

IN THE FLORIDA SUPREME COURT

SHAUN OLMSTEAD et al, *
*
Movants-Defendants-Appellants, and *
*
v. * No. SC08-1009
*
FEDERAL TRADE COMMISSION, *
*
Respondent-Plaintiff-Appellee. *

On Certification from the United States Court of Appeals
for the Eleventh Circuit, No. 06-13254-DD

On Appeal from the United States District Court
for the Middle District of Florida, No. 8:03 CV-2353-T17-TBM

REPLY BRIEF OF APPELLANT SHAUN OLMSTEAD

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Statement of Issue 1

Conclusion 3

Certificate of Service 4

Certificate of Compliance 5

TABLE OF AUTHORITIES

Statutes

<i>Fla. Stat.</i> § 608.423(1)	2
<i>Fla. Stat.</i> § 608.423(2)(f)	2
<i>Fla. Stat.</i> § 608.433(4)	1, 2, 3
<i>Fla. Stat.</i> § 608.441(1)(d)	1
<i>Fla. Stat.</i> § 608.4431	1

STATEMENT OF ISSUE

Appellant files this Reply Brief directed to the Brief of Appellee-Plaintiff, Federal Trade Commission, and would state as follows:

THE REASONABLE CONSTRUCTION OF SECTION 608.433(4), *FLORIDA STATUTES*, DOES LIMIT JUDGMENT CREDITORS OF THE MEMBER OF A SINGLE MEMBER, LLC TO A CHARGING ORDER REMEDY.

Appellant does not ignore Chapter 608 and Appellant's analysis as to the plain meaning of §608.433(4) does not lead to an absurd result. The language of §608.433(4) is direct, simple and clear as follows:

“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 the member of the benefit of any exemption laws applicable to the member's interest.”

Appellee argues that the entry of a charging order would have a single member LLC with no members and require its dissolution pursuant to §608.441(1)(d), *Florida Statutes*. The Appellee then argues that this problem is compounded because the LLC, without members, would have no one with the authority to take the statutorily prescribed stages necessary to wind down the dissolved LLC, Section 608.4431, *Florida Statutes*.

However, Appellee fails to take into consideration Section 608.423(1), *Florida Statutes*, relative to operating agreements. Specifically, Section 608.423(2)(f) provides:

“(2) The operating agreement may not:

(f) Restrict the rights of a person, other than as manager, member, or transferee of a member’s interest distributional interest, under this chapter.”

Clearly, the availability of the operating agreement provision would negate the Appellee’s argument of absurdity.

Consequently, Appellant would agree that Section 608.433(4), *Florida Statutes*, is clear and unambiguous on its face. Moreover, Appellee’s arguments as to absurd conclusions on the applicability of Section 608.433(4) to single member LLCs are negated by the available provisions for operating agreements in Chapter 608.

CONCLUSION

The reasonable construction of Section 608.433(4), *Florida Statutes*, does limit judgment creditors of the member of a single member LLC to a Charging Order Remedy.

Respectfully submitted,

/s/ Thomas C. Little

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of October, 2008, I sent a copy of the foregoing Appellant's Reply Brief by U.S. MAIL to: John Gotto and Richard Oliver, Esquire, 401 E. Jackson Street, Suite 2500, Tampa, FL 33602, and John Andrew Singer, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-582, Washington, D.C. 20580.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Florida R. App. P. 9.210(a)(2) in that it is printed in double-spaced, computer-generated Times New Roman 14 point font, with the exception of quotations which are printed in single-space.

/s/ Thomas C. Little

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