

CHAPTER 2011-77

Committee Substitute for House Bill No. 253

An act relating to limited liability companies; amending s. 608.433, F.S.; providing that a charging order against a member's limited liability company interest is the sole and exclusive remedy available to enforce a judgment creditor's unsatisfied judgment against a member or member's assignee; providing an exception for enforcing a judgment creditor's unsatisfied judgment against a judgment debtor or assignee of the judgment debtor of a single-member limited liability company under certain circumstances; providing that, in the case of a multimember limited liability company, certain remedies are unavailable to a judgment creditor attempting to satisfy a judgment; prohibiting a court from ordering such remedies; providing construction relating to secured creditor rights, specified principles of law and equity, and continuing enforcement jurisdiction of the court; providing legislative intent; providing for retroactive application; providing an effective date.

WHEREAS, on June 24, 2010, the Florida Supreme Court held in *Olmstead v. Federal Trade Commission* (No. SC08-1009), reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L. Weekly S357, that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company (LLC), and

WHEREAS, a charging order represents a lien entitling a judgment creditor to receive distributions from the LLC or the partnership that otherwise would be payable to the member or partner who is the judgment debtor, and

WHEREAS, the dissenting members of the Court in *Olmstead* expressed a concern that the majority's holding is not limited to a single-member LLC and a desire that the Legislature clarify the law in this area, and

WHEREAS, the Legislature finds that the uncertainty of the breadth of the Court's holding in *Olmstead* may persuade businesses and investors located in Florida to organize LLCs under the law in other jurisdictions where a charging order is the exclusive remedy available to a judgment creditor of a member of a multimember LLC, and

WHEREAS, the Legislature further finds it necessary to amend s. 608.433, Florida Statutes, to remediate the potential effect of the holding in *Olmstead* and to clarify that the current law does not extend to a member of a multimember LLC organized under Florida law and to provide procedures for application of the holding in *Olmstead* to a member of a single-member LLC organized under Florida law, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 608.433, Florida Statutes, is amended to read:

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 s. ss. 608.4211, s. 608.4228, or s. and 608.426.

(4)(a) On application to a court of competent jurisdiction by any judgment creditor of a member or a member's assignee, the court may enter a charging order against the limited liability company interest of the judgment debtor or assignee rights for charge the limited liability company membership interest of the member with payment of the unsatisfied amount of the judgment plus with interest.

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest or assignee rights. Under a charging order To the extent so charged, the judgment creditor has only the rights of an assignee of a limited liability company interest to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled from the limited liability company, to the extent of the judgment, including such interest.

(c) This chapter does not deprive any member or member's assignee of the benefit of any exemption law laws applicable to the member's limited liability company interest or the assignee's rights to distributions from the limited liability company.

(5) Except as provided in subsections (6) and (7), a charging order is the sole and exclusive remedy by which a judgment creditor of a member or member's assignee may satisfy a judgment from the judgment debtor's interest in a limited liability company or rights to distributions from the limited liability company.

(6) In the case of a limited liability company having only one member, if a judgment creditor of a member or member's assignee establishes to the

satisfaction of a court of competent jurisdiction that distributions under a charging order will not satisfy the judgment within a reasonable time, a charging order is not the sole and exclusive remedy by which the judgment creditor may satisfy the judgment against a judgment debtor who is the sole member of a limited liability company or the assignee of the sole member, and upon such showing, the court may order the sale of that interest in the limited liability company pursuant to a foreclosure sale. A judgment creditor may make a showing to the court that distributions under a charging order will not satisfy the judgment within a reasonable time at any time after the entry of the judgment and may do so at the same time that the judgment creditor applies for the entry of a charging order.

(7) In the case of a limited liability company having only one member, if the court orders foreclosure sale of a judgment debtor's interest in the limited liability company or of a charging order lien against the sole member of the limited liability company pursuant to subsection (6):

(a) The purchaser at the court-ordered foreclosure sale obtains the member's entire limited liability company interest, not merely the rights of an assignee;

(b) The purchaser at the sale becomes the member of the limited liability company; and

(c) The person whose limited liability company interest is sold pursuant to the foreclosure sale or is the subject of the foreclosed charging order ceases to be a member of the limited liability company.

(8) In the case of a limited liability company having more than one member, the remedy of foreclosure on a judgment debtor's interest in such limited liability company or against rights to distribution from such limited liability company is not available to a judgment creditor attempting to satisfy the judgment and may not be ordered by a court.

(9) Nothing in this section shall limit:

(a) The rights of a creditor that has been granted a consensual security interest in a limited liability company interest to pursue the remedies available to such secured creditor under other law applicable to secured creditors;

(b) The principles of law and equity which affect fraudulent transfers;

(c) The availability of the equitable principles of alter ego, equitable lien, or constructive trust, or other equitable principles not inconsistent with this section; or

(d) The continuing jurisdiction of the court to enforce its charging order in a manner consistent with this section.

Section 2. The amendment to s. 608.433, Florida Statutes, made by this act is intended by the Legislature to be clarifying and remedial in nature and shall apply retroactively.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 31, 2011.

Filed in Office Secretary of State May 31, 2011.