BUSINESS FOCUS

Charging Orders: Their Effects On Different Business Interests

Part One: Limited Liability Companies and Corporations

BY MAY LU

KAREN ROACH/DREAMSTIME

Assume a creditor receives a judgment giving him a lien on a debtor's interest in a business entity. In Arizona, this is called a charging order. If the business entity is a limited liability company ("LLC"), then the charging order is the creditor's exclusive remedy to satisfy a judgment out of the debtor's interest in the business entity with its scope being limited to the right to distributions. But if the business entity is a corporation, then the creditor has the same voting and economic rights as all other shareholders.

May Lu

A creditor with a charging order has only the rights of an assignee of the member's interest in an LLC. An assignee is entitled to receive the assignor's share of distributions and the allocation of profits and losses. Assignment, however, does not entitle that assignee to participate in the management of the business and affairs of the LLC or to become or to exercise the rights of a member, unless that assignee is admitted as a member. Although only a member can ask for a judicial dissolution, an assignee can wind down the business and affairs of the LLC if no managers or members are left.

If the debtor has an interest in a corporation, a charging order is inapplicable. The creditor becomes the owner of the shares of stock, which automatically gives the creditor the rights to receive distributions and to vote.

Look for Part Two of this Article in the Fall Newsletter discussing the effects of charging orders on partnerships and limited partnerships.

COMPLIANCE

Arizona Corporation Commission Status Update

Effective September 2009, the Arizona Corporation Commission no longer mails reminders to corporations that the Annual Report is due. The Commission advises that corporations docket the due date for the Annual Report to avoid penalties and loss of corporate protection from personal liability for failure to timely file the Annual Report. The due date is printed on the top, left side of the Annual Report form, which can be accessed at www.azcc.gov/divisions/corporations/annrpts/arfilingoptions.asp. In addition, recent legislation underscores the importance of maintaining an updated corporate address with the ACC. Corporations can easily check their address at the ACC's website: www.azcc.gov/divisions/corporations.

For more information, contact Jim O'Sullivan, director of our Business Solutions department, at (602) 255-6017 or jpo@tblaw.com.

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partnered with Iraqi judges and police to rebuild and reform the Iraqi criminal justice system.

Upon returning from Iraq in 2006, Will led the prosecution of eight high profile murder cases against soldiers who committed atrocities against Iraqi civilians. He obtained convictions in every case. His cases were chronicled in two recently published books: *The "Good Soldier" on Trial, a Sociological Study of Misconduct by the U.S. Military Pertaining to Operation Iron Triangle* and *Black Hearts: One Platoon's Descent into Madness in Iraq's Triangle of Death*. Will's cases also formed the basis for the 2007 Brian De Palma film *Redacted*.

Will's final assignment was as an appellate attorney at U.S. Army Headquarters in Washington, D.C. While there, Will argued and won a high-profile death penalty case, and served as the President of the Pentagon Chapter of the Federal Bar Association. In late 2008, Will was Honorably Discharged from the United States Army at the rank of Major. During his Army career, Will litigated 13 jury trials and over 100 bench trials.

Will was awarded the Bronze Star Medal and Combat Action Badge for his service in Iraq. Will is also one of the very few military attorneys to ever successfully complete Pathfinder, Airborne, and Air Assault training.

Will joins three other Tiffany & Bosco attorneys who are also veterans: William H. Finnegan, William J. Simon, and Jon M. Paladini.

Will is admitted to practice before the Supreme Court of Arizona, the United States District Court for the District of Arizona, the United States Supreme Court, and the United States Court of Appeals for the Armed Forces. His practice areas include Civil and Commercial Litigation and Criminal Investigations, Litigation and Defense.

BUSINESS FOCUS

Part Two: Partnerships and Limited Partnerships

Charging Orders:

Their Effects On Different Business Interests

BY MAY LU

A charging order is a judgment lien that a creditor may obtain against a debtor's interest in a business entity. Part One of this article in the Spring 2010 Newsletter discussed the effects of charging orders on limited liability companies ("LLCs") and corporations. Part Two explains that, as with LLCs, a charging order is the creditor's exclusive remedy to satisfy a judgment out of the debtor's interest in a business entity if the entity is a partnership or limited partnership.

May Lu

ILLUSTRATION: ISTOCKPHOTO

If the debtor's interest is in a partnership, creditors with a charging order have rights only to partnership distributions and to foreclose on the debtor's transferable interest. In fact, A.R.S. § 29-1042 specifies that the partner's only transferable interest in a partnership is "the partner's share of the profits and losses of the partnership and the partner's right to receive distributions." As a result, creditors do not participate in management or obtain voting rights and cannot sell the partnership's assets. However, a creditor with a charging order, as a transferee of the debtor's interest, has the right to seek a judicial determination to wind down the partnership under certain conditions. Upon request, a court also may order the foreclosure of the partner's interest subject to the charging order.

In the case of limited partnerships, an assignment of a limited partnership interest due to a charging order does not entitle the creditor to become or to exercise any rights of a partner. The creditor is entitled only to receive distributions. Thus, such a creditor does not participate in management or obtain voting rights. If, however, all of a partner's interest in a limited partnership is assigned to a creditor, then that partner ceases to be a partner. Unlike partnerships, a creditor can become a limited partner if the debtor gives the creditor that right pursuant to the partnership agreement or all the other partners in the limited partnership consent. The creditor also can apply for a judicial dissolution of the limited partnership.

For further information regarding various business entities and the advantages or disadvantages of setting up a specific entity, Tiffany & Bosco has a number of attorneys who can help.

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