



THE ENFORCER

BY DAVID FINDLING

THE FINDLING LAW FIRM

WWW.FINDLINGLAW.COM

WWW.COURTAPPOINTEDRECEIVER.COM

WITH SPECIAL THANKS TO ERICA J. EHRLICHMAN, ESQ., JOHN W. POLDERMAN, ESQ., KRISTY L. BIDDINGER, ESQ. AND BRANDON J. WILSON, ESQ., FOR THEIR INVALUABLE ASSISTANCE IN PREPARATION.

Pay Me from My Ex's LLC: Part II

In my March 2011 column, *Pay Me From My Ex's LLC* (<http://tinyurl.com/3sjwa3j>), I discussed the issues related to property and support enforcement against a spouse's limited liability company. This column addresses a recent opinion and a change to the Limited Liability Act which impact this issue.

On December 16, 2010, Public Act 290 of 2010 became law. It addressed a number of issues related to Limited Liability Companies and their operation. Most importantly, from an enforcement perspective, it reinforced and clarified the provisions of MCL 450.4507. Further, it made §4507 the *exclusive* enforcement remedy for a judgment creditor seeking to enforce a claim against a member.

(1) If a court of competent jurisdiction receives an application from any judgment creditor of a member of a limited liability company, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest.

(2) If a limited liability company is served with a charging order and notified of the terms of that order, then to the extent described in the order, the member's judgment creditor described in the order is entitled to receive only any distribution or distributions to which the judgment creditor is entitled with respect to the member's membership interest.

(3) This act does not deprive any member of the benefit of any exemption laws applicable to the member's membership interest.

(4) Unless otherwise provided in an operating agreement or admitted as a member under section 501, a judgment creditor of a member that obtains a charging order does not become a member of the limited liability company, and

the member that is the subject of the charging order remains a member of the limited liability company and retains all rights and powers of membership except the right to receive distributions to the extent charged.

(5) A charging order is a lien on the membership interest of the member that is the subject of the charging order. However, a person may not foreclose on that lien or on the membership interest under this act or any other law, and the charging order is not an assignment of the member's membership interest for purposes of section 505(4).

(6) This section provides the **exclusive remedy** by which a judgment creditor of a member may satisfy a judgment out of the member's membership interest in a limited liability company. A court order to which a member may have been entitled that requires a limited liability company to take an action, provide an accounting, or answer an inquiry is not available to a judgment creditor of that member attempting to satisfy a judgment out of the member's membership interest, and a court may not issue an order to a judgment creditor. (Emphasis supplied)

An analysis of §4507 reflects the limitations of a judgment creditor seeking satisfaction from a member's interests. Under §4507(1), the judgment creditor is only permitted a charging lien against the member's interest. Further, the creditor cannot foreclose on the charging lien¹, cannot request an accounting nor seek an answer to an inquiry². If the members of the LLC wish to stop taking distributions or increase payroll, there is little that a judgment creditor may do.

In an unpublished opinion, *Shouneyia v. Shouneyia*, 2011 WL 148783, the Court Appeals found another way to skin the cat. In *Shouneyia*, the husband owed money to his ex-wife.



She moved for the appointment of a receiver over his assets and those of his business, Shouneyia Brothers Corporation (the "Corporation"). The Corporation was jointly owned by the husband and his brother. Appellants argued on appeal that because the corporation had not been joined as a party, the court was without jurisdiction to appoint a receiver over it.

In its analysis, the court examined MCR 2.207 and the liberal provisions for joinder of parties. Conversely, it noted the statutory limitations of a divorce being between a husband and wife, only. Ultimately, it relied on *Berg v. Berg*, 336 Mich. 284 (1953) which provided an exception:

Third persons may be made defendants in an action for divorce where it is charged that such persons have conspired with the husband with intent to defraud the wife out of her property. *Id.* at 288.

The court remanded the case for the lower court to order the joinder of the Corporation as a party. Once the court had determined a solution for joining the corporation, its analysis moved to the propriety of the appointment of the receiver, which it affirmed.

Shouneyia is instructive of the issue referenced in my Part I, which was the lack of a family court's jurisdiction over the business entity. Nonetheless, the limitations of MCL 450.4507 remain. Unless the corporation and spouse are involved in some fraud or artifice, it remains unlikely that enforcement against the membership interest will be successful. Rather, the likely result will be a charging lien under §4507(1).

Endnotes

1. MCL 450.4507(5)
2. MCL 450.4507(6)

"TIPS FROM THE TOP"

A collection of "**Hot Tips**" presented by top Michigan lawyers at the 2010 American Academy of Matrimonial Lawyers' annual Advanced Level Family Law Seminar.

Each set includes 2 DVDs containing 15 of the "**Hot Tips**" presented on May 6, 2010 at the AAML's annual seminar in Birmingham, Michigan and the printed materials relating to those presentations. Topics include short sales of real estate, separate property issues, tort claims in divorce cases, post judgment arbitration issues, attorney fee liens and many more.

To order, send check for **\$75** (including postage and handling) payable to

AAML – Michigan Chapter to

John F. Mills, Esq.
Williams, Williams, Rattner & Plunkett, P.C.
380 N. Old Woodward Ave., Suite 300
Birmingham, MI 48009
Email: jfm@wwrplaw.com

