



**Fourth Court of Appeals**  
**San Antonio, Texas**

**DISSENTING OPINION**

No. 04-14-00331-CV

Gene **DEVOLL**,  
Appellant

v.

Rebecca **DEMONBREUN** and William Dowds,  
Appellees

From the 285th Judicial District Court, Bexar County, Texas  
Trial Court No. 2013-CI-05169  
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice  
Dissenting Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: August 31, 2016

I respectfully dissent from the majority's disposition of appellant's first issue because I disagree with the majority's conclusion that "a trial court [may] temporarily enjoin the sale, transfer, encumbrance, or dissipation of partnership assets underlying a partnership interest when that interest is the object of a charging order and the judgment creditor asserts a TUFTA claim involving the partnership interest or its underlying assets."

The Texas Uniform Fraudulent Transfer Act ("TUFTA") speaks broadly in terms of remedies available to judgment creditors seeking to prevent fraudulent dissipation of assets. TUFTA allows a judgment creditor to obtain an injunction against further dissipation of the asset

transferred or of other property. *See* TEX. BUS. & COM. CODE ANN. § 24.008(a)(3)(A) (West 2015); *see also Blackthorne v. Bellush*, 61 S.W.3d 439, 444 (Tex. App.—San Antonio 2001, no pet.) (noting that under TUFTA pre-judgment “interim injunctive relief is an available remedy to a fraudulent transfer for which the claimant asserts an equitable interest” to protect the status quo pending trial).

The remedies, however, available to judgment creditors under TUFTA may be limited by other statutes. For example, relevant to this appeal, are the limitations placed on a judgment creditor by the Texas Business Organizations Code provisions relating to the assets of general partnerships. Section 152.308 of the Business Organizations Code, (hereinafter, “the Charging Order Statute”), provides that “[o]n application by a judgment creditor of a partner or of any other owner of a partnership interest, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment.” TEX. BUS. ORGS. CODE ANN. § 152.308(a) (West 2012). “To the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the partnership interest.” *Id.* § 152.308(b). “The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor’s partnership interest.” *Id.* § 152.308(d). Thus, the Charging Order Statute speaks only in terms of a trial court’s power to charge a partner’s *interest* in the partnership and allows satisfaction of any judgment against the partner only from any distribution to which the partner would otherwise be entitled in respect of the partnership *interest*. As to the actual property of the partnership, the statute expressly provides as follows: “A creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable

remedies with respect to, the property of the partnership.” *Id.* § 152.308(f). Thus, I believe the trial court lacks the power to award equitable relief over a partnership’s *property*.

The majority attempts to harmonize the remedies available under TUFTA with the prohibition contained in subsection (f) section 152.308 by holding that “the charging order statute’s prohibition against a creditor exercising legal or equitable remedies against a partnership property to satisfy a judgment does not prevent a court from granting an injunction under [TUFTA] section 24.008(a)(3)(A).” I believe the clear and unambiguous language of subsection (f) precludes just such relief.

I agree with the majority that principles of equity allow a trial court to impose the minimal reasonable restraint necessary to protect dissipation of a partnership interest during the pendency of a TUFTA suit. However, because the Charging Order Statute expressly precludes a creditor of a partner or of any other owner of a partnership interest from exercising legal or equitable remedies with respect to the property of the partnership, I do not believe a trial court may enjoin—even temporarily—the sale, transfer, encumbrance, or dissipation of any partnership assets underlying a partnership interest. Instead, consistent with the provisions of the Charging Order Statute, I believe a trial court may enjoin a partner against the sale, transfer, encumbrance, or dissipation of the partner’s *partnership interest* during the pendency of a TUFTA suit. *See id.* § 152.308(c) (“A charging order constitutes a lien on the judgment debtor’s partnership interest.”). Because the trial court here enjoined “Defendant Gene DeVoll, individually and in his capacity as general partner of The 206 Camedia Partnership, from directly or indirectly proceeding to transfer, sell, encumber,

or otherwise dispose of” a specific asset of the partnership—the property located at 466 Adrian, San Antonio, Texas—I believe the trial court erred.<sup>1</sup>

For this reason, I respectfully dissent.

Sandee Bryan Marion, Chief Justice

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<sup>1</sup> Additionally, the property located at 466 Adrian, San Antonio, Texas was transferred into the 206 Camedia Partnership years before appellees became judgment creditors and, accordingly, the transfer the appellees allege to be fraudulent is not the transfer of 466 Adrian to the partnership.