

No. 40585-7-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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SOUNDBUILT NORTHWEST, LLC, Respondent,

v.

THOMAS PRICE and PATRICIA PRICE, HYUN UM and JIN S. UM, et al.,  
Appellants.

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APPELLANTS' OPENING BRIEF ON THE CONSOLIDATED CASE

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FILED  
COURT OF APPEALS  
DIVISION II  
10 SEP 29 PM 1:59  
STATE OF WASHINGTON  
BY   
DEPUTY

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## I. INTRODUCTION

RCW 25.15.255, setting forth the charging order remedy, does not provide for a wholesale deprivation of a judgment debtor's membership rights. Nor does it vest a judgment creditor with membership in the LLC. Instead, it only entitles the judgment creditor to a lien on the member's economic interest until the judgment is satisfied.

Under RCW 25.15.255, a trial court may, upon application of a judgment creditor, charge the judgment debtor's limited liability company interest with payment of the amount of the judgment that remains unsatisfied. By the plain language of the statute, whether to issue a charging order is within the trial court's discretion and is not automatic or mandatory. Such a charging order vests the judgment creditor with the rights of an assignee of the company "to the extent so charged." RCW 25.15.255. A charging order is, in essence, a lien on the judgment debtor's interest in the entity.

The rights of a judgment creditor assignee are defined by statute and, in this case, by contract. RCW 25.15.250 provides that a judgment creditor assignee has "no right to participate in the management of the business and affairs of a limited liability company" unless other members approve of such powers or the limited liability

agreement provides otherwise. RCW 25.15.250(1). Unless the limited liability agreement provides otherwise, the assignee is entitled to only share in profits and losses, receive distributions, and receive allocations of income, gain, loss, deduction, or credit to which the judgment debtor was entitled and to the extent of the assignment. RCW 25.15.250(2)(a) (“An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned[.]”); *see also* RCW 25.15.260 (providing requirements for assignee to become a member). In other words, a charging order merely affords judgment creditors the judgment debtors’ share of distributions and confers no management authority or voting rights.

As for the assigning member, he or she ceases to be a member of the limited liability company only upon assignment of his or her entire limited liability company interest. RCW 25.15.250(2)(b) (“A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.”); *see also* RCW 25.15.130(1)(b) (“A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as

set forth in RCW 25.15.250(2), upon the occurrence of one or more of the following events: The member ceases to be a member as provided in RCW 25.15.250(2)(b) following an assignment of all the member's limited liability company interest."). These provisions are of course subject to any contrary provisions of the limited liability company agreement, which would take precedence in the event of a conflict with the statute. *See* RCW 25.15.250(1) ("except as provided in a limited liability company agreement . . . ."); RCW 25.15.250(2) ("Unless otherwise provided in a limited liability company agreement . . . .").

In spite of these principles, the trial court nonetheless entered a charging order purporting to deprive Appellants Price and Um ("Price and Um") of their membership in Queen High Full House, LLC and Prium Companies, LLC and their management rights; ordering Price and Um to provide Respondent Soundbuilt Northwest LLC ("Soundbuilt") with access to the books, records and bank account information of both LLCs; and ordering that Soundbuilt is entitled to "all" profits and losses "until full satisfaction of the Judgment, including any amounts subsequently awarded as attorneys' fees and costs." In doing so, the trial court exceeded its statutory authority under RCW 25.15 *et seq.* and ignored the statutory distinction between a member's economic and governance rights.

The order should be modified to provide only the relief set forth by the Washington Limited Liability Company Act, RCW 25.15 *et seq.* Appellants Price and Um request this Court to vacate paragraphs two, three, four, and five of the trial court's charging order and modify the order consistent with Price and Um's proposed Amended Charging Order. (CP at 1078-1080.)

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in Paragraph 2 of the Charging Order, ordering that Price and Um shall cease to be members of Queen High Full House, LLC and Prium Companies, LLC and shall cease to have the power to exercise any rights or powers of a member.
2. The trial court erred in Paragraph 3 of the Charging Order, ordering that the management authority of Price and Um shall cease immediately and that Price and Um shall cease to have the power to exercise any rights or powers of a manager.
3. The trial court erred in Paragraph 4 of the Charging Order, ordering that Price and Um, identify bank accounts held in the name of Queen High Full House, LLC and Prium Companies, LLC, and all books and records of both companies, including their operating agreements and financial records.

4. The trial court erred in Paragraph 5 of the Charging Order, ordering that Soundbuilt is entitled to all profits and losses from Queen High Full House, LLC and Prium Companies, LLC until full satisfaction of the judgment, including any amounts subsequently awarded as attorneys' fees and costs.

### III. STATEMENT OF THE CASE

On April 2, 2010, the trial court entered judgment against Price and Um in the amount of \$5,990,916.08. Price and Um have appealed that judgment and have filed their opening brief.

In an effort to collect on that judgment, on May 21, 2010, Soundbuilt moved, *ex parte*, for an order charging Price and Um's interests in two Washington Limited Liability Companies—Queen High Full House, LLC and Prium Companies, LLC—with payment of the unsatisfied judgment. Soundbuilt provided no notice of the motion. In its motion, Soundbuilt asserted that an “effect of an assignment by Charging Order is that the judgment debtor: ‘ceases to be a member and to have power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.’” (CP at 1027.) Soundbuilt further argued that “the assignment of an [sic] limited liability company interest is an ‘event of disassociation’ under RCW 25.15.130(1)(b)” and that “[b]ecause the Judgment Debtors are

the only members of each limited liability company as to which a Charging Order is sought, the effect of the entry of the order would ultimately be a dissolution of the LLCs under RCW 25.15.270[.]” (CP at 1027.)

On May 21, 2010, the trial court granted the motion ordering that “[e]ffective immediately, the Judgment Debtors shall cease to be members of the LLCs as provided in RCW 25.15.250 and shall cease to have the power to exercise any rights or powers of a member including without limitation the right to transfer, dispose of or encumber any LLC asset[,]” and that “[t]o the extent that either Judgment Debtor is a manager of an LLC, the management authority of that Judgment Debtor shall cease immediately, and the Judgment Debtors shall cease to have the power to exercise any rights or powers of a manger including without limitation the right to transfer or dispose of any LLC asset.” (CP at 1043, ¶¶ 2 and 3.) The trial court’s order also required that “Judgment debtors shall immediately identify any bank accounts held in the name of the LLCs and provide access to Judgment Creditor/Plaintiff to all books and records of the LLCs including, without limitation, the Operating Agreement and financial records.” (CP at 1043, ¶ 4.)

On June 4, 2010, Price and Um moved to amend the charging order on the grounds that the trial court exceeded its authority under the Washington Limited Liability Company Act (“LLC Act” or “Act”), RCW 25.15 *et seq.* (CP at 1071-1076.) (Proposed Amended Charging Order at CP 1078-1080.) Price and Um pointed out that the charging order does not divest a member of their entire economic interest in the LLC and, therefore, is not an event of dissociation or dissolution of either company under the Act nor does it assign the judgment debtor member’s management interest to the judgment creditor. (CP at 1071-1076.) Price and Um also explained that Soundbuilt is not entitled to the company’s bank account records, operating agreements and financial records and that Soundbuilt is not entitled to all profits or to charge its attorneys’ fees and costs. (CP at 1074-1075.) Their motion was denied. (CP at 1118-1119.)

On June 10, 2010, a writ of execution was issued, directing the Sheriff to seize the non-exempt personal property of Price and Um, including their membership interests in both LLCs. (CP at 1081-1083.)

#### IV. ARGUMENT

**A. THE CHARGING ORDER REMEDY ONLY ENTITLES A JUDGMENT CREDITOR TO THE RIGHTS OF AN ASSIGNEE OF THE JUDGMENT DEBTOR'S INTEREST IN THE JUDGMENT DEBTOR'S SHARE OF THE LLC'S PROFITS AND LOSSES AND IN THE RIGHT TO RECEIVE DISTRIBUTION OF THE LLC'S ASSETS.**

The trial court erroneously ordered that Price and Um cease to have membership or management rights in either LLC. Under the Washington LLC Act, a judgment creditor seeking satisfaction must follow the statutory remedies specifically afforded under RCW Ch. 25, which include a charging order. The remedy is set out in RCW 25.15.255, "Rights of judgment creditor", which provides in relevant part:

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member 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 the limited liability company interest.

RCW 25.15.255 (emphasis added).<sup>1</sup> The statute defines "limited liability company interest" in economic terms: "Limited liability company interest means a member's share of the profits and losses of a limited liability company and a member's right to receive the distributions of the limited liability company's assets." RCW

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<sup>1</sup> For the Court's ease of reference, the full text of RCW 25.15.255 is attached as Appendix Ex. A.

25.15.005(6). In short, the rights of a judgment creditor are limited to the rights of an assignee of an economic interest. The judgment creditor does not actually *become* an assignee; the judgment creditor's rights simply do not *exceed* those of an assignee. This distinction is important when considering the involuntary nature of the charging order remedy—an assignment is generally a voluntary action made by an assignor, whereas a charging order is unquestionably an involuntary assignment by a judgment debtor.

RCW 25.15.250 addresses the rights of an assignee of a limited liability company interest. The section imposes at least three relevant limitations. First, “a limited liability company interest is assignable either in whole or in part, except as provided in the LLC agreement.” RCW 25.15.250(1) (emphasis added).<sup>2</sup> In short, a contrary operating agreement takes precedence in the event of a conflict with the statute.<sup>3</sup> Further, although a member may freely assign an *economic* interest, the transfer of a *membership* interest is greatly restricted under the statute. An assignee has “no right to participate in the management” of the company except by unanimous

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<sup>2</sup> The full text of RCW 25.15.250 is attached as Ex. B.

<sup>3</sup> RCW 25.15.800, titled “Construction and application of chapter and limited liability company agreement” expressly provides: “It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability companies.” RCW 25.15.800(2).

consent of the members, or as otherwise provided in the LLC agreement. RCW 25.15.250(1). The assignee is only entitled to share in profits and losses and to receive distributions to which the assigning member would otherwise be entitled. RCW 25.15.250(2)(b); *see also* Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies: Tax and Business Law*, ¶ 1.01[3][c] (2008). Thus, the assignment of an interest in a limited liability company is limited to an assignment of the economic rights of that member and does not include assignment of actual membership in the LLC.

RCW 25.15.260 reiterates that an assignee does not automatically become a member with concomitant management rights.<sup>4</sup> “An assignee of a limited liability interest may become a member upon: (a) The approval of all the members of the limited liability company other than the member assigning his or her limited liability company interest” or as provided for in the limited liability company agreement. RCW 25.15.260(1).

Although there is a dearth of Washington cases interpreting the scope of Washington’s LLC Act, this Court is not without guidance. Washington’s Act is modeled substantially upon the Uniform Limited Liability Company Act (“ULLCA”) and Washington courts look to the

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<sup>4</sup> The full text of RCW 25.15.260 is attached as Ex. C.

ULLCA to aid their interpretation of Washington's Act. *Koh v. Inno-Pacific Holdings, Ltd.*, 114 Wn. App. 268, 271-72, 54 P.3d 1270 (2002). ULLCA § 503 sets forth the charging order remedy.<sup>5</sup> The comments to this section explain the purpose and rationale underlying the remedy, as well as its limitations, and are in accord that a charging order assigns only an economic interest:

This section balances the needs of a judgment creditor of a member or transferee with the needs of the limited liability company and the members. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited liability company.

Under this section, the judgment creditor of a member or transferee is entitled to a charging order against the relevant transferrable interest. While in effect, that order entitled the judgment creditor to whatever distributions would otherwise be due to the member or transferee whose interest is subject to the order. However, the judgment creditor has no say in the timing or amount of those distributions, management and activities of the limited liability company.

ULLCA § 503 comment (2006).

Courts in other jurisdictions faced with the question have reached the same conclusion. Analyzing nearly identical statutory language, the court in *Brant v. Krilich*, 835 N.E.2d 582 (Ind. Ct. App. 2005), dealt with Appellant Brant's appeal of the trial court's decision

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<sup>5</sup> The full text of ULLCA § 503, with comments, is attached as Ex. D.

that Appellee Krilich was entitled to Appellant's ownership interest in several LLCs. As is specifically relevant to this case,

[T]he biggest point of contention among the parties throughout this proceeding is whether Krilich may be awarded Brant's interests in the LLCs. The simple answer is "Yes." Nonetheless, that interest is much more limited than that sought by Krilich. Indeed, that interest is limited to economic interests and nothing more.

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Indiana Code § 23-18-1-10 defines "interest" as a "member's economic rights in the limited liability company, including the member's share of the profits and losses of the limited liability company and the right to receive distributions from the limited liability company." Thus, while personal property is subject to execution according to Indiana Code § 34-55-8-2 (Burns Code Ed. Repl. 1998), the interest here is limited by [Indiana] Code § 23-18-1-10 to the economic rights and nothing more. Through execution Krilich may not receive any of Brant's rights to participate in management, nor may Krilich inspect the books or records of the LLCs. See CALLISON, § 4:5 at 59 (stating that judgment creditors obtain no right to participate in management, inspect the books or records, or to force a sale of the membership interest).

The effect of this is essentially that a charging order is the only remedy for a judgment creditor against a member's interest in an LLC. Indiana Code § 23-18-6-7 states that a judgment creditor may seek a charging order upon application to the court. To the extent a charging order is granted, the judgment creditor has only the rights of an assignee of the member's interest in the LLC. Consequently, in any future proceeding, Krilich is not entitled to Brant's membership in any LLC but may be able to receive a charging order against Brant's interest [, which relates to his economic stake in the LLCs and not a management role].

*Brant*, 835 N.E.2d at 592 (footnote omitted).

Similarly, in *Goldberg v. Winogradow*, No. CV000093186S, 2006 WL 3041979 (Conn. Super. Oct. 12, 2006), in an effort to collect a judgment, plaintiffs filed an application with court seeking an order that defendant turn over to a levying officer his shares in two limited liability companies.<sup>6</sup> The court refused:

The plaintiffs are attempting to assume the defendant's ownership, rather than just the shares or profits to which the defendant may be entitled. The transfer of an ownership interest entails participation in the 'management and affairs' of the LLC. This request is specifically proscribed by the language of [Connecticut] General Statutes § 34-170(a)(3) ["an assignment of a limited liability company membership interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member ..."]. Because the plaintiffs are seeking an ownership interest, rather than merely than [sic] the right of an assignee of the defendant's profits, the plaintiffs' requests exceed the scope allowable for a charging order under General Statutes § 34-171 [which provides "[o]n application ... by any judgment creditor of a member, the court may charge the member's limited liability company interest 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 the member's limited liability company interest."]. Consequently, this court denies [the plaintiffs'] application for order in aid of execution.

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<sup>6</sup> In accordance with RAP 10.4(h) and GR 14(1)(b), the full text of the Connecticut court's opinion is attached as Ex. E.

2006 WL 3041979, at \*2. *See also, Olmstead v. F.T.C.*, — So.3d —, 2010 WL 2518106, at \*2-3 (Fla. June 24, 2010) (under the Florida LLC Act, an assignment of a membership interest will not necessarily transfer the associated right to participate in the LLC’s management, only “entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned. § 608.432(2)(b) (Florida Stat. 2008)”).<sup>7</sup>

In short, the charging order remedy does not authorize the charging of a judgment debtor’s interest in an LLC beyond the debtor’s right to share in the LLC’s profits and losses and to receive distributions of the LLC’s assets. The trial court exceeded its statutory authority in ordering in paragraphs two and three of its charging order that Price and Um cease to have membership or management rights in either LLC.

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<sup>7</sup> In accordance with RAP 10.4(h) and GR 14(1)(b), the full text of the Florida court’s opinion is attached as Ex. F.

**B. THE CHARGING ORDER DID NOT ASSIGN PRICE AND UM'S ENTIRE ECONOMIC INTERESTS IN THE LLCs AND DEPRIVE PRICE AND UM OF THEIR MEMBERSHIP UNDER RCW 25.15.250(2)(b).**

In its ex parte motion, quoting RCW 25.15.250(2)(b), Soundbuilt asserted that an “effect of an assignment by Charging Order is that the judgment debtor: ‘ceases to be a member and to have power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.’” (CP at 1027.) However, this dramatic and overreaching effect is not supported by the Act.

RCW 25.15.250(2)(b) provides that “[a] member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.” The LLC Act defines a member’s interest solely in economic terms: “‘Limited liability company interest’ means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.” RCW 25.15.005(6). Thus, a member does not cease to be a member under RCW 25.15.250(2)(b) unless *all* of the economic interest is charged to assignee.

By its terms, the charging order provision does not deprive a member of its entire economic interest. Under RCW 25.15.255, a

court has discretion only to “charge the limited liability company interest with payment of the unsatisfied amount of the judgment plus interest[.]” The judgment creditor is an assignee only “[t]o the extent so charged.” § 15.255. If a charging order necessarily operated to charge the member’s entire interest, there would be no reason for the statute to qualify and limit the assignee’s rights “to the extent so charged.”

This reading is consistent with RCW 25.15.250(1), which provides that a limited liability company interest is assignable in whole or in part. In practical terms, this means that a charging order will not encompass a member’s entire economic interest if the judgment is for *less* than the available economic distributions of an LLC. The trial court made no finding in regard to the amount of the judgment relative to the available distributions of either LLC. Nor is a valuation required by statute. Of course, even if a member’s entire economic interest in the company was assigned it would not entitle a creditor to review the company’s records nor would it necessarily deprive the debtor of his or her management rights. In the case of a manager-managed LLC, such as Prium, the debtor could continue managing the company without any membership interest at all. c

Finally, for RCW 25.15.250(2) to apply, the operative LLC agreements must not have a contrary provision governing withdrawal of a member or dissolution of the company. Again, the importance of this caveat cannot be overstated. Both the Prium and Queen High Full House operating agreements preclude such a result and are controlling here. The Prium Agreement provides that in a case of involuntary withdrawal of a member's interest, there is a right of first refusal for the company to purchase the interests, thus precluding the membership interests being levied upon. (CP at 1069-1070.) The Queen High Full House Agreement specifically provides that "[n]o Member shall transfer, sell, gift, pledge, encumber or otherwise dispose of any or all of his or her interest herein, in any manner whatsoever. Any attempt to transfer, pledge or otherwise dispose of an interest herein in violation of this Agreement shall be null and void and shall not operate to transfer any interest or title to the purported transferee." (Limited Liability Company Agreement for Queen High Full House, LLC, Article 8.)<sup>8</sup> As a result, under the agreements, Price and Um could not involuntarily transfer their entire interests and the court erroneously divested Price and Um of their membership and management rights under RCW 25.15.250(2)(b).

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<sup>8</sup> The court erroneously failed to ask to review any part of this agreement. A true and

**C. THE CHARGING ORDER IS NOT AN “EVENT OF DISSOCIATION” THAT TRIGGERS DISSOLUTION OF THE LLCs UNDER RCW 25.15.270.**

In support of their request that Price and Um be deprived of their management rights and compelled to provide access to records, Soundbuilt also argued that “the assignment of an [sic] limited liability company interest is an ‘event of dissociation’ under RCW 25.15.130(1)(b)” and that “[b]ecause the Judgment Debtors are the only members of each limited liability company as to which a Charging Order is sought, the effect of the entry of the order would ultimately be a dissolution of the LLCs under RCW 25.15.270[.]” (CP at 1072.) Soundbuilt is wrong in both respects.

Under section 15.270, “[u]nless the limited liability company agreement provides otherwise,” an LLC is dissolved “ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under RCW 25.15.130(1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in RCW 25.15.120(1).” RCW 25.15.270(4) (emphasis added). Under RCW 25.15.130(1)(b), if a member ceases to be a member by assigning his or her entire economic interest under RCW 25.15.250(2)(b), it is an “event of dissociation”:

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correct copy of the excerpts cited in this brief is attached as Ex. G.

(1) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in RCW 25.15.250(2), upon the occurrence of one or more of the following events:

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(b) The member ceases to be a member as provided in RCW 25.15.250(2)(b) following an assignment of all the member's limited liability company interest:

RCW 25.15.130(1)(b).<sup>9</sup> By its terms, for an assignment to conceivably trigger dissolution under these provisions, the *entire* economic interest of *every* member of the LLC must be assigned. As demonstrated above, the charging order could not and did not assign the entire economic interest of Price and Um in either LLC.

Also, as already noted, both the Prium and Queen High Full House agreements expressly preclude a member from involuntarily assigning his or her entire interest in the company. But even if the economic interests of Price and Um in Prium LLC were assigned completely, which they were not, the LLC's third member, a third party unrelated to this litigation, remains, thereby preventing dissolution of Prium under RCW 25.15.270. (CP at 1064.)

Furthermore, by its terms, for section 15.270 to apply, the operative LLC agreements must not have a contrary provision

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<sup>9</sup> The full text of RCW 25.15.130 and RCW 25.15.270 are attached as Ex. H and I.

governing withdrawal of a member or dissolution of the company. The Prium agreement, Section 7.1 Events of Dissolution, expressly prevents dissolution as a result of any of the events set forth in RCW 25.15.130:

The Company shall be dissolved upon the written agreement of a majority of the Members; provided, the death, resignation, expulsion or bankruptcy of a Member or of any other event which otherwise terminates the continued membership of a Member in the Company under RCW 25.15.130 shall not result in the dissolution of the Company.

(CP at 1070) (underline in original).

Similarly, the Queen High Full House agreement also precludes dissolution by way of an assignment of a member's interest or withdrawal of a member. Section 3.1.5 Withdrawal of Member, provides: "No Member may withdraw from the company, or demand the balance of his capital account, except as otherwise provided in this agreement." Article 8, Transfers, provides,

No Member shall transfer, sell, gift, pledge, encumber or otherwise dispose of any or all of his or her interest herein, in any manner whatsoever. Any attempt to transfer, pledge or otherwise dispose of an interest herein in violation of this agreement shall be null and void and shall not operate to transfer any interest or title to the purported transferee.

(Emphasis added.)<sup>10</sup> Thus, as to either LLC, even if the charging order effected an event of dissociation, such event would not dissolve either company.

**D. RCW 25.15.270 Does Not ENTITLE A JUDGMENT CREDITOR TO THE LLCs' BOOKS AND RECORDS**

The trial court erroneously ordered that Soundbuilt be provided access to all bank accounts held in the name of the limited liability companies and all books and records of the companies, including their operating agreements and financial records. Soundbuilt's premise for its request was to "facilitate a prompt determination as to whether [Soundbuilt] will exercise its rights under this provision [RCW 25.15.270]." (CP at 1027.) First, the charging order did not trigger dissolution of the LLCs so Soundbuilt has no rights under RCW 25.15.270. Furthermore, as Soundbuilt acknowledged in its response to Price and Um's motion to amend the charging order, there is no legal support for this sweeping request, and certainly none is provided in RCW 25.15.270. (CP at 1089) ("The right to review financial and other data relating to the limited liability company can be implied for the other rights granted expressly.")

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<sup>10</sup> Ex. G, p. 5.

If Soundbuilt is entitled to this information, it may only do so by complying with the procedures set forth in RCW 6.32 *et seq.* The relief provided in paragraph four of the trial court's charging order exceeds the trial court's statutory authority and should be vacated.

E. **SOUNDBUILT IS NOT ENTITLED TO "ALL" PROFITS AND LOSSES UNTIL SATISFACTION OF THE JUDGMENT, INCLUDING ANY AMOUNTS SUBSEQUENTLY AWARDED AS ATTORNEYS' FEES AND COSTS.**

Paragraph five of the charging order erroneously provides that Soundbuilt is entitled to "all" profits and losses "until full satisfaction of the Judgment, including any amounts subsequently awarded as attorneys' fees and costs." (CP at 1043.) RCW 25.15.250 only entitles a judgment creditor to "share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned." RCW 25.15.250(2)(a). Similarly, RCW 25.15.255 provides that the member's interest in the limited liability company may be charged "with payment of the unsatisfied amount of the judgment with interest." RCW 25.15.255. The statute does not provide that the interest in the limited liability company may be charged with the judgment creditor's attorneys' fees as may be subsequently awarded. *Accord* RCW 25.05.215 (partnerships); RCW 25.10.410 (limited partnerships). Paragraph five of the charging order

exceeds the trial court's authority under RCW 25.15.250 and RCW 25.15.255.

#### IV. CONCLUSION

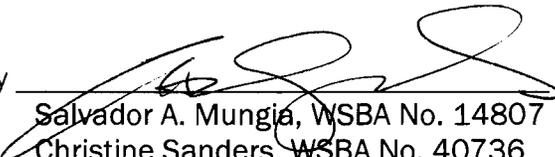
The charging order remedy entitles a judgment creditor to levy only the economic interest of an LLC and only to the extent necessary to satisfy the judgment. The trial court's charging order vastly exceeded its statutory authority by stripping Price and Um of their entire membership in Prium and Queen High Full House LLCs, precluding them from exercising their management rights, and by ordering that they turn over the LLCs' books and records to the Soundbuilt. The trial court also exceeded its statutory authority in ordering that Soundbuilt is entitled to "all" of both LLC's profits until the judgment is satisfied, including any subsequently awarded attorneys' fees and costs.

Paragraphs two, three, four, and five of the charging order should be vacated and the order modified consistent with Price and Um's proposed Amended Charging Order. (CP at 1078-1080.)

Dated this 29<sup>th</sup> day of September, 2010.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By   
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**APPENDIX  
ATTACHMENT A**

**C**

West's Revised Code of Washington Annotated Currentness

Title 25. Partnerships (Refs & Annos)

▣ Chapter 25.15. Limited Liability Companies (Refs & Annos)

▣ Article VII. Assignment of Limited Liability Company Interests

→ **25.15.255. Rights of judgment creditor**

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member 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 the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

CREDIT(S)

[1994 c 211 § 703.]

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**APPENDIX  
ATTACHMENT B**

**C**

West's Revised Code of Washington Annotated Currentness

Title 25. Partnerships (Refs & Annos)

▣ Chapter 25.15. Limited Liability Companies (Refs & Annos)

▣ Article VII. Assignment of Limited Liability Company Interests

→ 25.15.250. Assignment of limited liability company interest

(1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) As provided in a limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(3) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(a) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(b) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute

an assignment of any portion of such limited liability company interest.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

CREDIT(S)

[1995 c 337 § 19; 1994 c 211 § 702.]

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**APPENDIX  
ATTACHMENT C**

**C**

West's Revised Code of Washington Annotated Currentness

Title 25. Partnerships (Refs &amp; Annos)

↳ Chapter 25.15. Limited Liability Companies (Refs &amp; Annos)

↳ Article VII. Assignment of Limited Liability Company Interests

→ **25.15.260. Right of assignee to become member**

(1) An assignee of a limited liability company interest may become a member upon:

(a) The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) Compliance with any procedure provided for in the limited liability company agreement.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in RCW 25.15.195, and for the obligations of his or her assignor under article VI of this chapter.

(3) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under articles V and VI of this chapter.

CREDIT(S)

[1994 c 211 § 704.]

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**APPENDIX  
ATTACHMENT D**

when a member transfers all of the member's transferable interest.

**Subsection (a)(3)** -Mere transferees have no right to intrude as the members carry on their activities as members. When a member dies, other law may effect a transfer of the member's interest to the member's estate or personal representative. Section 504 contains special rules applicable to that situation.

**Subsection (b)** -Amounts due under this subsection are of course subject to offset

for any amount owed to the limited liability company by the member or dissociated member on whose account the distribution is made. As to whether an LLC may properly offset for claims against a transferee that was never a member is matter, for other law, specifically the law of contract dealing with assignments.

**Subsection (d)** -The use of certificates can raise issues relating to Articles 8 and 9 of the Uniform Commercial Code.

**Action In Adopting Jurisdictions**

**Variations from Official Text:**

**IDAHO**

In subsec. (a)(1), adds " provided however, that the transfer of a transferable interest in a

professional company is not permissible absent compliance with section 30-6-201A(7), Idaho Code" following "permissible".

**Law Review and Journal Commentaries**

Foreclosure and Dissolution Rights of a Member's Creditors. Thomas E. Rutledge, Carter G.

Bishop, and Thomas Earl Geu. 21 Prop. 35 (May/June 2007).

**Library References**

Limited Liability Companies 30.  
Westlaw Topic No. 241E.

**§ 503. Charging Order.**

(a) 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.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

- (1) appoint a receiver of the distributions subject to the charging order with the power to make all inquiries the judgment debtor might have made and
- (2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member and is subject to Section 502.

subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This [act] does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) 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.

**Comment**

Charging order provisions appear in various forms in UPA, ULPA, RULPA, RUPA, ULLCA, and ULPA (2001). This section builds on those acts, while: (i) modernizing the language; (ii) making explicit certain points that have been at best implicit; and (iii) seeking to delineate more precisely the types of extraordinary circumstances that would have to exist before a court enforcing a charging order would be justified in interfering with an LLC's management or activities.

This section balances the needs of a judgment creditor of a member or transferee with the needs of the limited liability company and the members. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited liability company.

Under this section, the judgment creditor of a member or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the member or transferee whose interest is subject to the order. However, the judgment creditor has no say in the timing or amount of those distributions.

management and activities of the limited liability company.

The operating agreement has no power to alter the provisions of this section to the prejudice of third parties. Section 110(c)(11).

**Subsection (a)** -The phrase "judgment debtor" encompasses both members and transferees. As a matter of civil procedure and due process, an application for a charging order must be served both on the limited liability company and the member or transferee whose transferable interest is to be charged.

**Subsection (b)** -Paragraph (2) refers to "other orders" rather than "additional orders. Therefore, given appropriate circumstances, a court may invoke either paragraph (1) or (2) or both.

**Subsection (b)(1)** -The receiver contemplated here is not a receiver for the limited liability company, but rather a receiver for the distributions. The principal advantage provided by this paragraph is an expanded right to information. However, that right goes no further than "the extent necessary to effectuate the collections of distributions pursuant to a charging order."

**Subsection (b)(2)** -This paragraph must be understood in the context of the balance described in the introduction to this

quire" is limited to "giv[ing] effect to the charging order."

**Example:** A judgment creditor with a charging order believes that the limited liability company should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the limited liability company to restrict re-investment. Subsection (b)(2) does not authorize the court to grant the motion.

**Example:** A judgment creditor with a judgment for \$10,000 against a member obtains a charging order against the member's transferable interest. Having been properly served with the order, the limited liability company nonetheless fails to comply and makes a \$3000 distribution to the member. The court has the power to order the limited liability company to pay \$3000 to the judgment creditor to "give effect to the charging order."

Under subsection (b)(2), the court also has the power to decide whether a particular payment is a distribution, because that decision determines whether the payment is part of a transferable interest subject to a charging order. To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (g). The payment is therefore subject to whatever other creditor remedies may apply.

Section 405(g) states a special exception to the definition of "distribution," but that exception applies only "[f]or purposes of subsection (a)" of Section 405. Therefore, whether a charging order applies to "amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program," Section 405(g), is a question determined under this section, without regard to Section 405(g). To date, case law is scant, but there is authority holding that compensation is a distribution. *PB Real Estate, Inc. v. Dem II Properties*, 719 A.2d 73, 75 (Conn. App. Ct. 1998) (rejecting the defendants' claim that the payments at issue were merely compensation for their ser-

vices to their law firm, which was organized as an LLC; noting that the defendants' characterization was at odds with the firm's business records and tax returns; holding that the payments received were distributions subject to the charging order).

This Act has no specific rules for determining the fate or effect of a "charging order" when the limited liability company undergoes a merger, conversion, or domestication under [Article] 10. In proper circumstances, such an organizational change might trigger an order under subsection (b)(2).

**Subsection (c)** -The phrase "that distributions under the charging order will not pay the judgment debt within a reasonable period of time" comes from case law. *Sz e.g., Nigri v. Lotz*, 453 S.E.2d 780, 783 (Ga. Ct. App. 1995).

**Subsection (e)** -This Act jettisons the confusing concept of redemption and substitutes an approach that more closely parallels the modern, real-world possibility of the LLC or its members buying the underlying judgment (and thereby dispensing with any interference the judgment creditor might seek to inflict on the LLC). When possible, buying the judgment remains superior to the mechanism provided by this subsection, because: (i) this subsection requires full satisfaction of the underlying judgment, (ii) while the LLC or the other members might be able to buy the judgment for less than face value. On the other hand, this subsection operates without need for the judgment creditor's consent, so it remains a valuable protection in the event a judgment creditor seeks to do mischief to the LLC.

Whether an LLC's decision to invoke this subsection is "ordinary course" or "outside the ordinary course," Section 407(b)(3) and (4) and (c)(3) and (4)(C), depends on the circumstances. However, the involvement of this subsection does not by itself make the decision "outside the ordinary course."

**Subsection (g)** -This subsection does not override Article 9, which may provide different remedies for a secured creditor acting in that capacity. A secured creditor with a judgment might decide to proceed under Article 9 alone, under this section

alone, or under both Article 9 and this section. In the last-mentioned circumstance, the constraints of this section would apply to the charging order but not to the Article 9 remedies.

This subsection is not intended to prevent a court from effecting a "reverse pierce" where appropriate. In a reverse

pierce, the court conflates the entity and its owner to hold the entity liable for a debt of the owner. *Litchfield Asset Mgmt. Corp. v. Howell*, 799 A.2d 298, 312 (Conn. App. Ct. 2002) (approving a reverse pierce where a judgment debtor had established a limited liability company in a patent attempt frustrate the judgment creditor).

Law Review and Journal Commentaries

Foreclosure and Dissolution Rights of a Member's Creditors. Thomas E. Rutledge, Carter G. Bishop, and Thomas Earl Geu. 21 Prob. & Prop. 35 (May/June 2007).

Library References

Limited Liability Companies §30, 31. Westlaw Topic No. 241E.

§ 504. Power of Personal Representative of Deceased Member.

If a member dies; the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Section 502(c) and, for the purposes of settling the estate, the rights of a current member under Section 410.

Comment

Source: ULPA (2001) § 704.  
Section 410 pertains only to information rights.

Law Review and Journal Commentaries

Foreclosure and Dissolution Rights of a Member's Creditors. Thomas E. Rutledge, Carter G. Bishop, and Thomas Earl Geu. 21 Prob. & Prop. 35 (May/June 2007).

Library References

Limited Liability Companies §30. Westlaw Topic No. 241E.

**APPENDIX  
ATTACHMENT E**

Not Reported in A.2d, 2006 WL 3041979 (Conn.Super.)  
 (Cite as: 2006 WL 3041979 (Conn.Super.))

**H**

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
 RULES BEFORE CITING.

Superior Court of Connecticut,  
 Judicial District of Middlesex.

Neal B. GOLDBERG et al.

v.

Victor WINOGRADOW.

No. CV000093186S.

Oct. 12, 2006.

Cloutier & Eddy, Old Saybrook, for Ann K.  
 Thompson.

Polivy & Taschner LLC, Hartford, for Victor  
 Winogradow and Carol Winogradow.

KEVIN G. DUBAY, J.

*FACTS*

\*1 This action was tried to the court, which found the following facts. See *Goldberg v. Winogradow*, Superior Court, judicial district of Middlesex, Docket No. CV 00 0093186 (December 18, 2002, Aurigemnia, J.). The plaintiffs, Neal Goldberg and Ann Thompson, instituted this action to collect on a promissory note signed by the defendant, Victor Winogradow, dated December 23, 1993. As written, the note was payable on December 31, 1994, in the amount of \$100,000, with a balance of \$53,000 due on June 30, 1995. When the \$100,000 became due, the defendant had made no payments. Thereafter, the defendant made two payments totaling \$30,000. In 1998, Goldberg assigned the note to himself and Thompson as tenants in common. In 2002, the note still remaining unpaid, the plaintiffs filed suit. At trial, judgment was rendered in favor of the plaintiffs and against the defendant in the

amount of \$215,787.64.<sup>FN1</sup> On April 28, 2003, after a hearing awarding attorneys fees in the amount of \$7,025, plus costs taxed by the court, the total judgment against the defendant was \$223,273.12.

FN1. This sum included \$92,257.64 in interest.

In an attempt to collect on the judgment, the plaintiffs filed an application for a financial institution execution on January 18, 2005, which was returned unsatisfied on May 24, 2005. On May 18, 2006, the judgment still remaining wholly unsatisfied, the plaintiffs filed an application for an execution and an application for an order in aid of the execution, ordering the defendant to turn over to the levying officer: a) possession of the defendant's shares of Front Line Apparel Group, LLC (Front Line); b) possession of the defendant's shares of 313 Mill Street Associates, LLC (Mill Street); c) the defendant's 51 percent share of any funds due from DSP Holdings, Inc. (DSP); and d) possession of documentary evidence of debts owed to the defendant from DSP. A hearing on this matter was held on June 19, 2006.

*DISCUSSION*

"The law of turnover orders is entirely statutory." *Sarasota CCM, Inc. v. Golf Marketing, LLC*, 94 Conn.App. 34, 37, 891 A.2d 72 (2006). "[Turnover] statutes have not been extensively litigated." *Id.*, at 38. The Appellate Court has noted that the trial court has supervisory control over the process of a property execution. See *Anthony Julian Railroad Construction Co. v. Mary Ellen Drive Associates*, 50 Conn.App. 289, 294, 717 A.2d 294 (1998). In the present case, two statutes are controlling, General Statutes §§ 52-356b and 34-171. General Statutes § 52-356b(a) provides that "[i]f a judgment is unsatisfied, the judgment creditor may apply to the court for an execution and an order in aid of the ex-

Not Reported in A.2d, 2006 WL 3041979 (Conn.Super.)  
(Cite as: 2006 WL 3041979 (Conn.Super.))

ecution directing the judgment debtor ... to transfer to the levying officer either or both of the following: (1) Possession of specified personal property that is sought to be levied on; or (2) possession of documentary evidence of title to property of, or a debt owed to, the judgment debtor that is sought to be levied on.” “The court may issue a turnover pursuant to this section, after notice and hearing ...” General Statutes § 52-356b(b).

\*2 Because the present case also involves the defendant's ownership interests in various limited liability companies (LLCs), the provisions of the Connecticut Limited Liability Company Act (act),<sup>FN2</sup> which sets forth requirements and guidelines for the operation of LLCs in the state of Connecticut, are relevant. General Statutes § 34-171 provides rights and remedies to judgment creditors against judgment debtors owning an interest in an LLC. In relevant part, General Statutes § 34-171 states, “[o]n application ... by any judgment creditor of a member, the court may charge the member's limited liability company interest 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 the member's limited liability company interest.”

FN2. Codified at General Statutes § 34-100 et seq., no portion of the act was cited by the plaintiffs in their application for order. Consideration of specific portions of the Act is appropriate, as “[i]t is plain error for a trial court to fail to apply an applicable statute, even in the absence of the statute having been brought to its attention by the parties.” (Internal quotation marks omitted.) *Location Realty, Inc., v. General Financial Services, Inc.*, 273 Conn. 766, 771 n. 8, 873 A.2d 163 (2005). In the present case, because parts “a,” “b,” and “c” of the application for order concern the defendant's ownership interest in LLCs, provisions of the act are clearly applicable, and are necessary for a proper de-

termination of this application. Further, because the plaintiffs fail to mention the act, they also fail to use the correct terminology for requesting a defendant's interest in an LLC, known as a charging order.

The definition in General Statutes § 34-101(11) of a limited liability company membership interest, made available under General Statutes § 34-171 for satisfaction of a judgment, encompasses “a member's share of the profits and losses of the limited liability company and a member's right to receive distributions of the limited liability company's assets ...” In the present case, because the plaintiffs are seeking to satisfy their judgment through an order charging the defendant's LLC interests, analysis of the plaintiffs' claims must be made not only in the context of General Statutes § 52-356b, but also based on the limitations and guidelines set forth in the act.

I

#### LLC INTEREST REQUESTS

In parts “a” and “b” of the May 18, 2006 application for order in aid of execution, the plaintiffs ask the court to transfer or assign to them possession of the defendant's shares of both Front Line and Mill Street. Further in the application, the plaintiffs specifically ask the court to assign or transfer the defendant's *ownership interest* of 51 percent in Front Line and 31 percent<sup>FN3</sup> of Mill Street. General Statutes § 34-170(a)(3) states, “an assignment of a limited liability company membership interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member ...”

FN3. The plaintiffs' application, and the February 6, 2006 transcript of the examination of the defendant, both state that the defendant's ownership interest in Mill

Not Reported in A.2d, 2006 WL 3041979 (Conn.Super.)  
(Cite as: 2006 WL 3041979 (Conn.Super.))

Street is 33 percent. In its prayer for order, however, the plaintiff states the ownership interest as 31 percent, and requests an interest in that amount. It is assumed that this is in error.

Based on the wording in the plaintiffs' application, it appears that the plaintiffs are asking for a more substantial interest than that of an assignee. The plaintiffs are attempting to assume the defendant's ownership, rather than just the shares or profits to which the defendant may be entitled. The transfer of an ownership interest entails participation in the "management and affairs" of the LLC. This request is specifically proscribed by the language of General Statutes § 170(a)(3). Because the plaintiffs are seeking an ownership interest, rather than merely than the right of an assignee of the defendant's profits, the plaintiffs' requests exceed the scope allowable for a charging order under General Statutes § 34-171. Consequently, this court denies parts "a" and "b" of the application for order in aid of execution.

\*3 Part "c" of the application asks the court to transfer or assign to the plaintiffs the defendant's 51% share of any funds due from DSP. "A limited liability company membership interest is personal property"; General Statutes § 34-169; and is assignable. General Statutes § 34-170. Connecticut courts have previously issued charging orders against a defendant's interest in an LLC under General Statutes § 34-171. See, e.g., *PB Real Estate, Inc. v. DEM II Properties*, 50 Conn.App. 741, 719 A.2d 73 (1998); *Merchants Bank v. Chestnut Tree Hill*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV 90 0033304 (June 6, 2003, Curran, J.T.R.) (35 Conn. L. Rptr. 160); *Cadle Company v. Ginsburg*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV 95 0076811 (March 28, 2002, Alander, J.) (31 Conn. L. Rptr. 597). From the transcript of the examination of the defendant, dated February 6, 2006, it was averred that the defendant is under a contact with DSP, whereby he is indirectly paid \$6,000

monthly for his consulting services. Because the defendant owns 51 percent of Front Line, his "interest" for purposes of General Statutes § 34-171 would be 51 percent of any funds paid to Front Line, including those funds paid by DSP.

Under General Statutes § 34-101(11), the request in part "c" appears to properly demand "[the defendant's] share of the profits ... of the limited liability company and [the defendant's] right to receive distributions of the limited liability company's assets ..." Unlike parts "a" and "b" of the application, part "c" only appears to be requesting the requisite portion of sums due to the defendant from a third party. The court grants the application as to part "c."

## II

### DOCUMENTARY EVIDENCE REQUEST

In part "d" of the application, the plaintiffs request possession of documentary evidence of the debts owed to the defendant from DSP. Under General Statutes § 52-356b(a), a judgment creditor is entitled to apply to the court and ask for "[p]ossession of documentary evidence ... of a debt owed to ... the judgment debtor that is sought to be levied on." General Statutes § 52-356a(4)(C) provides a procedure for providing notice to a third person in such a case.<sup>FN4</sup> As the plain language of General Statutes § 52-356b(a) indicates, the motion for turnover of documentary evidence of debts owed to the defendant will issue after a proper application and hearing. In the present case, a hearing took place on June 19, 2006. Because it is undisputed that DSP owes certain funds to the defendant as part of a continuing business relationship, the plaintiffs' request in part "d" for documentary evidence of debts owed to the defendant from DSP properly complies with the requirements for such requests under General Statutes § 52-356b(a), and may, as such, be granted.

Not Reported in A.2d, 2006 WL 3041979 (Conn.Super.)  
 (Cite as: 2006 WL 3041979 (Conn.Super.))

FN4. General Statutes § 52-356a(4)(C) provides in relevant part that when personal property “is in the possession of a third person, the levying officer shall serve that person with two copies of the execution, required notices and claim forms. On receipt of such papers, the third person shall forthwith mail a copy thereof postage prepaid to the judgment debtor at the last-known address of record ...” The state marshal's return, filed on June 14, 2006, stated that he left “a verified ... copy of the within original [execution, notices, and claim forms].” Further, the state marshal specified that his service was being executed pursuant to General Statutes § 33-929. General Statutes § 33-929 concerns service of process on a foreign corporation. While DSP is undoubtedly a foreign corporation, it was not being served with process; rather, it was to be served with a property execution pursuant to General Statutes § 52-356a(4)(C), the statute under which the plaintiffs have filed the present order. Service under General Statutes § 33-929 requires only one copy. From the record, it appears that the plaintiffs have not complied with the requirements for service set forth in General Statutes § 52-356a(4)(C).

It is manifest from a reading of General Statutes § 52-356a(4)(C) that the purpose of serving two copies on the third party was so that the third party could send a copy to the judgment debtor. Despite the fact that the marshal only served one copy with DSP, the marshal's return also specifies that he served the defendant at his last known address. Notwithstanding the procedural defect in service of the property execution, all relevant parties were served with the proper documents. Consequently, this is not a basis for denying the application with respect to part “d.” See *Mucci Construction*,

*LLC v. Oxford Conservation Commission*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV 05 4002344 (May 5, 2005, Shluger, J.) (39 Conn. L. Rptr. 296) (serving one copy of appeal with town clerk and one with commission was not a fatal error when statutory language required service of two copies to the town clerk, who would then forward a copy to the chairperson of the board).

#### CONCLUSION

For the foregoing reasons, the court denies the application with respect to parts “a” and “b,” and grants the application with respect to parts “c” and “d.”

Conn.Super.,2006.  
 Goldberg v. Winogradow  
 Not Reported in A.2d, 2006 WL 3041979  
 (Conn.Super.)

END OF DOCUMENT

**APPENDIX  
ATTACHMENT F**

--- So.3d ---, 2010 WL 2518106 (Fla.), 35 Fla. L. Weekly S357  
(Cite as: 2010 WL 2518106 (Fla.))

**H**

NOTICE: THIS OPINION HAS NOT BEEN RE-  
LEASED FOR PUBLICATION IN THE PER-  
MANENT LAW REPORTS. UNTIL RELEASED,  
IT IS SUBJECT TO REVISION OR WITHDRAW-  
AL.

Supreme Court of Florida.  
Shaun OLMSTEAD, et al., Appellants,  
v.  
FEDERAL TRADE COMMISSION, Appellee.  
No. SC08-1009.

June 24, 2010.

**Background:** The United States Court of Appeals for the Eleventh Circuit, 528 F.3d 1310, 2008-1 Trade Cases P 76,171, 22 Fla. L. Weekly Fed. C 756, certified a question concerning the rights of a judgment creditor regarding the respective ownership interests of judgment debtors in certain single-member limited liability companies (LLCs).

**Holding:** The Supreme Court, Canady, J., held that court could order judgment debtor to surrender all right, title, and interest in debtor's single-member LLC.

Question answered.

Lewis, J., dissented and filed opinion in which Polston, J., joined.

West Headnotes

**[1] Limited Liability Companies 241E ↪6**

241E Limited Liability Companies

241Ek6 k. Nature and Purpose of Entity in General. Most Cited Cases  
A "limited liability company (LLC)" is a business entity originally created to provide tax benefits akin

to a partnership and limited liability akin to the corporate form.

**[2] Limited Liability Companies 241E ↪30**

241E Limited Liability Companies

241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

In addition to eligibility for tax treatment like that afforded partnerships, "limited liability companies (LLCs)" are characterized by restrictions on the transfer of ownership rights that are related to the restrictions applicable in the partnership context; in particular, the transfer of management rights in an LLC generally is restricted.

**[3] Limited Liability Companies 241E ↪31**

241E Limited Liability Companies

241Ek31 k. Rights of Creditors. Most Cited Cases  
The "limited liability company (LLC) charging order remedy" is a remedy derived from the charging order remedy created for the personal creditors of partners and affords a judgment creditor access to a judgment debtor's rights to profits and distributions from the business entity in which the debtor has an ownership interest.

**[4] Limited Liability Companies 241E ↪25**

241E Limited Liability Companies

241Ek24 Rights and Liabilities of Members or Stockholders

241Ek25 k. In General. Most Cited Cases  
A "limited liability company (LLC)" is a type of corporate entity, and an ownership interest in an LLC is personal property that is reasonably understood to fall within the scope of corporate stock.

**[5] Debtor and Creditor 117T ↪11**

117T Debtor and Creditor

117Tk11 k. Creditors' Suit. Most Cited Cases  
The general rule is that where one has any interest

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in property which he may alien or assign, that interest, whether legal or equitable, is liable for the payment of his debts.

**[6] Limited Liability Companies 241E ↪30**

241E Limited Liability Companies

241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

The sole member in a single-member limited liability company (LLC) may freely transfer the owner's entire interest in the LLC.

**[7] Limited Liability Companies 241E ↪30**

241E Limited Liability Companies

241Ek30 k. Distribution, Transfer and Assignment of Interest. Most Cited Cases

Court could order a judgment debtor to surrender all right, title, and interest in the debtor's single-member LLC to satisfy an outstanding judgment; provision authorizing the use of charging orders under the Limited Liability Company (LLC) Act was not the sole remedy for a judgment creditor against a judgment debtor's interest in a single-member LLC and did not displace the creditor's remedy under statute governing property subject to execution. Fla. Stat. § 608.433(4).

**[8] Statutes 361 ↪158**

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k158 k. Implied Repeal in General. Most Cited Cases

**Statutes 361 ↪159**

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k159 k. Implied Repeal by Inconsistent or Repugnant Act. Most Cited Cases

Repeal of a statute by implication is not favored and will be upheld only where irreconcilable conflict between the later statute and earlier statute

shows legislative intent to repeal.

Certified Question of Law from the United States Court of Appeals for the Eleventh Circuit-Case Nos. 06-13254-DD and 03-02353-CV-T-17-TBM. Thomas C. Little, Clearwater, FL, for Appellant.

William Blumenthal, General Counsel, John F. Daly, Deputy General Counsel and John Andrew Singer, Attorney, Federal Trade Commission, Washington, D.C., for Appellee.

Daniel S. Kleinberger, Professor, William Mitchell College of Law, St. Paul, MN, As Amicus Curiae.

CANADY, J.

\*1 In this case we consider a question of law certified by the United States Court of Appeals for the Eleventh Circuit concerning the rights of a judgment creditor, the appellee Federal Trade Commission (FTC), regarding the respective ownership interests of appellants Shaun Olmstead and Julie Connell in certain Florida single-member limited liability companies (LLCs). Specifically, the Eleventh Circuit certified the following question: "Whether, pursuant to Fla. Stat. § 608.433(4), a court may 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." *Fed. Trade Comm'n v. Olmstead*, 528 F.3d 1310, 1314 (11th Cir.2008). We have discretionary jurisdiction under article V, section 3(b)(6), Florida Constitution.

The appellants contend that the certified question should be answered in the negative because the only remedy available against their ownership interests in the single-member LLCs is a charging order, the sole remedy authorized by the statutory provision referred to in the certified question. The FTC argues that the certified question should be answered in the affirmative because the statutory charging order remedy is not the sole remedy available to the judgment creditor of the owner of a single-member limited liability company.

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For the reasons we explain, we conclude that the statutory charging order provision does not preclude application of the creditor's remedy of execution on an interest in a single-member LLC. In line with our analysis, we rephrase the certified question as follows: "Whether Florida law permits 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." We answer the rephrased question in the affirmative.

## I. BACKGROUND

The appellants, through certain corporate entities, "operated an advance-fee credit card scam." *Olmstead*, 528 F.3d at 1311-12. In response to this scam, the FTC sued the appellants and the corporate entities for unfair or deceptive trade practices. Assets of these defendants were frozen and placed in receivership. Among the assets placed in receivership were several single-member Florida LLCs in which either appellant *Olmstead* or appellant *Connell* was the sole member. Ultimately, the FTC obtained judgment for injunctive relief and for more than \$10 million in restitution. To partially satisfy that judgment, the FTC obtained-over the appellants' objection-an order compelling appellants to endorse and surrender to the receiver all of their right, title, and interest in their LLCs. This order is the subject of the appeal in the Eleventh Circuit that precipitated the certified question we now consider.

## II. ANALYSIS

In our analysis, we first review the general nature of LLCs and of the charging order remedy. We then outline the specific relevant provisions of the Florida Limited Liability Company Act (LLC Act), chapter 608, Florida Statutes (2008). Next, we discuss the generally available creditor's remedy of levy and execution under sale. Finally, we explain the basis for our conclusion that Florida law permits a court to order a judgment debtor to surrender

all right, title, and interest in the debtor's single-member LLC to satisfy an outstanding judgment. In brief, this conclusion rests on the uncontested right of the owner of the single-member LLC to transfer the owner's full interest in the LLC and the absence of any basis in the LLC Act for abrogating in this context the long-standing creditor's remedy of levy and sale under execution.

### A. Nature of LLCs and Charging Orders

\*2 [1][2][3] The LLC is a business entity originally created to provide "tax benefits akin to a partnership and limited liability akin to the corporate form." *Elf Altochem North Am., Inc. v. Jaffari*, 727 A.2d 286, 287 (Del.1998). In addition to eligibility for tax treatment like that afforded partnerships, LLCs are characterized by restrictions on the transfer of ownership rights that are related to the restrictions applicable in the partnership context. In particular, the transfer of management rights in an LLC generally is restricted. This particular characteristic of LLCs underlies the establishment of the LLC charging order remedy, a remedy derived from the charging order remedy created for the personal creditors of partners. *See City of Arkansas City v. Anderson*, 242 Kan. 875, 752 P.2d 673, 681-683 (Kan.1988) (discussing history of partnership charging order remedy). The charging order affords a judgment creditor access to a judgment debtor's rights to profits and distributions from the business entity in which the debtor has an ownership interest.

### B. Statutory Framework for Florida LLCs

The rules governing the formation and operation of Florida LLCs are set forth in Florida's LLC Act. In considering the question at issue, we focus on the provisions of the LLC Act that set forth the authorization for single-member LLCs, the characteristics of ownership interests, the limitations on the transfer of ownership interests, and the authorization of a charging order remedy for personal creditors of

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LLC members.

Section 608.405, Florida Statutes (2008), provides that “[o]ne or more persons may form a limited liability company.” A person with an ownership interest in an LLC is described as a “member,” which is defined in section 608.402(21) as “any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account.” The terms “membership interest,” “member’s interest,” and “interest” are defined as “a member’s share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company’s assets, voting rights, management rights, or any other rights under this chapter or the articles of organization or operating agreement.” § 608.402(23), Fla. Stat. (2008). Section 608.431 provides that “[a]n interest of a member in a limited liability company is personal property.”

Section 608.432 contains provisions governing the “[a]ssignment of member’s interest.” Under section 608.432(1), “[a] limited liability company interest is assignable in whole or in part except as provided in the articles of organization or operating agreement.” An assignee, however, has “no right to participate in the management of the business and affairs” of the LLC “except as provided in the articles of organization or operating agreement” and upon obtaining “approval of all of the members of the limited liability company other than the member assigning a limited liability company interest” or upon “[c]ompliance with any procedure provided for in the articles of organization or operating agreement.” *Id.* Accordingly, an assignment of a membership interest will not necessarily transfer the associated right to participate in the LLC’s management. Such an assignment which does not transfer management rights only “entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or

similar item to which the assignor was entitled, to the extent assigned.” § 608.432(2)(b), Fla. Stat. (2008).

\*3 Section 608.433—which is headed “Right of assignee to become member”—reiterates that an assignee does not necessarily obtain the status of member. Section 608.433(1) states: “Unless otherwise provided in the articles of organization or operating agreement, an assignee of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.” Section 608.433(4) sets forth the provision-mentioned in the certified question—which authorizes the charging order remedy for a judgment creditor of a member:

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company membership interest of the member 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 such interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member’s interest.

#### C. Generally Available Creditor’s Remedy of Levy and Sale under Execution

[4][5] Section 56.061, Florida Statutes (2008), provides that various categories of real and personal property, including “stock in corporations,” “shall be subject to levy and sale under execution.” A similar provision giving judgment creditors a remedy against a judgment debtor’s ownership interest in a corporation has been a part of the law of Florida since 1889. *See* ch. 3917, Laws of Fla. (1889) (“That shares of stock in any corporation incorporated by the laws of this State shall be subject to levy of attachments and executions, and to sale under executions on judgments or decrees of any court in this State.”). An LLC is a type of corporate entity, and an ownership interest in an LLC is per-

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sonal property that is reasonably understood to fall within the scope of “corporate stock.” “The general rule is that where one has any ‘interest in property which he may alien or assign, that interest, whether legal or equitable, is liable for the payment of his debts.’ “ *Bradshaw v. Am. Advent Christian Home & Orphanage*, 145 Fla. 270, 199 So. 329, 332 (Fla.1940) (quoting *Croom v. Ocala Plumbing & Electric Co.*, 62 Fla. 460, 57 So. 243, 245 (Fla.1911)).

At no point have the appellants contended that section 56.061 does not by its own terms extend to an ownership interest in an LLC or that the order challenged in the Eleventh Circuit did not comport with the requirements of section 56.061. Instead, they rely solely on the contention that the Legislature adopted the charging order remedy as an exclusive remedy, supplanting section 56.061.

#### D. Creditor's Remedies Against the Ownership Interest in a Single-Member LLC

Since the charging order remedy clearly does not authorize the transfer to a judgment creditor of all an LLC member's “right, title and interest” in an LLC, while section 56.061 clearly does authorize such a transfer, the answer to the question at issue in this case turns on whether the charging order provision in section 608.433(4) always displaces the remedy available under section 56.061. Specifically, we must decide whether section 608.433(4) establishes the exclusive judgment creditor's remedy-and thus displaces section 56.061-with respect to a judgment debtor's ownership interest in a single-member LLC.

\*4 [6] As a preliminary matter, we recognize the uncontested point that the sole member in a single-member LLC may freely transfer the owner's entire interest in the LLC. This is accomplished through a simple assignment of the sole member's membership interest to the transferee. Since such an interest is freely and fully alienable by its owner, section 56.061 authorizes a judgment creditor with a judg-

ment for an amount equaling or exceeding the value of the membership interest to levy on that interest and to obtain full title to it, including all the rights of membership-that is, unless the operation of section 56.061 has been limited by section 608.433(4).

Section 608.433 deals with the right of assignees or transferees to become members of an LLC. Section 608.433(1) states the basic rule that absent a contrary provision in the articles or operating agreement, “an assignee of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.” *See also* § 608.432(1)(a), Fla. Stat (2008). The provision in section 608.433(4) with respect to charging orders must be understood in the context of this basic rule.

The limitation on assignee rights in section 608.433(1) has no application to the transfer of rights in a single-member LLC. In such an entity, the set of “all members other than the member assigning the interest” is empty. Accordingly, an assignee of the membership interest of the sole member in a single-member LLC becomes a member-and takes the full right, title, and interest of the transferor-without the consent of anyone other than the transferor.

Section 608.433(4) recognizes the application of the rule regarding assignee rights stated in section 608.433(1) in the context of creditor rights. It provides a special means-i.e., a charging order-for a creditor to seek satisfaction when a debtor's membership interest is not freely transferable but is subject to the right of other LLC members to object to a transferee becoming a member and exercising the management rights attendant to membership status. *See* § 608.432(1), Fla. Stat. (2008) (setting forth general rule that an assignee “shall have no right to participate in the management of the business affairs of [an LLC]”).

Section 608.433(4)'s provision that a “judgment creditor has only the rights of an assignee of [an LLC] interest” simply acknowledges that a judgment creditor cannot defeat the rights of nondebtor

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members of an LLC to withhold consent to the transfer of management rights. The provision does not, however, support an interpretation which gives a judgment creditor of the sole owner of an LLC less extensive rights than the rights that are freely assignable by the judgment debtor. *See In re Albright*, 291 B.R. 538, 540 (D.Colo.2003) (rejecting argument that bankruptcy trustee was only entitled to a charging order with respect to debtor's ownership interest in single-member LLC and holding that "[b]ecause there are no other members in the LLC, the entire membership interest passed to the bankruptcy estate"); *In re Modanlo*, 412 B.R. 715, 727-31 (D.Md.2006) (following reasoning of *Albright*).

\*5 Our understanding of section 608.433(4) flows from the language of the subsection which limits the rights of a judgment creditor to the rights of an assignee but which does not expressly establish the charging order remedy as an exclusive remedy. The relevant question is not whether the purpose of the charging order provision-i.e., to authorize a special remedy designed to reach no further than the rights of the nondebtor members of the LLC will permit-provides a basis for implying an exception from the operation of that provision for single-member LLCs. Instead, the question is whether it is justified to infer that the LLC charging order mechanism is an *exclusive remedy*.

On its face, the charging order provision establishes a *nonexclusive* remedial mechanism. There is no express provision in the statutory text providing that the charging order remedy is the *only* remedy that can be utilized with respect to a judgment debtor's membership interest in an LLC. The operative language of section 608.433(4)-"the court may charge the [LLC] membership interest of the member with payment of the unsatisfied amount of the judgment with interest"-does not in any way suggest that the charging order is an exclusive remedy.

In this regard, the charging order provision in the LLC Act stands in stark contrast to the charging order provisions in both the Florida Revised Uniform

Partnership Act, §§ 620.81001-9902, Fla. Stat. (2008), and the Florida Revised Uniform Limited Partnership Act, §§ 620.1101-2205, Fla. Stat. (2008). Although the core language of the charging order provisions in each of the three statutes is strikingly similar, the absence of an exclusive remedy provision sets the LLC Act apart from the other two statutes. With respect to partnership interests, the charging order remedy is established in section 620.8504, which states that it "provides the *exclusive remedy* by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership." § 620.8504(5), Fla. Stat. (2008) (emphasis added). With respect to limited partnership interests, the charging order remedy is established in section 620.1703, which states that it "provides the *exclusive remedy* which a judgment creditor of a partner or transferee may use to satisfy a judgment out of the judgment debtor's interest in the limited partnership or transferable interest." § 620.1703(3), Fla. Stat. (2008) (emphasis added).

"[W]here the legislature has inserted a provision in only one of two statutes that deal with closely related subject matter, it is reasonable to infer that the failure to include that provision in the other statute was deliberate rather than inadvertent." 2B Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 51:2 (7th ed.2008). "In the past, we have pointed to language in other statutes to show that the legislature 'knows how to' accomplish what it has omitted in the statute [we were interpreting]." *Cason v. Fla. Dep't of Mgmt. Services*, 944 So.2d 306, 315 (Fla.2006); *see also Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So.2d 176, 185 (Fla.2007); *Rollins v. Pizzarelli*, 761 So.2d 294, 298 (Fla.2000).

\*6 [7] The same reasoning applies here. The Legislature has shown-in both the partnership statute and the limited partnership statute-that it knows how to make clear that a charging order remedy is an exclusive remedy. The existence of the express exclusive-remedy provisions in the partnership and

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limited partnership statutes therefore decisively undermines the appellants' argument that the charging order provision of the LLC Act-which does not contain such an exclusive remedy provision-should be read to displace the remedy available under section 56.061.

[8] The appellants' position is further undermined by the general rule that "repeal of a statute by implication is not favored and will be upheld only where irreconcilable conflict between the later statute and earlier statute shows legislative intent to repeal." *Town of Indian River Shores v. Richey*, 348 So.2d 1, 2 (Fla.1977). We also have previously recognized the existence of a specific presumption against the "[s]tatutory abrogation by implication of an existing common law remedy, particularly if the remedy is long established." *Thorner v. City of Fort Walton Beach*, 568 So.2d 914, 918 (Fla.1990). The rationale for that presumption with respect to common law remedies is equally applicable to the "abrogation by implication" of a long-established statutory remedy. See *Schlesinger v. Councilman*, 420 U.S. 738, 752, 95 S.Ct. 1300, 43 L.Ed.2d 591 (1975) (" '[R]epeals by implication are disfavored,' and this canon of construction applies with particular force when the asserted repealer would remove a remedy otherwise available.") (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 133, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974)). Here, there is no showing of an irreconcilable conflict between the charging order remedy and the previously existing judgment creditor's remedy and therefore no basis for overcoming the presumption against the implied abrogation of a statutory remedy.

Given the absence of any textual or contextual support for the appellants' position, for them to prevail it would be necessary for us to rely on a presumption contrary to the presumption against implied repeal-that is, a presumption that the legislative adoption of one remedy with respect to a particular subject abrogates by implication all existing statutory remedies with respect to the same subject. Our law, however, is antithetical to such a presumption of

implied abrogation of remedies. See *Richey; Thorner; Tamiami Trails Tours, Inc. v. City of Tampa*, 159 Fla. 287, 31 So.2d 468, 471 (Fla.1947).

In sum, we reject the appellants' argument because it is predicated on an unwarranted interpretive inference which transforms a remedy that is nonexclusive on its face into an exclusive remedy. Specifically, we conclude that there is no reasonable basis for inferring that the provision authorizing the use of charging orders under section 608.433(4) establishes the sole remedy for a judgment creditor against a judgment debtor's interest in single-member LLC. Contrary to the appellants' argument, recognition of the full scope of a judgment creditor's rights with respect to a judgment debtor's freely alienable membership interest in a single-member LLC does not involve the denial of the plain meaning of the statute. Nothing in the text or context of the LLC Act supports the appellants' position.

### III. CONCLUSION

\*7 Section 608.433(4) does not displace the creditor's remedy available under section 56.061 with respect to a debtor's ownership interest in a single-member LLC. Answering the rephrased certified question in the affirmative, we hold that 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.

It is so ordered.

QUINCE, C.J., and PARIENTE, LABARGA, and PERRY, JJ., concur.

LEWIS, J., dissents with an opinion, in which POLSTON, J., concurs.

LEWIS, J., dissenting.

I cannot join my colleagues in the judicial rewriting of Florida's LLC Act. Make no mistake, the majority today steps across the line of statutory interpretation and reaches far into the realm of rewriting this legislative act. The academic community has clearly recognized that to reach the result of today's

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majority requires a judicial rewriting of this legislative act. See, e.g., Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies: Tax and Business Law*, ¶ 1.04[3][d] (2008) (discussing fact that statutes which do not contemplate issues with judgment creditors of single-member LLCs “invite *Albright*-style judicial invention”); Carter G. Bishop, *Reverse Piercing: A Single Member LLC Paradigm*, 54 S.D. L.Rev. 199, 202 (2009); Larry E. Ribstein, *Reverse Limited Liability and the Design of Business Associations*, 30 Del. J. Corp. L. 199, 221-25 (2005) (“The situation in *Albright* theoretically might seem to be better redressed through explicit application of traditional state remedies than by a federal court trying to *shoehorn its preferred result into the state LLC statute*. The problem ... is that no state remedy is appropriate because the asset protection was explicitly permitted by the applicable statute. The appropriate solution, therefore, lies in *fixing the statute*. ” (emphasis supplied)); Thomas E. Rutledge & Thomas Earl Geu, *The Albright Decision-Why an SMLLC Is Not an Appropriate Asset Protection Vehicle*, Bus. Entities, Sept.-Oct.2003, at 16; Jacob Stein, *Building Stumbling Blocks: A Practical Take on Charging Orders*, Bus. Entities, Sept.-Oct.2006, at 29. (stating that the *Albright* court “ignored Colorado law with respect to the applicability of a charging order” where the “statute does not exempt single-member LLCs from the charging order limitation”). An adequate remedy is available without the extreme step taken by the majority in rewriting the plain and unambiguous language of a statute. This is extremely important and has far-reaching impact because the principles used to ignore the LLC statutory language under the current factual circumstances apply with equal force to multimember LLC entities and, in essence, today's decision crushes a very important element for all LLCs in Florida. If the remedies available under the LLC Act do not apply here because the phrase “exclusive remedy” is not present, the same theories apply to multimember LLCs and render the assets of all LLCs vulnerable.

\*8 I would answer the certified question in the neg-

ative based on the plain language of the statute and an *in pari materia* reading of chapter 608 in its entirety. At the outset, the majority signals its departure from the LLC Act as it rephrases the certified question to frame the result. The question certified by the Eleventh Circuit requested this Court to address whether, *pursuant to section 608.433(4)*, a court may 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 majority modifies the certified question and fails to directly address the critical issue of whether the charging order provision applies uniformly to all limited liability companies regardless of membership composition. In addition, the majority advances a position with regard to chapter 56 of the Florida Statutes that was neither asserted by the parties nor discussed in the opinion of the federal court.

Despite the majority's claim that it is not creating an exception to the charging order provision of the statute for single-member LLCs, its analysis necessarily does so in contravention of the plain statutory language and general principles of Florida law. The LLC Act inherently displaces the availability of the execution provisions in chapter 56 of the Florida Statutes by providing a remedy that is intended to prevent judgment creditors from seizing ownership of the membership interests in an LLC and from liquidating the separate assets of the LLC. In doing so, the LLC Act applies uniformly to single-and multimember limited liability companies, and does *not* provide either an implicit or express exception that permits the *involuntary* transfer of all right, title, and interest in a single-member LLC to a judgment creditor. The statute also does not permit a judgment creditor to liquidate the assets of a non-debtor LLC in the manner allowed by the majority today. Therefore, under the current statutory scheme, a judgment creditor seeking satisfaction must follow the statutory remedies specifically afforded under chapter 608, which include but are not limited to a charging order, regardless of the membership composition of the LLC.

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Although this plain reading may require additional steps for judgment creditors to satisfy, an LLC is a purely statutory entity that is created, authorized, and operated under the terms required by the Legislature. This Court does *not* possess the authority to judicially rewrite those operative statutes through a speculative inference not reflected in the legislation. The Legislature has the authority to amend chapter 608 to provide any additional remedies or exceptions for judgment creditors, such as an exception to the application of the charging order provision to single-member LLCs, if that is the desired result. However, by basing its premise on principles of law with regard to *voluntary* transfers, the majority suggests a result that can only be achieved by rewriting the clear statutory provisions. In effect, the majority accomplishes its result by judicially legislating section 608.433(4) out of Florida law.

\*9 For instance, the majority disregards the principle that in general, an LLC exists separate from its owners, who are defined as members under the LLC Act. *See* §§ 608.402(21) (defining “member”), 608.404, Fla. Stat. (2008) (“[E]ach limited liability company organized and existing under this chapter shall have the same powers as an individual to do all things necessary to carry out its business and affairs....”). In other words, an LLC is a distinct entity that operates independently from its individual members. This characteristic directly distinguishes it from partnerships. Specifically, an LLC is not immediately responsible for the personal liabilities of its members. *See Litchfield Asset Mgmt. Corp. v. Howell*, 70 Conn.App. 133, 799 A.2d 298, 312 (Conn.App.Ct.2002), *overruled on other grounds by Robinson v. Coughlin*, 266 Conn. 1, 830 A.2d 1114 (Conn.2003). The majority obliterates the clearly defined lines between the LLC as an entity and the owners as members.

Further, when the Legislature amended the LLC requirements for formation to allow single-member LLCs, it did *not* enact other changes to the provisions in the LLC Act relating to an involuntary assignment or transfer of a membership interest to a

judgment creditor of a member or to the remedies afforded to a judgment creditor. Moreover, no other amendments were made to the statute to demonstrate any different application of the provisions of the LLC Act to single-member and multimember LLCs. For example, the LLC Act generally does not refer to the number of members in an LLC within the separate statutory provisions. The Legislature is presumed to have known of the charging order statute and other remedies when it introduced the single-member LLC statute. Accordingly, by choosing not to make any further changes to the statute in response to this addition, the Legislature indicated its intent for the charging order provision and other statutory remedies to apply uniformly to all LLCs. This Court should not disregard the clear and plain language of the statute.

In addition, the majority fails to correctly set forth the status of a member in an LLC and the associated rights and interests that such membership entails. An owner of a Florida LLC is classified as a “member,” which is defined as

any person who has been *admitted to a limited liability company as a member* in accordance with this chapter *and* has an *economic interest* in a limited liability company which may, but need not, be represented by a capital account.

§ 608.402(21), Fla. Stat. (2008) (“Definitions”) (emphasis supplied). Therefore, to be a member of a Florida LLC it is now necessary to be admitted as such under chapter 608 *and* to also maintain an economic interest in the LLC. Moreover, a member of an LLC holds and carries a “membership interest” that encompasses both governance and economic rights:

“Membership interest,” “member’s interest,” or “interest” means a member’s *share of the profits and the losses* of the limited liability company, the *right to receive distributions* of the limited liability company’s assets, *voting rights, management rights, or any other rights* under this chapter or the articles of organization or operating agreement.

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\*10 § 608.402(23), Fla. Stat. (2008) (emphasis supplied). This provision was adopted during the 1999 amendments, which was after the modification to allow single-member LLCs. *See* ch. 99-315, § 1, at 4, Laws of Fla. In stripping the statutory protections designed to protect an LLC as an entity distinct from its owners, the majority obliterates the distinction between economic and governance rights by allowing a judgment creditor to seize both from the member and to liquidate the separate assets of the entity.

Consideration of an involuntary lien against a membership interest must address what interests of the member may be involuntarily transferred. Contrary to the view expressed by the majority, a member of an LLC is restricted from freely transferring interests in the entity. For instance, because an LLC is a legal entity that is separate and distinct from its members, the specific LLC property is not transferable by an individual member. In other words, possession of an economic and governance interest does not also create an interest in specific LLC property or the right or ability to transfer that LLC property. *See* § 608.425, Fla. Stat. (2008) (stating that all property originally contributed to the LLC or subsequently acquired is LLC property); *see also* Bishop, *supra*, 54 S.D. L.Rev. at 226 (discussing in context of federal tax liens the fact that “[t]ypically, a member is not a co-owner and has no transferable interest in limited liability company property”) (citing Unif. Ltd. Liab. Co. Act § 501 (1996), 6A U.L.A. 604 (2003)). The specific property of an LLC is not subject to attachment or execution except on an express claim against the LLC itself. *See* Bishop & Kleinberger, *supra*, ¶ 1.04[3][d].

The interpretation of the statute advanced by the majority simply ignores the separation between the particular separate assets of an LLC and a member's specific membership interest in the LLC. The ability of a member to *voluntarily* assign his, her, or its interest does not subject the property of an LLC to execution on the judgment. Under the factual circumstances of the present case, the trial court

forced the judgment debtors to *involuntarily* surrender their membership interests in the LLCs and then authorized a receiver to liquidate the specific LLC assets to satisfy the judgment. In doing so, the trial court ignored the clearly recognized legal separation between the specific assets of an LLC and a member's interest in profits or distributions from those assets. *See F.T.C. v. Peoples Credit First, LLC*, No. 8:03-CV-2353-T-TBM, 2006 WL 1169677, \*2 (M.D.Fla. May 3, 2006) (ordering the appellants to “endorse and surrender to the Receiver, all of their right, title and interest in their ownership/equity unit certificates” of the LLCs for the receiver to liquidate the assets of these companies). The majority approves of this disregard by improperly applying principles of voluntary transfers to allow creditors of an LLC member to attack and liquidate the separate LLC assets.

\*11 Additionally, the transfer of a membership interest is restricted by law and by the internal operating documents of the LLC. Although a member may freely transfer an economic interest, a member may not voluntarily transfer a management interest without the consent of the other LLC members. *See* § 608.432(1), Fla. Stat. (2008). Contrary to the view of the majority, in the context of a single-member LLC, the restraint on transferability expressly provided for in the statute does not disappear. Unless admitted as a member to the LLC, the transferee of the economic interest *only* receives the LLC's financial distributions that the transferring member would have received absent the transfer. *See* § 608.432(2), Fla. Stat. (2008); *see also* Bishop & Kleinberger, *supra*, ¶ 1.01[3][c]. Consequently, a member may cease to be a member upon the assignment of the *entire* membership interest (i.e., transferring all of the following: (1) share of the profits and losses of the LLC, (2) right to receive distributions of LLC assets; (3) voting rights, (4) management rights, and (5) any other rights). *See* §§ 608.402(23), 608.432(2)(c), Fla. Stat. (2008). Furthermore, a transferring member no longer qualifies under the statutory definition of “member” upon a transfer of the *entire* economic interest. *See* §

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608.402(21), Fla. Stat. (2008) (defining “member” as a person who has an *economic* interest in an LLC). However, unless otherwise provided in the governing documents of the entity (i.e., the articles of incorporation and the operating agreement), the pledge or granting of “a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member *shall not cause the member to cease to be a member* or to have the power to exercise any rights or powers of a member.” § 608.432(2)(c), Fla. Stat. (2008) (emphasis supplied). Accordingly, a judgment or a charging order does *not* divest the member of a membership interest in the LLC as the member retains governance rights. It only provides the judgment creditor the economic interest until the judgment is satisfied.

Whether the LLC Act allows a judgment creditor of an individual member to obtain this entire membership interest to exert full control over the assets of the LLC is the heart of the underlying dispute. Neither the Uniform Limited Liability Company Act nor the Florida LLC Act contemplates the present situation in providing for single-member LLCs but restricting the transferability of interests. This problematic issue is not one solely limited to our state, though our decision must be based solely on the language and purpose of the Florida LLC Act. Thus, in my view, this Court must apply the plain meaning of the statute unless doing so would render an absurd result. In contrast, the majority simply rewrites the statute by ignoring those inconvenient provisions that preclude its result.

***Legislative Intent With Regard to the Rights of a  
Judgment Creditor of a Member***

\*12 I understand the policy concerns of the FTC and the majority with the inherent problems in the transferability of both governance and economic interests under the LLC Act because the plain language does not contemplate the impact of a judgment creditor seeking to obtain the entire membership interest of a single-member LLC and to obtain

the ability to liquidate the assets of the LLC. The Florida statute simply does not create a different mechanism for obtaining the assets of a single-member LLC as opposed to a multimember LLC and, therefore, there is no room in the statutory language for different rules.

However, I decline to join in rewriting the statute with inferences and implications, which is the approach adopted by the majority. This Court generally avoids “judicial invention,” as accomplished by the majority, when the statute may be construed under the plain language of the relevant legislative act. *See* Bishop & Kleinberger, *supra*, ¶ 1.04[3][d]. In construing a statute, we strive to effectuate the Legislature’s intent by considering first the statute’s plain language. *See* Kasischke v. State, 991 So.2d 803, 807 (Fla.2008) (citing *Borden v. East-European Ins. Co.*, 921 So.2d 587, 595 (Fla.2006)). When, as it is here, the statute is clear and unambiguous, we do *not* “look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent.” *Daniels v. Fla. Dep’t of Health*, 898 So.2d 61, 64 (Fla.2005). This is especially applicable in the instance of a business entity created solely by state statute.

If the statute had been written as the majority suggests here, I would agree with the result requested by the FTC. However, the underlying conclusion lacks statutory support. By reading only self-selected provisions of the statute to support this result, the majority disregards the remainder of the LLC Act, which destroys the isolated premise that the charging order provision only applies to multimember LLCs and that other statutory restrictions do not exist.

Additionally, exceptions not found within the statute cannot simply be read into the statute, as the majority does by holding that single-member LLCs are an *implicit* exception to the charging order provision. The remedy provided to the FTC by the federal district court and approved by the majority in this instance—that a judgment creditor of a single-member LLC is entitled to receive a surrender and

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transfer of the full right, title, and interest of the judgment debtor and to liquidate the LLC assets-is not provided for under the plain language of the LLC Act without judicially writing an exception into the statute.

***Judgment Creditor Can Charge the Debtor Member's Interest in the LLC With Payment of the Unsatisfied Judgment***

As a construct of statutory creation, an LLC is an entity separate and distinct from its members, and thus the liability of the LLC is not directly imputed to its members. In a similar manner, the liability of individual members is not directly imposed separately upon the LLC.

\*13 Although a member's interest in an LLC is considered to be personal property, *see* § 608.431, Fla. Stat. (2008), and personal property is generally an asset that may be levied upon by a judgment creditor under Florida law, *see* § 56.061, Fla. Stat. (2008), there are statutory restrictions in the LLC context. Any rights that a judgment creditor has to the personal property of a judgment debtor are limited to those provided by the applicable creating statute.

The appellants contend that if a judgment creditor may seek satisfaction of a member's personal debt from a non-party LLC, the plain language of the LLC Act limits the judgment creditor to a charging order. *See* § 608.433(4), Fla. Stat. (2008). A charging order is a statutory procedure whereby a creditor of an individual member can satisfy its claim from the member's interest in the limited liability company. *See Black's Law Dictionary* 266 (9th ed.2009) (defining term in the context of partnership law). It is understandable that the FTC challenges the charging order concept being deemed a remedy for a judgment creditor because, from the creditor's perspective, a charging order may not be as attractive as just seizing the LLC assets. For example, a creditor may not receive *any* satisfaction of the judgment if there are no actual distributions

from the LLC to the judgment creditor through the debtor-member's economic interest. *See* Elizabeth M. Schurig & Amy P. Jetel, *A Shocking Revelation! Fact or Fiction? A Charging Order is the Exclusive Remedy Against a Partnership Interest*, Probate & Property, Nov.-Dec.2003, at 57, 58. The preferred creditor's remedy would be a transfer and surrender of the membership interest that is subject to the charging order, which is a more permanent remedy and may increase the creditor's chances of having the debt satisfied. *See id.*

The application of the charging order provision, including its consequences and implications, has been hotly debated in the context of both partnership and LLC law because of the similarities of these entities. The language of the charging order provision in the Revised Uniform Limited Partnership Act (1976), as amended in 1985, is virtually identical to that used in the Uniform Limited Liability Company Act, as well as in the Florida LLC Act. *See* §§ 608.433(4), 620.153, Fla. Stat. (2008). The Uniform Limited Partnership Act of 2001 significantly changed this provision by explicitly allowing execution upon a judgment debtor's partnership interest. *See Schurig & Jetel, supra*, at 58. However, the Florida Partnership Act provides that a charging order is the exclusive remedy for judgment creditors. *See* § 620.8504(5), Fla. Stat. (2008) (stating the charging order provision provides the "exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership"). In the context of partnership interests, Florida courts have also determined that a charging order is the *exclusive* remedy for judgment creditors based on the straightforward language of the statute. *See Givens v. Nat'l Loan Investors L.P.*, 724 So.2d 610, 612 (Fla. 5th DCA 1998) (holding that charging order is the exclusive remedy for a judgment creditor of a partner); *Myrick v. Second Nat'l Bank of Clearwater*, 335 So.2d 343, 345 (Fla. 2d DCA 1976) (substantially similar). The Florida LLC Act has neither adopted an explicit surrender-and-transfer remedy nor does it include a provision

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explicitly stating that the charging order is the exclusive remedy of the judgment creditor. The plain language of the charging order provision only provides one remedy that a judgment creditor may choose to request from a court and that the court may, in its discretion, choose to impose. *See* § 608.433(4), Fla. Stat. (2008).

\*14 To support its conclusion that charging orders are inapplicable to single-member LLCs, the majority compares the provision in the partnership statute that mandates a charging order as an exclusive remedy to the non-exclusive provision in the LLC Act. The exclusivity of the remedy is irrelevant to this analysis. By relying on an inapplicable statute, the majority ignores the plain language of the LLC Act and the other restrictions of the statute, which universally apply the use of a charging order to judgment creditors of all LLCs, regardless of the composition of the membership. The majority opinion now eliminates the charging order remedy for multimember LLCs under its theory of “nonexclusivity” which is a disaster for those entities.

#### *Plain Meaning of the Statute's Actual Language*

The charging order provision does not act as a reverse-asset shield against the creditors of a member. Instead, the LLC Act implements statutory restrictions on the transfer and assignment of membership interests in an LLC. These restrictions limit the mechanisms available to a judgment creditor of a member of any type of LLC to obtain satisfaction of a judgment against the membership interest. Specifically, section 608.433(4) grants a court of competent jurisdiction the discretion to enter a charging order against a member's interest in the LLC in favor of the judgment creditor:

608.433. Right of assignee to become member.-

(1) Unless otherwise provided in the articles of organization or operating agreement, an assignee

of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning member under the articles of organization, the operating agreement, and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in s. 608.4211 and wrongful distributions as provided in s. 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or the operating agreement.

(3) If an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to the limited liability company under ss. 608.4211, 608.4228, and 608.426.

(4) On application to a court of competent jurisdiction by any judgment creditor of a member, the court *may charge the limited liability company membership interest of the member 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 such interest.* This chapter does not deprive any member of the benefit of any exemption....

\*15 § 608.433, Fla. Stat. (2008) (emphasis supplied).

The majority asserts that the placement of the charging order provision within the section titled “Right of assignee to become member” mandates that the provision only applies to circumstances where the interest of the member is subject to the rights of other LLC members. There is absolutely nothing to support the notion that the Legislature's placement

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of the charging order provision as a subsection of section 608.433, instead of as a separately titled section elsewhere in the statute, was intended to unilaterally link its application only to the multimember context. For instance, the Revised Uniform Limited Liability Company Act, unlike the Florida statute, places the charging order provision as a separately titled section within the article that discusses transferable interests and rights of transferees and creditors. *See* Unif. Ltd. Liab. Co. Act § 503 (revised 2006), 6B U.L.A. 498 (2008). Other states have also adopted a statutory scheme that places the charging order remedy within a separate provision specifically dealing with the rights of a judgment creditor. *See* Conn. Gen.Stat. § 34-171 (2007). Thus, the majority's interpretation would again fail by a mere movement of the charging order provision to a separately titled section within the Act.

In contrast to the majority, my review of this provision begins with the actual language of the statute. In construing a statute, it is our purpose to effectuate legislative intent because "legislative intent is the polestar that guides a court's statutory construction analysis." *See Polite v. State*, 973 So.2d 1107, 1111 (Fla.2007) (citing *Bautista v. State*, 863 So.2d 1180, 1185 (Fla.2003)) (quoting *State v. J.M.*, 824 So.2d 105, 109 (Fla.2002)). A statute's plain and ordinary meaning must be given effect unless doing so would lead to an unreasonable or absurd result. *See City of Miami Beach v. Galbut*, 626 So.2d 192, 193 (Fla.1993). Here, the plain language establishes a charging order remedy for a judgment creditor that the court *may* impose. This section provides the only mechanism in the *entire* statute specifically allocating a remedy for a judgment creditor to attach the membership interest of a judgment debtor. In the multimember context, the uncontested, general rule is that a charging order is the appropriate remedy, even if the language indicates that such a decision is within the court's discretion. *See Myrick*, 335 So.2d at 344. As the Second District explained:

Rather, the charging order is the essential first

step, and all further proceedings must occur under the supervision of the court, which may take all appropriate actions, including the appointment of a receiver if necessary, to protect the interests of the various parties.

*Id.* at 345. Without express language to the contrary, the discretionary nature of this remedy applies with equal force to single- and multimember LLCs, which the majority erases from the statute.

\*16 Nevertheless, the certified question before us is not the discretionary nature of this remedy but whether a court should even apply the charging order remedy to single-member LLCs. The majority rephrases the question certified to this Court as not considering whether an exception to the charging order provision should be implied for single-member LLCs. In doing so, the majority unjustifiably alters and recasts the question posed by the federal appellate court to fit the majority's result. The convoluted alternative presented by the majority is premised on a limited application of a charging order without express language in the statutory scheme to support this assertion.

Here, the plain language crafted by the Legislature does *not* limit this remedy to the multimember circumstance, as the majority holds. Further, exceptions not made in a statute generally cannot be read into the statute, unless the exception is within the reason of the law. *See Cont'l Assurance Co. v. Carroll*, 485 So.2d 406, 409 (Fla.1986) ("This Court cannot grant an exception to a statute nor can we construe an unambiguous statute different from its plain meaning."); *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla.1952) ("We apprehend that had the legislature intended to establish other exceptions it would have done so clearly and unequivocally.... We cannot write into the law any other exception...."). Thus, without going behind the plain language of the statute, at first blush, the statute applies equally to all LLCs, regardless of membership composition.

The distinction asserted by the FTC is clearly in-

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consistent with the plain language of section 608.434 with regard to the proper method for a judgment creditor to reach the interest of a member in a LLC in that a complete surrender of the membership interest and the subsequent liquidation of the LLC assets are *not* contemplated by the LLC Act. The majority's interpretation that the charging order remedy only applies to multimember LLCs can only be given effect if the plain language of this provision renders an absurd result, which it does not.

The purpose of creating the charging order provision was never limited to the protection of "innocent" members of an LLC. Moreover, when amending the LLC Act to permit single-member LLCs, the Legislature did not also amend the assignment of interest and charging order provisions to create different procedures for single- and multimember LLCs. The appellants argue that this indicates a manifestation of legislative intent; however, it appears more likely that our Legislature, as with many other states, had not yet contemplated the situation before us. Even so, the appropriate remedy in this circumstance is not for this Court to impose its speculative interpretation, but for the Legislature to amend the statute to reflect its specific intention, if necessary. When interpreting a statute that is unambiguous and clear, this Court defers to the Legislature's authority to create a new limitation and right of action. Here, the actual language of the statute does not distinguish between the number of members in an LLC. Thus, the charging order applies with equal force to both single-member and multimember LLCs, and the assignment provision of section 608.433 does not render an absurd result.

\*17 The majority purports to base its analysis on the plain language of the statute. However, the FTC and a multitude of legal theorists agree that the plain language of the statute does not support this result. *See e.g.*, Bishop & Kleinberger, *supra*, ¶ 1.04[3][d]; Bishop, *supra*, 54 S.D. L.Rev. at 202; Ribstein, *supra*, 30 Del. J. Corp. L. at 221-25; Rut-

ledge & Geu, *supra*, Bus. Entities, Sept.-Oct.2003 at 16; Stein, *supra*, Bus. Entities, Sept.-Oct.2006 at 28. All authorities recognize that the sole way to achieve the result desired by the FTC and the majority is to ignore the plain language of the statute. No external support exists for the majority's bare assertions.

### *Rights of an Assignee*

The plain language of section 608.433(4) applies the charging provision to the judgment creditor of both a single-member and multimember LLC. The next analytical step is to determine what rights that charging order provision grants the judgment creditor. To the extent that a membership interest is charged with a judgment, the plain text of the statute specifically provides that the judgment creditor only possesses the rights of an assignee of such interest. *See* § 608.433(4), Fla. Stat. (2008) ("To the extent so charged, the judgment creditor has only the rights of an assignee of such interest.").

To determine the rights of an assignee of such an interest, we look to section 608.432, which defines these rights. To divine the intent of the Legislature, we construe related statutory provisions together, or *in pari materia*, to achieve a consistent whole that gives full, harmonious effect to all related statutory provisions. *See Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 199 (Fla.2007) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 455 (Fla.1992)). The FTC asserts that the rights delineated in this section render an absurd result when applied to single-member LLCs; however, the FTC ignores that the same rule applies even if only a *part* of a member's interest is needed to satisfy a debt amount. Further, an assignee is entitled solely to an economic interest and is not entitled to governance rights without the unanimous approval of the other members or as otherwise provided in the articles of incorporation or the operating agreement.

The plain reading of this provision does not estab-

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lish the judgment creditor as an assignee of such interest, only that to the extent of the judgment amount charged to the economic interest, the judgment creditor has the same rights as an assignee. Though section 608.433(4) directs that the judgment creditor has only the rights of an assignee of such interest, as provided in section 608.432, it is important to clarify that the judgment creditor does not become an assignee; the language merely indicates that the judgment creditor's rights do not *exceed* those of an assignee.

This clear distinction can be seen when considering the voluntary and involuntary nature of these different interests—an assignment is generally a voluntary action made by an assignor, whereas a charging order is clearly an involuntary assignment by a judgment debtor. For that reason, the majority formulates a false conclusion that section 404.433(1) provides a foundation for the bare assertion that a charging order is inapplicable in the context of a single-member LLC. Exploiting this false foundation, the majority asserts a result that is unsupported when considered *in pari materia* with the entirety of the statutory scheme.

\*18 The question before this Court requires articulation of a general principle of law that applies to all types of judgments, whether less than, equal to, or greater than the value of a membership interest, and to all types of LLCs. Reading section 608.433(4) and 608.432 together, a judgment creditor may be assigned a portion of the economic interest, depending on the amount of the judgment. This provision contemplates that a charging order may not encompass a member's entire membership interest if the judgment is for less than the available economic distributions of an LLC. For instance, if the LLC membership interest here were worth more than the \$10 million judgment, it would be unnecessary under this provision to transfer the full economic interest in the LLC to satisfy the judgment. Further, a member does not lose the economic interest *and* membership status unless *all* of the economic interest is charged to the judgment creditor. *See* §

608.432(2)(c), Fla. Stat. (2008). Thus, if the judgment were for less than the value of either the membership interest or the assets in the LLC, the members could transfer a *portion* of their economic interest and still retain their membership interest, in that they would still hold an economic and governance interest in the LLC. The FTC would then only have the right to receive distributions or allocations of income in an amount corresponding to satisfaction of a partial economic interest. Regardless of the amount of the interest assigned, the judgment creditor does not immediately receive a governance interest. *See* § 608.432(1), (2), Fla. Stat. (2008).

In such a circumstance, the result contemplated by the FTC does not come to pass—the single member maintains his, her, or its membership rights because a member only ceases to be a member and to have the power to exercise any governance rights upon assignment of *all* of the economic interest of such member. *See id.* The majority disregards this factual possibility and considers only the application of the statutory scheme in the context of a judgment that is equal to or greater than the value of the membership interest. Under the majority's interpretation of the statute, a judgment creditor could force a single-member LLC to surrender all of its interest and liquidate the assets specifically owned by the LLC, even if the judgment were for less than the assets' worth.

#### *Alternative Remedies*

Currently, the plain language of the statute provides additional remedies to the charging order provision for judgment creditors seeking satisfaction on a judgment that is equal to or greater than the economic distributions available under a charging order—(1) dissolution of the LLC, (2) an order of insolvency against the judgment debtor, or (3) an order conflating the LLC and the member to allow a court to reach the property assets of the LLC. First, upon the issuance of a charging order that exceeds a member's economic interest in an LLC for satisfaction of the judgment, dissolution may be achieved

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because the remaining member ceases to possess an economic interest and governance rights in the LLC following the assignment of *all* of its membership interest. See § 608.432(2)(c), Fla. Stat. (2008) (“Assignment of member’s interest”). The statutory provision with regard to the assignment of a member’s interest provides, in relevant part:

\*19 (2) Unless otherwise provided in the articles of organization or operating agreement:

....

(c) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of *all* of the membership interest of such member. Unless otherwise provided in the articles of organization or operating agreement, the pledge of, or *granting of* a security interest, lien, or *other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member* or to have the power to exercise any rights or powers of a member.

*Id.* (emphasis supplied). This demonstrates a clear and unambiguous distinction between a voluntary assignment of *all* the interest and the granting of an encumbrance against *any or all* of the membership interest. Because a “member” is defined as an actual or legal person admitted as such under chapter 608, who also has an *economic interest* in the LLC, it is the assignment of *all* of that economic interest that divests the member of his, her, or its status and power. Thus, if the charging order is only for a part of the economic interest held by the judgment debtor, the statute does not require that the member cease to be a member. See §§ 608.402(21), 608.432(2)(c), Fla. Stat. (2008). If, on the other hand, the charging order is to the extent that it requires a surrender of *all* of the member’s economic interest, in that circumstance, the member ceases to be a member under section 608.432(2)(c). In the case of a *member-managed* LLC, this would leave the LLC without anyone to govern its affairs. However, within the *manager-managed* LLC con-

text, the manager would remain in a position to direct the LLC and distribute any profits according to any governing documents.

This provision need not be limited to single-member LLCs. For example, if the appellants had entered into a multimember LLC, that entity would be subject to the same statutory construction issues as a single-member LLC. Once the FTC obtained a judgment against a member of the multimember LLC, a charging order would be lodged against that member’s interest. In that circumstance, though there may be charging orders against separate membership interests, in essence the same divestiture of the membership interest would occur if the judgment was for *all* of each member’s economic interest.

It is important to note, however, if an LLC becomes a shell or legal fiction with no actual governing members, the LLC shall be dissolved under section 608.441. The dissolution statute provides:

(1) A limited liability company organized under this chapter shall be dissolved, and the limited liability company’s affairs shall be concluded, upon the first to occur of any of the following events:

....

(d) *At any time there are no members*; however, unless otherwise provided in the articles of organization or operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within 90 days, or such other period as provided in the articles of organization or operating agreement, after the occurrence of the event that terminated the continued membership of the last remaining member, the personal or other legal representative of the last remaining member agrees in writing to continue the limited liability company and agrees to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective

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as of the occurrence of the event that terminated the continued membership of the last remaining member; or

\*20 ....

(4) Following the occurrence of any of the events specified in this section which cause the dissolution of the limited liability company, the limited liability company shall deliver articles of dissolution to the Department of State for filing.

§ 608.441(1)(d), (4), Fla. Stat. (2008) (emphasis supplied). A dissolved LLC continues its existence but does not carry on any business except that which is appropriate to wind up and liquidate its business and affairs under section 608.4431. Once dissolved, the liquidated assets may then be distributed to a judgment creditor holding a charging order. *See* § 608.444(1), Fla. Stat. (2008).

The judgment creditor may also seek an order of insolvency against the individual member, in which instance that member ceases to be a member of the single-member LLC, and the member's interest becomes part of the bankruptcy estate. In Florida, the commencement of a bankruptcy proceeding also terminates membership within an LLC. *See* §§ 608.402(4), 608.4237, Fla. Stat (2008). The decisions advanced by the FTC involved bankruptcies of the judgment debtor, and the rights of a judgment creditor in a bankruptcy are substantially different than the rights of a judgment creditor generally. *See In re Modanlo*, 412 B.R. 715 (Bankr.D.Md.2006), *aff'd*, No. 06-2213 (4th Cir.2008); *In re Albright*, 291 B.R. 538, 539 (Bankr.D.Colo.2003). Upon commencement of a bankruptcy proceeding, a bankruptcy estate includes all legal or equitable property interests of the debtor. An LLC membership interest is the personal property of the member. Therefore, when a judgment debtor files for bankruptcy, or is subject to an order of insolvency, the judgment debtor effectively transfers any membership interest in an LLC to the bankruptcy estate. In this context, it is reasonable for the bankruptcy courts to construe the LLC Act

to no longer require a charging order because the judgment debtor has passed the entire membership interest to the bankruptcy estate, and the trustee stands in the shoes of the judgment debtor, who is now seeking reorganization of its assets. *See, e.g., In re Albright*, 291 B.R. at 541. The majority refuses to even acknowledge any of these approaches.

This bankruptcy context is distinguishable from the general case of a judgment creditor seeking to execute upon the assets of an LLC because the judgment may not meet or exceed the economic interest remaining in the LLC. Thus, the *Albright* bankruptcy situation should not alter our determination that the plain language of the statute applies the charging order provision to both single- and multi-member LLCs. This may be a more complicated procedure than to allow a court to simply "shortcut" and rewrite the law and enter a surrender-and-transfer order of a member's entire right, title, and interest in an LLC as the majority accomplishes today. However, it is the *method prescribed by the statute*. Although the procedures created by the statute may involve multiple steps and legal proceedings, they are not absurd or irreconcilable with chapter 608 as a whole.

***A Charging Order, in and of Itself, Does Not Entitle a Judgment Creditor to Seize and Dissolve a Florida LLC***

\*21 Based on the plain language of the statute and the construction of chapter 608 *in pari materia*, I would answer the certified question in the negative: A court may *not* order a judgment debtor to surrender and transfer outright all "right, title, and interest" in the debtor's single-member LLC to satisfy an outstanding judgment. If a judgment creditor wishes to proceed against a single-member LLC, it may first request a court of competent jurisdiction to impose a charging order on the member's interest. If the judgment creditor is concerned that the member is constraining distribution of assets and incomes, the creditor may seek judicial remedies to enforce proper distribution. In addition, if the eco-

--- So.3d ----, 2010 WL 2518106 (Fla.), 35 Fla. L. Weekly S357  
(Cite as: 2010 WL 2518106 (Fla.))

conomic interest so charged is insufficient to satisfy the judgment, the judgment creditor may move through additional proceedings: (1) seek to dissolve the LLC and to have its assets liquidated and subsequently distributed to the judgment creditor; (2) seek an order of insolvency against the judgment debtor, in which case the trustee of the bankruptcy estate will control the assets of the LLC, or (3) request a court to pierce the liability shield to make available the personal assets of the company to satisfy the personal debts of its member. This plain reading of chapter 608 may create additional steps for judgment creditors and judgment debtors to satisfy, as characterized by the federal district court in this case. However, only the Legislature, as the architects of this statutorily created entity, has the authority to provide a more streamlined surrender of these rights, not the judicial branch through selective reading and rewriting of the statute. As enacted, the plain meaning of the statute is unambiguous and does not require “judicial invention” of exceptions that are clearly not provided in the LLC Act. If the Legislature wishes to make either an exception to the charging order provision for single-member LLCs or to provide additional remedies to judgment creditors, it may do so through an amendment of chapter 608.

Accordingly, I would answer the certified question in the negative. Under Florida law, a court does not have the authority to order an LLC member to surrender and transfer all right, title, and interest in an LLC and have LLC assets liquidated without first going through the statutory requirements created by the Legislature.

POLSTON, J., concurs.

Fla.,2010.

Olmstead v. F.T.C.

--- So.3d ----, 2010 WL 2518106 (Fla.), 35 Fla. L. Weekly S357

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**APPENDIX  
ATTACHMENT G**

5.1.2 A copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

5.1.3 Copies of the Company's federal, state and local tax returns and reports, if any, for the three most recent years;

5.1.4 Copies of the Company's currently effective written Limited Liability Company Agreement and all amendments thereto, copies of any writings permitted or required under the Act and copies of any financial statements of the Company for the three most recent years; and

5.1.5 Minutes of every meeting of the Members and any consents obtained from Members for actions taken without a meeting.

5.2 **Reports.** Within 90 days after the end of each fiscal year of the Company, the Company shall furnish to the Member an annual report consisting of at least the following to the extent applicable:

5.2.1 A copy of the Company's federal income tax return for that fiscal year;

5.2.2 Profit and loss statements;

5.2.3 A balance sheet showing the Company's financial position as of the end of that fiscal year; and

5.2.4 Any additional information that the Member may require for the preparation of their individual federal and state income tax returns.

In addition, if the Company indemnifies or advances expenses to a Member in connection with a proceeding by or in the right of the Company, the Company shall report the indemnification or advance in writing to the Member.

## **ARTICLE 6** **DISSOLUTION**

6.1 **Dissolution.** Upon dissolution of the Company, the Members shall immediately proceed to wind up the affairs of the Company. The Members shall sell or otherwise liquidate all of the property of the Company as promptly as practicable and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

6.1.1 First, to the payment of creditors, including the Members to the extent he is a creditor and to the extent otherwise permitted by law, in satisfaction of liabilities of the Company;

6.1.2 Second, to establish any reserves that the Members deem necessary for contingent or unforeseen obligations of the Company and, at the expiration of such period as the Members deem advisable;

6.1.3 Thereafter, to the Members.

6.2 **Distributions in Kind.** If the Members so determine, the assets of the Company shall be distributed to the Member in kind.

6.3 **Termination.** The Company and the Members shall comply with any applicable requirements of law pertaining to the winding up of the affairs of the Company and the final distribution of its assets. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

6.4 **Certificate of Cancellation.** When all debts, liabilities and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the Members, the Members shall file a certificate of cancellation as required by the Act. Upon filing the certificate of cancellation, the existence of the Company shall cease, except as otherwise provided in the Act.

## **ARTICLE 7** **ADOPTION AND AMENDMENT**

This Agreement shall be adopted and be effective only upon execution by all of the Members. This Agreement and the Certificate may be amended, restated or modified from time to time by the Members.

## **ARTICLE 8** **TRANSFERS**

No Member shall transfer, sell, gift, pledge, encumber or otherwise dispose of any or all of his or her interest herein, in any manner whatsoever. Any attempt to transfer, pledge or otherwise dispose of an interest herein in violation of this Agreement shall be null and void and shall not operate to transfer any interest or title to the purported transferee.

## **ARTICLE 9** **MISCELLANEOUS**

9.1 **Application of Washington Law.** This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of Washington and specifically the Act, without regard to choice of law rules.

9.2 **Construction.** Whenever required by the context in this Agreement, the singular number shall include the plural and vice versa, and any gender shall include the masculine, feminine and neuter genders.

9.3 **Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

9.4 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefit of the

**APPENDIX  
ATTACHMENT H**

**C**

West's Revised Code of Washington Annotated Currentness

Title 25. Partnerships (Refs &amp; Annos)

Chapter 25.15. Limited Liability Companies (Refs &amp; Annos)

Article III. Members

→ 25.15.130. Events of dissociation

(1) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in RCW 25.15.250(2), upon the occurrence of one or more of the following events:

(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member as provided in RCW 25.15.250(2)(b) following an assignment of all the member's limited liability company interest;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in the limited liability company agreement, or with written consent of all other

members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incapacitated, as used and defined under chapter 11.88 RCW, as to his or her estate;

(g) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(h) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(i) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(2) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

CREDIT(S)

[2000 c 169 § 2; 1995 c 337 § 17; 1994 c 211 § 304.]

Current with 2010 Legislation effective through July 1, 2010

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**APPENDIX  
ATTACHMENT I**



West's Revised Code of Washington Annotated Currentness

Title 25. Partnerships (Refs & Annos)

▣ Chapter 25.15. Limited Liability Companies (Refs & Annos)

▣ Article VIII. Dissolution

→ 25.15.270. Dissolution

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1)(a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members.

(b) This subsection does not apply to a limited liability company formed under RCW 30.08.025 or 32.08.025;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under RCW 25.15.130(1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in RCW 25.15.120(1);

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The administrative dissolution of the limited liability company by the secretary of state under RCW 25.15.285(2), unless the limited liability company is reinstated by the secretary of state under RCW 25.15.290.

#### CREDIT(S)

[2010 c 196 § 5, eff. June 10, 2010; 2009 c 437 § 1, eff. July 26, 2009; 2006 c 48 § 4, eff. June 7, 2006; 2000 c 169 § 4; 1997 c 21 § 1; 1996 c 231 § 9; 1994 c 211 § 801.]

Current with 2010 Legislation effective through July 1, 2010

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END OF DOCUMENT

No. 40585-7-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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SOUNDBUILT NORTHWEST, LLC

Respondent,

v.

THOMAS PRICE and PATRICIA PRICE, HYUN UM and JIN S. UM, et al.

Appellants.

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CERTIFICATE OF SERVICE

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GORDON THOMAS HONEYWELL LLP  
Salvador A. Mungia, WSBA No. 14807  
Christine Sanders, WSBA No. 40736  
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STATE OF WASHINGTON  
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THIS IS TO CERTIFY that on the 29<sup>th</sup> of September, 2010, I did  
serve true and correct copies of the following:

1. APPELLANTS' OPENING BRIEF ON THE CONSOLIDATED  
CASE; and
2. CERTIFICATE OF SERVICE.

via ABC Legal Messengers (or by other method indicated below) by  
directing delivery to and addressed to the following:

Paul Edward Brain  
BRAIN LAW FIRM PLLC  
1119 Pacific Avenue, Suite 1200  
Tacoma, WA 98402-4323

Dated this 29<sup>th</sup> day of September, 2010, at Tacoma,  
Washington.

  
Cheryl M. Koubik, Legal Assistant  
GORDON THOMAS HONEYWELL LLP