find that a creditor is precluded by Louisiana charging order statutes from seizing a single-member LLC’s 100% membership interest in the LLC, and grant Mr. Boudreaux’s motion for summary judgment.

WRIT GRANTED; JUDGMENT REVERSED;
SUMMARY JUDGMENT RENDERED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISON, JR.

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 9, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

20-C-237

E-NOTIFIED

40TH DISTRICT COURT (CLERK)

HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)

TODD FONTENOT (RESPONDENT)

ASHLEY L. BELLEAU (RELATOR)

TYLER J. ARBOUR (RELATOR)

MAILED

RYAN M. TUCKER (RELATOR)

ATTORNEY AT LAW

601 POYDRAS STREET

SUITE 2775

NEW ORLEANS, LA 70130

SCOTT FALGOUST (RESPONDENT)

ATTORNEY AT LAW

LEMMON LAW FIRM

POST OFFICE BOX 904

HAHNVILLE, LA 70057