

The “Daily Plan-It™”

LAW OFFICES OF GARY R. WAITZMAN, L.L.C.

Volume 12, Issue 18

9/9/2010

A New Florida Ruling that Could Affect Your Client’s Single Member LLC

I try to ensure that the issues discussed in this column are not too state specific. However, every once in a while a case pops up in one state that I believe could have ramifications elsewhere.

Such is the case in a recent Florida Supreme Court ruling, in which the court limited protections for a single member Limited Liability Company (LLC). I believe it could affect business owners nationwide.

LLCs have long been touted as the ultimate entity for investors and business owners. LLCs combine the best asset protection qualities and tax benefits of corporations and partnerships into a single hybrid entity. One of the big selling points is that they're entitled to the same “charging order” that creditor protection partnerships are entitled to.

What’s this Case About?

The case involved a \$10 million judgment obtained by the Federal Trade Commission against debtors for operating an advanced-fee credit card scam. Assets were frozen and placed into receivership. Among the assets were several single member LLCs. The FTC obtained an order to compel the debtors to endorse and surrender 100% of their right, title and interest in the LLCs.

The debtors argued that the most the FTC was entitled to was a charging order against their single-member LLCs. The case was appealed and the Florida Supreme Court ruled that the charging order does NOT apply to single member LLCs.

What is a Charging Order?

The charging order protects the company and the member’s investment if a member is sued in his or her personal life. The original charging order philosophy protected **A & B** from having to accept **D** as an unwanted partner if **C**, the person they originally went into business with, gets sued.

They don’t want to have to deal with **D**. To prevent this unwanted member, the charging order is all **D** can get out of **C**’s membership. The charging order limits **D**. He must wait for **A & B** to decide to distribute money. No distributions — no money.

The Single Member Hitch

When a member of a single member LLC is sued, there is no other member to protect from **D**. Two bankruptcy courts have used this flaw in the LLC to allow creditors to take over an LLC and liquidate it.

Advisors should review this ruling with clients who have single member LLCs to measure their risk. Potentially thousands of business owners could be affected because single member LLCs are a common corporate structure used by professionals, including many doctors and attorneys.

A possible solution is to add a second person to the company membership. Make it the Bill & Ted LLC instead of just the Ted LLC. That way, it will still have the old protections.

As always, I hope this article has helped you and your clients. If you have a specific case or concern you’d like to discuss, please call our office.

Provided to
Friends, Clients and Colleagues of
GARY R. WAITZMAN



LAW OFFICES OF
GARY R. WAITZMAN

Law Offices of Gary R. Waitzman, L.L.C.
250 Parkway Drive, Suite 130
Lincolnshire, IL 60069
847.719-1300
Fax: 847.719.1301
gary@grweplaw.com



Please note: If you would like to be removed from our list, please call (847.793.9103), fax or email our office and we will be happy to comply with your request. Thank you.