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Florida Supreme Court Limits Charging Order Protection of Florida LLCs

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On June 24, 2010, the Florida Supreme Court issued its opinion in the case of *Shaun Olmstead, et. al., v. Federal Trade Commission* holding that a court may order an owner of a single-member Florida Limited Liability Company ("LLC") to surrender its ownership interest in an LLC to satisfy an outstanding judgment. The Court's holding clarifies that charging orders are not the exclusive remedy to enforce a judgment against the sole member of a single-member Florida LLC. Additionally, the holding creates uncertainty regarding the benefits provided by multi-member LLCs formed in Florida and jeopardizes the level of asset protection provided by such LLCs.

Prior to this ruling, it was not clear under the Florida Limited Liability Company Act (the "LLC Act") whether a charging order was the exclusive remedy available for judgment creditors with respect to single owners of a Florida LLC. A "charging order" is a legal remedy that provides judgment holders with only limited rights to receive distributions, if any, made by an LLC to its members, but a charging order does not allow a judgment holder to seize the entire ownership interest of the owner. In *Olmstead*, the Court held that a charging order is not the exclusive remedy available to creditors and, therefore, an individual's actual ownership interest in a single-member Florida LLC (i.e., the right to receive distributions and to manage the LLC) may be subject to levy and sale to a third-party to pay the judgment.

The Court's analysis focused on the charging order provision of the LLC Act which provides that a court ***may*** charge a member's LLC membership interest for payment of a creditor's judgment lien. The question decided by the Court in *Olmstead* was whether the charging order provision provides the ***exclusive remedy***with respect to a judgment debtor's ownership interest in a single-member Florida LLC. The Court concluded that the charging order is a ***"non-exclusive remedy"*** because there is no express language in the statute providing that it is the ***exclusive remedy*** to satisfy a judgment lien, unlike the Florida Revised Uniform Partnership Act ("Partnership Act") and the Florida Revised Uniform Limited Partnership Act ("LP Act"), both of which specifically state that charging orders are ***"exclusive remedies"*** for enforcement of judgment liens.

In addition to subjecting single-member Florida LLC interests to actual levy and sale, this case appears to threaten the degree of protection provided by "multi-member" Florida LLCs because the provisions of the charging order statute apply to single-member as well as multi-member Florida LLCs. As a result, the *Olmstead* decision also creates issues for multi-member Florida LLCs in two ways: ***first***, owners of LLC membership interests may find their holdings subject to levy and sale to satisfy a judgment lien (rather than merely being subjected to a charging order to pay over LLC distributions, if any), and ***second***, other members of the LLC may find that a judgment creditor of one of the members has quite unexpectedly become the newest (and likely unwanted) member of the LLC with the right to fully participate in the management and operation of the LLC.

If you own a membership interest in a Florida LLC, we recommend that you contact our office to discuss your options.

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- **Albert W. Gortz**