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Shaun Olmstead v. Federal Trade Commission

>> THE NEXT MATTER ON THE COURT'S AGENDA IS OLMSTEAD v. FEDERAL TRADE COMMISSION.

ALTHOUGH JUSTICE WELLS IS NOT HERE THIS MORNING HE WILL BE PARTICIPATING IN THESE CASES. MR. ^LITTLE?

>> THANK YOU, YOUR HONOR.

>> YOU MAY PROCEED.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, THOMAS LITTLE REPRESENTING THE APPELLANTS SHAUN OLMSTEAD AND JULIE CONNELL.

WE HAVE BEFORE THE COURT A CERTIFIED QUESTION FROM THE 11th CIRCUIT COURT OF APPEALS WHICH SEEKS THIS COURT'S INTERPRETATION OF FLORIDA LAW AS IT APPLIES TO THE LIMITED LIABILITY COMPANY ACT, SPECIFICALLY SECTION 608.4334. THAT SECTION --

>> CAN YOU DO ME A FAVOR AND JUST GIVE US JUST A LITTLE, YOU KNOW, JUST BRIEF UNDERSTANDING OF THE DIFFERENCE UNDER FLORIDA LAW AND I GUESS OTHER STATES' LAWS BETWEEN LIMITED LIABILITY CORPORATION, CORPORATION AND PARTNERSHIP SO WE CAN -- AS I UNDERSTAND IT HERE, THE PROBLEM COMES BECAUSE THIS IS A SINGLE-MEMBER LIMITED LIABILITY CORPORATION.

SO JUST, JUST EXPLAIN IT SO WE HAVE SOME FRAME OF REFERENCE AS TO YOU KNOW AND THEN I UNDERSTAND WE'RE REALLY DEALING WITH THE STATUTORY CONSTRUCTION.

SO I JUST WANT TO UNDERSTAND IT FROM YOUR POINT OF VIEW WHAT IT MEANS.

>> WELL, YOUR HONOR, I GUESS IN RESPONSE TO THAT QUESTION, THE LIMITED LIABILITY COMPANY IS A

CREATURE THAT WAS CREATED BY THE LEGISLATURE IN THE STATE OF FLORIDA ORIGINALLY YOU COULD NOT HAVE A SINGLE-MEMBER LIMITED LIABILITY COMPANY. THE LAW THE LEGISLATURE AMENDED THE LIMITED LIABILITY COMPANY ACT IN 1998 AND ALLOWED FOR ONE PERSON TO CREATE A LIMITED LIABILITY COMPANY.

>> BUT WHAT DOES THAT MEAN? IN OTHER WORDS, IT'S THE PERSON, THERE'S NOW AN ENTITY THAT IS A FICTIONAL ENTITY THAT'S AUTHORIZED BY THE STATE THAT'S SEPARATE FROM ITS MEMBER.

>> YES, YOUR HONOR.

>> AND IS THIS DIFFERENT IN TIMES OF DIFFERENT TYPES OF BUSINESS ENTITIES BECAUSE OF THIS MEMBERSHIP INTEREST VERSUS MANAGEMENT?

I MEAN, THAT'S WHAT -- TRY TO UNDERSTAND WHY THE FEDERAL TRADE COMMISSION CAN'T GET AT YOUR, YOU KNOW, THE WHOLE COMPANY BECAUSE JUST YOU, AND THAT'S WHAT WE HAVE -- I JUST NEEDS TO UNDERSTAND ONE MORE -- ANY OTHER INDICIA OF WHAT IT MEANS VERSUS I UNDERSTAND CORPORATIONS, I UNDERSTAND PARTNERSHIPS, I UNDERSTAND, I JUST AM NOT AS FAMILIAR WITH THIS FORM OF BUSINESS ENTITY.

>> WELL, JUDGE, THE ISSUE IS BOILED DOWN TO THE FACT THAT IF WE HAD A CORPORATION THAT WAS CREATED UNDER FLORIDA LAW, A JUDGMENT CREDITOR, REGARDLESS OF THE NATURE OF THAT CREDITOR, IN THIS CASE THAPPENS TO BE A GOVERNMENTAL UNIT, BUT THAT IN AND OF ITSELF DOESN'T CHANGE THE APPLICATION.

WE'RE LOOKING AT A JUDGMENT CREDITOR IN A CORPORATE SETTING.

GOING TO HAVE A RIGHT TO LEVY ON THE STOCK OWNED BY THE INDIVIDUAL SHAREHOLDER AND COULD HAVE A SHARE OF SALE ON THAT STOCK AND BECOME THE

STOCKHOLDER IF THEY WERE THE SUCCESSFUL BIDDER AT THE SALE.

>> THEN AS SOLE SHAREHOLDER, THEY COULD DISOLVE THE CORPORATION.

>> CORRECT.

>> I DON'T UNDERSTAND WHAT WE ARE TALKING ABOUT HERE DO WE HAVE TO GO THROUGH MORE HOOPS TO GET TO WHAT THIS IS.

WHAT ARE YOU SAYING THEY CAN ATTACH?

OR CAN'T ATTACH?

>> WELL, WHAT I AM SAYING IS THE LEGISLATURE DETERMINED WHAT A JUDGMENT CREDITOR IS ENTITLED TO REACH IN THE NATURE OF A LIMITED LIABILITY COMPANY. AND THAT IS FOUND IN SECTION 633 OR 608.4334.

WHICH PROVIDES FOR THE CHARGING ORDER REMEDY WHEREBY THE JUDGMENT CREDITORER CAN GO TO COURT AND APPLY FOR A CHARGING ORDER THAT CHARGER ORDER THEN WOULD GIVE THE JUDGMENT CREDITOR IN ESSENCE A LIEN AGAINST ANY RIGHTS TO DISTRIBUTIONS OF PROFITS NCOME, ET CETERA, THAT GO TO THE MEMBER UPON WHOM THE CHARGING ORDER HAS BEEN IMPOSED.

>> BUT DOESN'T THAT REALLY CONTEMPLATE THAT THERE WOULD BE MORE THAN ONE MEMBER OF THIS LIMITED LIABILITY CORPORATION?

>> WELL, NO, JUDGE.

I DO NOT BELIEVE THAT IT DOES CONTEMPLATE THAT.

BECAUSE NUMBER ONE, THE LEGISLATURE MADE NO DIFFERENTIATION WITHIN THE STATUTE ITSELF SAYING THAT THIS ONLY APPLYS IF THERE ARE MULTIPLE MEMBERS.

IT DOESN'T APPLY IF THERE'S A SINGLE MEMBER.

THERE IS NO DIFFERENTIATION MADE WITHIN THE STATUTE AS TO THAT APPLICATION.

>> DID I UNDERSTAND YOU BEFORE TO SAY THAT WHEN THIS STATUTE WAS FIRST ENACTED, IT DID NOT HAVE ANY INFORMATION ABOUT A

SINGLE MEMBER LIMITED LIABILITY CORPORATION AND THEN THAT WAS ADDED LATER?

>> THAT'S CORRECT, JUDGE.

AND ALSO WE THINK

IMPORTANTLY IT WAS ADDED BUT THIS CHARGING REMEDY WAS NOT CHANGED.

THE LEGISLATURE DID NOT CHANGE THE REMEDY EVEN THOUGH IT THEN PROVIDED FOR SINGLE MEMBER LIMITED LIABILITY COMPANY.

WE BELIEVE CERTAINLY IN THE LEGISLATIVE INTENT IF THE LEGISLATURE HAD INTENDED FOR THERE TO BE A DIFFERENT TREATMENT FOR THE SINGLE MEMBER COMPANY WHICH IT ALLOWED, THE LEGISLATURE WOULD HAVE PROVIDED FOR THAT TREATMENT WITHIN THE STATUTORY FRAMEWORK. IT DID NOT.

>> LET'S WALK THROUGH IT, IF WE MAY.

>> YES, SIR.

CERTAINLY WHAT YOU'VE SAID --

>> CERTAINLY WHAT YOU'VE SAID TO THIS POINT IS CLEARLY REFLECTED IN THE STATUTORY SCHEME, BUT ONCE THAT CHARGING INTEREST IS ENTERED, AND IF WE ASSUME AS IN THIS CASE, THAT THE CHARGING INTEREST IS GREATER THAN THE MEMBERSHIP EVALUATION.

IS THAT A FAIR STATEMENT TO THAT POINT?

>> YES, SIR.

>> BECAUSE YOU COULD HAVE A SITUATION WHERE IT'S LESS BECAUSE SOMEONE COULD HAVE A \$5,000 JUDGMENT AND IT COULD BE LESS.

WELL AT THAT POINT, THAT PERSON WHO RECEIVES THAT CHARGING INTEREST HAVE THE RIGHTS OF AN --

>> THAT'S CORRECT.

>> AND BY THAT ASSIGNMENT THEN DOES THE MEMBER NOT THEN CEASE TO HAVE AN ECONOMIC INTEREST? AT THAT POINT.

>> THE MEMBER CEASES TO HAVE AN ECONOMIC INTEREST --

>> OKAY, I UNDERSTAND.
LET'S JUST STOP -- THE MEMBER
WOULD CONTINUE TO HAVE A
MANAGEMENT INTEREST.
>> YES, SIR.
>> BUT UNDER THE DEFINITION OF
MEMBER, IT REQUIRES AN ECONOMIC
INTEREST, DOES IT NOT?
>> THE DEFINITION OF MEMBER OR
INTEREST --
>> NO, NO, THERE ARE DIFFERENT
-- MEMBER DEFINITION AND
MEMBERSHIP INTEREST DEFINITION.
THE DEFINITION INCLUDES YOU
MUST HAVE AN ECONOMIC INTEREST.
>> YES.
>> SO YOU HAVE TO HAVE THAT
ECONOMIC INTEREST.
WE THEN HAVE AN LLC.
WITH, WITH NO MEMBERS.
THE LEGISLATURE DIDN'T AFRIEND
THESE THINGS AND IT CAN'T LEAVE
AN INDIVIDUAL WITHOUT A REMEDY.
THERE MAY BE DIFFERENT STEPS
AND THEY MAY BE WASTED STEPS IS
WHAT THE CONCERN MAY BE BECAUSE
CERTAINLY IF YOU HAVE AN LLC
WITH NO MEMBER, YOU HAVE TO
HAVE A JUDICIAL REMEDY OF
DISSOLUTION.
YOU WOULD AGREE WITH THAT?
IF YOU HAVE A CIRCUMSTANCE THAT
THERE'S NO MEMBERS LEFT --
>> IF THERE WERE NO MEMBER --
>> BUT I DON'T AGREE THE
CHARGING REMEDY RESULTS IN NO
MEMBER.
>> WELL, I MEAN,,
>> YOU SAID THE STATUTE SAYS IT
CREATES THE SAME -- YOU BECOME
AN ASSIGNEE.
>> YOU BECOME AN ASSIGNEE.
>> DOESN'T IT SAY THAT THE
ASSIGNEE SAY THAT YOU HAVE LOST
THE ECONOMIC INTEREST ,
THE MEMBERS LOST THE ECONOMIC
INTEREST.
IS THAT WRONG.
>> THAT IS CORRECT.
>> OKAY THEN I HAVE TO GO BACK
-- I'M SORRY.
I DIDN'T MEAN TO INTERRUPT YOU.
>> I'M SORRY, JUDGE.
YOU HAVEN'T LOST THE MANAGEMENT

INTEREST.

>> I UNDERSTAND THAT.

YOU STILL HAVE THE MANAGEMENT
BUT THE DEFINITION OF MEMBER
REQUIRES AN ECONOMIC INTEREST.

>> WELL, I DON'T THINK
THAT'S --

>> READ, READ TO US WHAT THE
DEFINITION OF MEMBER IS.

>> I'M LOOKING AT SECTION 23.
OF THE DEFINITION.

>> OF MEMBER?

>> RIGHT.

IT SAYS MEMBERSHIP INTEREST,
MEMBERS INTEREST, OR INTEREST.

>> MEMBER -- DEFINITION OF
MEMBER.

>> ALL RIGHT, JUDGE, DEFINITION
OF MEMBER.

MEMBER MEANS ANY PERSON WHO HAS
BEEN ADMITTED TO A LIMITED
LIABILITY COMPANY AS A MEMBER
IN ACCORDANCE WITH HIS CHAPTER
AND HAS AN ECONOMIC INTEREST --

>> THERE YOU GO.

>> AND STOP RIGHT THERE.

AND HAS AN ECONOMIC
INTERESTING, THAT'S WHERE I'M
GOING WITH THIS, THAT DOES NOT
THEN CEASE TO HAVE MEMBERS IF
YOU HAVE NO ECONOMIC INTEREST
IN SOMEONE?

THAT'S -- BY STATUTORY
DEFINITION.

>> WELL, BUT JUDGE, I THINK IF
YOU LOOK AT 608432 2B.

>> WHICH IS, WHICH ONE IS THAT.

>> 2C.

>> WHAT'S THAT ABOUT?

>> THIS IS THE ONE THAT TALKS
ABOUT MEMBER CEASES TO BECOME A
MEMBER AND TO HAVE THE POWER TO
EXERCISE ANY RIGHTS UPON
ASSIGNMENT OF ALL OF THE
MEMBERSHIP INTEREST.

>> WELL, I MEAN, THAT'S OKAY.
I AGREE WITH THAT AS WELL, BUT
AGAIN --

>> WE HAVE TO --

>> OH, NO, I AGREE.

>> BUT LET ME ASK YOU THIS.

IN A SINGLE-MEMBER LLC, CAN'T
THE SINGLE MEMBER ASSIGN ALL
HIS INTEREST ESSENTIALLY SELL

HIS INTEREST ENTIRELY?

>> OF COURSE HE CAN.

>> WELL, IF A SINGLE-MEMBER LLC PERMITS THAT SORT OF TRANSFER OF INTEREST AND THAT SORT OF ASSIGNMENT OF ENTIRE INTEREST INCLUDING MANAGEMENT INTEREST, WHY CAN'T A JUDGMENT CREDITOR OBTAIN A SIMILAR INTEREST BECAUSE THE WHOLE POINT IS TO PREVENT A JUDGMENT CREDITOR FROM GETTING A GREATER INTEREST THAN COULD BE TRANSFERRED IN A SALE. ISN'T THAT RIGHT?

>> YEAH.

>> WELL IT SEEMS TO ME YOU'VE GOT A SITUATION HERE WHERE THE JUDGMENT CREDITOR IS GOING TO BE IN THE SAME POSITION THAT, THAT A PURCHASER COULD BE IN. AND I DON'T SEE HOW THIS PROVISION OF A STATUTE YOU ARE SEEKING REFUGE IN SHOULD PROVIDE REFUGE AND LET ME ASK A QUESTION.

WHY IS WHY IS PROFESSOR PINEBURGER WRONG WHETHER HE SAYS THE STATUTORY CONSTRUCTION WHICH YOU ARE URGING WOULD TRANSFORM FLORIDA LIMITED LIABILITY COMPANIES INTO A UNIQUE VEHICLE FOR INSULATING MISCREANT DEBTORS FROM THE CLAIMS OF LEGITIMATE DEBTORS.

>> WELL, JUDGE, I DON'T AGREE THAT FIRST OF ALL THE MEMBERSHIP INTEREST IS TERMINATED.

YOU HAVE A CHARGING LIEN. THE JUDGMENT CREDITOR DOES NOT BECOME IN OUR OPINION A MEMBER OF THE LIMITED LIABILITY COMPANY.

THEY'RE ENTITLED TO A CHARGING INTEREST.

YOU HAVE A LIEN.

THERE IS NO SUBSTITUTION OF INTEREST.

>> WHY SHOULDN'T THE CHARGING INTEREST EXTEND TO THE FULL EXTENT THAT THE, OF, OF THE ABILITY OF THAT MEMBER AGAINST IN THE CHARGING LIEN IS

ASSESSED COULD TRANSFER THE INTEREST?

>> BECAUSE THERE IS A DIFFERENCE IN A PURCHASER AND A CHARGING --

>> WHY SHOULD THERE BE A DIFFERENCE -- WHY SHOULD YOUR CLIENT BE ABLE TO TRANSFER AN INTEREST BUT NOT HAVE THAT SAME INTEREST THAT YOUR CLIENT COULD TRANSFER SUBJECT TO THE LEGITIMATE CLAIMS THAT ARE MADE AGAINST YOUR CLIENT?

>> WELL THE DIFFERENCE IS FOUND WE CONTEND IN THE STATUTORY SCHEME ITSELF.

6084321 PROVIDES THAT THE ASSIGNEE OF A MEMBER'S INTEREST SHALL HAVE NO RIGHT TO PARTICIPATE IN THE MANAGEMENT OF THE BUSINESS AND AFFAIRS OF A LIMITED LIABILITY COMPANY.

THE RIGHTS GIVEN IN 4334 ARE GIVEN TO AN ASSIGNEE THE ASSIGNEE BY DEFINITION IN THE STATUTE DOESN'T HAVE THE RIGHT TO MANAGE.

>> BUT IF YOU TAKE WHAT JUSTICE LEWIS HAS SAID AND BUT IT DOESN'T FIT IN A SINGLE-MEMBER LLC BECAUSE IF THAT MEMBER NO LONGER HAS AN ECONOMIC INTEREST, THEY CAN'T BE A MEMBER.

THERE'S NO ONE MANAGING THIS LLC.

AND WE START TO LOOK AT SOMETHING THAT AS YOU CAN SEE, AT LEAST CERTAIN MEMBERS OF COURSE STRUGGLING WITH WHAT SEEMS TO BE A CLEARLY ABSURD AND UNINTENDED RESULT OF THE LEGISLATION.

>> THE AMOUNT OF THE JUDGMENT AGAINST YOUR CLIENT IS HOW MUCH?

>> APPROXIMATELY \$10 MILLION.

>> AND WHAT THIS PARTICULAR -- ARE THERE SEVERAL COMPANIES THAT ARE LLC CREATED?

>> YES, YOUR HONOR, I THINK THERE WERE FIVE.

>> OKAY SO THE ARGUMENT PERTAINS TO EACH OF THE FIVE.

>> YES.

>> AND DO WE KNOW, IS THERE ANYTHING IN THE RECORD OF WHAT THE ASSETS ARE OF EACH OF THE FIVE.

>> SEVERAL MILLION.

>> WE WOULD BE HAVING A DIFFERENT ARGUMENT IF THEY WERE LESS THAN THE AMOUNT OF THE JUDGMENT AGAINST YOUR CLIENTS, CORRECT?

>> WELL, NO, JUDGE, I THINK WE'D HAVE THE SAME ARGUMENT --

>> ESSENTIALLY WHETHER IT'S THIS HOOP OR THE NEXT HOOP, ARE YOU SAYING THERE IS A WAY UNDER FLORIDA LAW THAT YOUR CLIENTS CAN BE INSULTED FROM THE \$10 MILLION JUDGMENT THAT REALLY WAS OBTAINED BECAUSE OF THEIR ILLEGAL OPERATION OF THESE COMPANIES, THESE LLCs WITH -- BECAUSE OF SOME QUIRK OF FLORIDA LAW.

IS THAT YOUR POSITION TODAY?

>> NO, IT IS NOT, JUDGE, BECAUSE THESE LLCs WERE NOT INVOLVED IN ANY IMPROPER CONDUCT WHATSOEVER.

THERE WERE NO FINDINGS OF ANY WRONGDOING REGARDING THE LLC.

>> BUT THERE'S NO QUESTION THAT YOUR CLIENTS -- SO I CORRECT THAT I STAND CORRECTED, LET'S GO BACK, THAT YOUR CLIENTS WHO DID SOMETHING ILLEGALLY THROUGH OTHER COMPANIES HAVE FIVE LLCs AND THEY ARE THE SOLE MEMBER OF EACH OF THE FIVE LLCs. AND THEY HAVE A JUDGMENT AGAINST THEM THAT FAR EXCEEDS THE VALUE OF FIVE LLCs IS THAT CORRECT?

>> THAT IS CORRECT, JUDGE. THERE WAS A MONETARY JUDGMENT. WE DON'T AGREE THAT IT WAS SOMETHING ILLEGAL, PER SE.

>> HOW DO YOU --

>> THERE WAS A MONETARY JUDGEMENT.

>> SAY THEY ATTACH THE RIGHTS TO PROCEEDS TO ALL FIVE LLCs WHAT DO HAPPENS?

>> WITH THEIR CHARGING ORDER.

>> WHAT HAPPENS NEXT?
HOW DO THESE COMPANIES CONTINUE
TO OPERATE?

>> THE COMPANIES CONTINUE TO
OPERATE WITH ANY DISTRIBUTIONS
ANY SINGLE MEMBER --

>> WHO MAKES THE DECISION WHAT
THE DISTRIBUTION IS GOING TO
BE?

>> WHO MAKES THE DECISION?
>> THE MANAGEMENT OF THE LLC.
>> BUT THEY CAN'T MANAGE IT
ANYMORE BECAUSE THEY'RE NOT A
MEMBER.

>> JUDGE, WE DON'T AGREE THAT
THEY'RE NOT A MEMBER.

>> THAT'S REALLY WHERE IT COMES
BACK.

>> WE DON'T AGREE THAT THEY'RE
NOT A MEMBER BECAUSE --

>> WHAT DOES -- AGAIN, WHAT
DOES, DOES IT NOT SAY THE
DEFINITION TO BE A MEMBER THAT
YOU HAVE AN ECONOMIC INTEREST?
DOESN'T IS SAY THAT.

>> YES, IT DOES, BUT.

>> LET ME ASK ONE MORE QUESTION
AND THEN YOU CAN GIVE ME YOUR
BUT.

DO YOU AGREE THE ECONOMIC
INTEREST IS NO LONGER THERE IN
THIS CASE?

>> THE ECONOMIC INTEREST
WOULD'VE BEEN SUBJECT TO THE
CHARGING LIEN.

>> ENTIRELY.

>> IT'S AN ASSIGNMENT OF THE
ECONOMIC INTEREST ONLY THE
ECONOMIC INTEREST PURSUANT TO
6084321.

>> WHY WOULDN'T THE ASSIGNEE
UPON ASSIGNMENT OF THAT
FINANCIAL INTEREST BECOME A
MEMBER?

>> BECAUSE IN 6324321, IN THE
STATUTE THE ASSIGNEE OF A
MEMBER'S INTEREST SHALL HAVE NO
RIGHT TO PARTICIPATE IN THE
MANAGEMENT AND BUSINESS AND
AFFAIRS OF A LIMITED LIABILITY
COMPANY.

>> SO WHY ARE THEY THEN NOT A
MEMBER WITH A FINANCIAL
INTEREST.

JUSTICE LEWIS SAID THE
DEFINITION HAS TO INCLUDE A
FINANCIAL INTEREST SO
THAT THE ASSIGNER IS NOT IN THE
POSTURE WHY IS THE ASSIGNEE?

>> JUDGE, THE ASSIGNEE IS NOT
IN THE POSTURE BECAUSE THE
JUDGMENT ITSELF HAS NO
MANAGEMENT RIGHTS?

>> WELL WHERE -- IS IT A
REQUIREMENT THEY HAVE
MANAGEMENT RIGHTS TO BE A
MEMBER?

IS THAT IN THE STATUTE
SOMEWHERE?

IT ONLY REQUIRES AN ECONOMIC
INTEREST.

THAT ECONOMIC INTEREST LIES
WITH THE ASSIGNEE.

>> THE ASSIGNEE HAS AN ECONOMIC
INTEREST PURSUANT TO THE
CHARGING LIEN.

WE AGREE ON THAT.

>> RIGHT.

>> HOWEVER, THE STATUTORY
SCHEME ITSELF IS SET UP BY THE
LEGISLATURE PROVIDES THAT THEY
HAVE THE PERSON, THE JUDGMENT
CREDITOR GETTING THE CHARGING
LIEN HAS THE RIGHTS OF AN
ASSIGNEE.

>> CORRECT.

>> THE RIGHTS OF THE ASSIGNEE
DO NOT INCLUDE MANAGEMENT.

>> I AGREE.

>> THEY ARE NOT A FULL MEMBER.
THEY DON'T HAVE MANAGING
CONTROL.

>> THEY DO NOT BECOME A FULL
MEMBER.

DO THEY HAVE MEMBERSHIP RIGHTS
DUE TO THE ECONOMIC INTEREST.

>> I DON'T BELIEVE THEY BECOME
A MEMBER.

>> WHY?

>> BECAUSE THE CHARGING LIEN
DOES NOT PROVIDE THAT THEY
BECOME A MEMBER.

IT SAYS MERELY THAT THEY HAVE
THE RIGHTS OF AN ASSIGNEE.

THE MEMBERSHIP INTEREST IS NOT
TERMINATED BECAUSE ALL OF THE
MEMBERS' INTEREST HAS NOT BEEN
ASSIGNED.

AGAIN PURSUANT TO THE STATUTE.
ALL OF THE MEMBERS' INTEREST
HAS NOT BEEN ASSIGNED.

>> WE GET BACK TO THE
DEFINITION WE WERE TALKING
ABOUT IT TALKS ABOUT MANAGEMENT
IN-- ECONOMIC INTEREST BUT NOT
MANAGEMENT INTEREST IN THE
DEFINITION OF MEMBER.

>> IN THE DEFINITION OF MEMBER,
IT DOES NOT BUT IN THE
DEFINITION OF MEMBERSHIP
INTEREST IT DOES.

>> WELL, YOU'RE ALMOST, YOU
KNOW, I THINK WHAT BEGOES --
WHAT THIS GOES BACK TO IS THAT
THERE IS SOME ARGUMENT THAT
UNDER THE PLAIN READING OF THE
STATUTE, YOU KNOW, IT LEADS TO
THE SAME RESULTS IN A SINGLE
MEMBER VERSUS MULTIMEMBER LLC.
WE UNDERSTAND IN A MULTIPLE
MEMBER LLC WHY THIS WOULD NOT
-- WHY THE LEGISLATURE WOULD
NOT WANT THIS TO OCCUR AND YOUR
BEST ARGUMENT IS THAT IT DIDN'T
DIFFERENTIATE AND IF WE STICK
TO THE PLAIN MEANING THAT'S
WHERE WE HAVE TO GO.

>> YOU CAN ANSWER JUSTICE
PARIENTE'S QUESTION BUT THEN IF
YOU WANT TO SAVE ANY TIME,
BRING IT TO A CONCLUSION.

>>.

>> OUR ARGUMENT IS THAT THE
MEMBERSHIP INTEREST ITSELF THAT
-- HAS NOT BEEN ASSIGNED THERE
IS NO STATUTE IN THE SCHEME
THAT SAYS A JUDGMENT CREDITOR
BECOMES A MEMBER AND IN FACT,
THE STATUTE SAYS THAT THE
MEMBER ONLY CEASES TO BE A
MEMBER IF THERE'S AN ASSIGNMENT
OF ALL OF THE MEMBERSHIP
INTEREST.

THEREFORE WE BELIEVE THE
CERTIFIED QUESTION SHOULD BE
ANSWERED IN THE NEGATIVE.

THANK YOU.

>> THANK YOU VERY MUCH.

MR.^SINGER?

>> THANK YOU.

MAY IT PLEASE THE COURT, MY
NAME IS JOHN ANDREW SINGER AND

I REPRESENT THE FEDERAL TRADE COMMISSION.

>> MR. SINGER AS WE GO INTO THIS, IT IS VERY CLEAR THAT THIS STATUTE JUST, JUST DOESN'T CONTEMPLATE THE SINGLE-MEMBER SITUATION WE ARE FACING. WOULD YOU -- AGREE WITH THAT. IT DOESN'T ADDRESS THAT.

>> I WOULD AGREE TO THAT, YOUR HONOR.

>> OKAY.

THE SECOND STEP BECOMES WE HAVE TO START LOOKING AT THE STATUTE OF WHAT HAPPENS.

AND, AND SO THERE'S WHERE, I MEAN, I AM SEEING YOU HAVE A CHARGING INTEREST YOU HAVE RIGHTS OF ASSIGNEE.

THE ASSIGNEE DOES NOT BECOME A MEMBER BUT THAT -- WE ALSO HAVE TO CONSTRUE THE STATUTE SO THERE MAY BE A TIME IN THE FUTURE WHERE A SINGLE MEMBER THE JUDGMENT'S LESS THAN THE FULL INTEREST.

YOU KNOW, THAT KIND OF THING. SO LET ME SEE IF THIS WALKS -- MAYBE JUMPING THROUGH HOOPS BUT IT'S NOT JUDICIALLY REWRITING A STATUTE.

AND THAT'S, I THINK THAT'S A CONCERN YOU SEE.

CASES FROM BANKRUPTCY AND CASES AROUND THE AREA AND COURTS JUST HAUL OFF AND JUST DO IT WITHOUT A DIRECT STATUTE.

YOU WOULD AGREE WITH THAT, WOULDN'T YOU?

>> I AGREE THEY TRY TO HARM UNDERSTAND A VARIETY OF COMPLEXITIES.

>> BUT THEY -- HARMONIZE A VARIETY OF COMPLEXITIES.

>> THEY REALLY JUST CREATE ADY -- CREATE A NEW PROVISION.

LET ME ASK THIS QUESTION AND TEST THIS REASONING.

IF IT IS A SINGLE MEMBER AND THE JUDGMENT INTEREST OR THE OUTSTANDING JUDGMENT'S GREATER THAN THE MEMBER'S INTEREST.

>> YES, SIR.

>> AND WE GO YOU THE CHARGING

ASPECT, -- AND WE GO THROUGH THE CHARGING ASPECT, THAT MEMBER THEN LOSES THE ECONOMIC INTEREST AND IS NO LONG ARMEMBER UNDER THE DEFINITION OF MEMBER UNDER THE FLORIDA STATUTE.

AND IF YOU DON'T HAVE A MEMBER, YOU DO HAVE A REMEDY TO GO THROUGH THE CIRCUIT COURT FOR EITHER A DISSOLUTION, FORCED BY THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR IF THIS IS SUCH AN AMOUNT AND THIS MAY CREATE ANOTHER ISSUE BUT IF, IF THE MEMBER IS INSOLVENT THEN AN ORDER OF INSOLVENCY AGAINST THE MEMBER WOULD TERMINATE.

>> THAT WOULD BE ONE POSSIBILITY.

>> SO THOSE WOULD BE WAYS TO DO IT WITHIN THE EXISTING STATUTES S. THAT NOT CORRECT?

>> I THINK THAT WOULD BE ONE POSSIBILITY ALTHOUGH THE ISSUE THAT EXISTICIZE THE JUDGMENT CREDITOR I THINK IN 608441 DEALING WITH DISSOLUTION OF THE LLK IS SUPPOSED -- AS OPPOSED TO A MEMBER OF THE LLC. THAT DISTINCTION BECOMES SOMEWHAT MURKY IN THE SINGLE-MEMBER SITUATION. I THINK ANOTHER WAY TO DO IT, IF I MIGHT SUGGEST.

FOLLOW AS STATUTE AND -- -->> FOLLOW AS STATUTORY AND HAS STATUTORY BASIS.

>> I THINK THIS DOES, I HOPE YOU AGREE WITH ME ON THIS POINT.

THAT WOULD BE THIS, UNDER SECTION 433 SUB4 WHAT THE ASSET CREDITOR GETS, THE ASSIGNEE GETS, IS IN FACT A ECONOMIC INTEREST, AND INCHOATE.

>> SAY THAT AGAIN.

THE ASSIGNEE GETTING.

>> CLEARLY GETS ECONOMIC INTEREST.,.

>> THEY AGREE WITH THE ECONOMIC INTEREST.

>> YES.

I WOULD ALSO SAY WHEN YOU LOOK

AT WHAT THE MEMBERSHIP INTEREST IS THAT'S ASSIGNED UNDER 608.402 SUB23 IN THE DEFINITIONS, THAT THEY RECEIVE THE MEMBER SHARE OF PROFITS AND LOSSES OF THE LLC, THE RIGHT TO RECEIVE DISTRIBUTIONS OF THE LLC'S ASSETS, VOTING RIGHTS, MANAGEMENT RIGHTS, OR ANY OTHER RIGHTS.

THIS IS WHERE I LOOK BACK AT THE EXCELLENT AMEEK THIS EXCELLENT PROFESSOR OF LAW -- AMICUS THE PROFESSOR OF LAW WANTS US TO ENGAGE IN POLICY I THINK WHEN THE LEGISLATURE HAS NOT SEEN FIT TO HARMONIZE THE CHARGING LEAN.

-- LIEN.

IF YOU HAD SEVERAL OF THE YOU WOULD AGREE THE ASSIGNEE WOULD NOT GET ANY MANAGEMENT RIGHTS IN THE LLC.

>> YES, I WOULD AGREE WITH THAT, YOUR HONOR.

>> YES.

>> SO WHERE ARE WE GETTING THE IDEA THAT WE'RE GOING TO SAY THAT BECAUSE IT'S A SINGLE MEMBER THEY THEN SHOULD GET THE MANAGEMENT INTEREST.

YOU KNOW, IN OTHER WORDS, WHAT --, WHERE SCHOOLED IN SAYING WE CAN'T SUBSTITUTE OUR JUDGEMENT FOR THE LEGISLATURE.

EVEN THOUGH THE LEGISLATURE HAS SOMETHING THAT DOESN'T MAKE SENSE THAT'S THEIR PROBLEM NOT OUR PROBLEM SO I'M HAVING TROUBLE SEEING HOW YOU GET AROUND THE CHARGING LANGUAGE AND THEIR FAILURE TO MAKE A DISTINCTION WITH WHEN IT'S ONLY A SINGLE MEMBER LLC.

>> JUSTICE LEWIS'S SUGGESTION WOULD BE ONE POSSIBLE SOLUTION, ONE WHICH I WOULD URGE WHICH I THINK IS SIMPLER AS WELL, INVOLVES LESS JUDICIAL INTERVENTION.

LOOK AT 608.432 SUB1 A AS WELL AS 608.433 SUB1.

BOTH OF THOSE PROVISIONS PROVIDE THAT ONLY UPON THE

OTHER MEMBERS OF AN LLC.
HERE WHEN THE ASSIGNMENT
OCCURS, ALL OF THE MEMBERSHIP
INTERESTS ARE TRANSFERRED TO
THE ASSIGNEE.

GENERALLY IN THE SITUATION --
>> BUT THAT'S NOT NORMALLY
TRUE.

>> THAT'S NOT NORMALLY TRUE BUT
THIS IS --

>> SO WHY IS IT?

WHAT ARE YOU SAYING, WHY IS IT
-- ARE YOU SAYING THAT BY
VIRTUE OF THERE ONLY BEING ONE
PERSON THERE, THEY'RE
ESSENTIALLY FORCED TO CONSENT
TO THE TRANSFERF THEIR WHOLE
INTEREST?

>> I AM SAYING --

>> BECAUSE AGAIN THAT STILL
SEEMS TO ME WE ARE PUTTING A
JUDICIAL GLOSS ON SOMETHING
TO REACH A RESULT THAT WE ALL
KNOW IS PROBABLY ONE THAT IS IN
KEEPING OVERALL WITH WHAT THE
LEGISLATURE WOULD WANT BUT NOT
ONE THEY'VE EXPRESSED THROUGH
THE PLAIN LANGUAGE.

>> I DON'T THINK THAT'S PUTTING
A JUDICIAL GLOSS ON, WITH DUE
RESPECT, JUSTICE PARIENTE AND I
SAY THAT FOR THIS REASON.
IN THIS SITUATION IF YOU READ
OUT -- IF YOU TOOK OUT THE
OTHER MEMBER PROVISION, THOSE
PROVISIONS BECOME MEANINGALIZE
IN A SINGLE MEMBER SITUATION.
THE ONLY WAY THAT YOU WOULD BE
ABLE TO GIVE MEANING TO THE
ENTIRE STATUTE IN THOSE
PROVISIONS IS TO SAY IN A
MULTIMEMBER SITUATION THE OTHER
MEMBERS HAVE TO GIVE CONSENT.
IN A SITUATION LIKE THIS WHERE
THERE IS ONLY ONE MEMBER, THE
ASSENT IS IN FACT WOULD BE
JUDICIALLY IMPLIED.

BECAUSE THE ASSIGNMENT IS BEING
MADE BY THE COURT.

AGAIN IT'S NOT A VOLUNTARY
ASSIGNMENT IT'S AN INVOLUNTARY
ONE BUT IT'S AN ASSIGNMENT
NONETHELESS MUCH LIKE JUSTICE
CANADY SAID, IN A SALE

SITUATION.

>> BUT IN A SALE A MEMBER
CANNOT SELL THEIR INTEREST AND
LET THAT PERSON BECOME A
MEMBER.

JUST ABSOLUTE.

IT REQUIRES.

>> IN A MULTIMEMBER SITUATION.

>> YES, SO THAT'S WHAT THE
STATUTE REQUIRES.

>> IN A MULTIMEMBER SITUATION.

>> NOW ADD THE GLOSS ON THIS IF
YOU WILL.

YOU CAN ALSO HAVE A MANAGEMENT
AGREEMENT AND THE MANAGEMENT
RIGHTS CAN REST IN A MANAGER,
CORRECT?

>> I UNDERSTAND BUT IF WE ARE
INTERPRETING A STATUTE WE HAVE
TO HAVE IT SO IT APPLIES
CROOTHESIS BOARD SO WE COULD
HAVE A SITUATION WHAT WOULD
HAPPEN OF YOUR SCENARIO IF YOU
HAVE A MANAGER.

THERE A IS A MANAGEMENT AND
THERE IS NO MEMBER.

>> IF THERE WERE A MANAGER AND
-- THE NEW MEMBER WOULD HAVE TO
TAKE OWNERSHIP SUBJECT TO AT
OPERATING AGREEMENT HOWEVER IN
THIS SITUATION, IF YOU ARE ONE

--.

>> I UNDERSTAND ALSO WE HAVE TO
COME UP WITH A PRINCIPLE OF LAW
THAT IS GOING TO APPLY ACROSS
THE BOARD UNLESS WE KEEP HAVING
EXCEPTIONS TO EXCEPTIONS I MEAN
THAT'S THE PROBLEM.

>> I GUESS YOU WOULD UNDERSTAND
THE LLC STATUTE ITSELF THAT
SOME OF THE DEFAULT
PROVISIONS IN A STATUTE CAN BE
MODIFIED BY AN OPERATING
AGREEMENT BY A MANAGEMENT
AGREEMENT THIS WOULD BE ONE
WHERE THE SINGLE MEMBER OF LLC
CHOOSES TO GO INTO A MANAGEMENT
AGREEMENT THAT WOULD MAKE A
DIFFERENCE BUT IN A SITUATION
LIKE THIS WHERE THERE IS NO
EVIDENCE OF ANY TYPE OF OPERATE
ORGANIZATION MANAGEMENT
AGREEMENT IT'S MEMBER MANAGED
BUT ITS IN FACT IT'S A MUCH

SIMPLER SITUATION BECAUSE THE MEMBERSHIP INTEREST WOULD BE ASSIGNED.

IT'S THE ENTIRE MEMBERSHIP INTEREST --

>> IT DOESN'T SAY THE MANAGEMENT INTEREST. AN ASSIGNEE.

>> ACTUALLY IT SAYS HE RECEIVES UNDER 608 -- HE RECEIVES OTHER THINGS THE MANAGEMENT RIGHTS ARE ASSIGNED TO HIM. ARE ASSIGNED.

>> THE RIGHTS OF ASSIGNEE.

>> I THINK ON AN IN COT BASIS THEY CAN'T EXERCISE IT MANAGEMENT BENEFITS UNLESS OTHER MEMBERS ASSENT --.

>> IS THERE ANYTHING IN THE STATUTE ABOUT IN COT RIGHTS TO MANAGEMENT OR ANYTHING LIKE THAT.

>> THE STATUTE DOES NOT SAY THAT --

>> SO THERE IS THE PROBLEM WE GET INTO IS THAT DO WE, IS IT BETTER TO TRY TO UNLOADS WHAT WE HAVE IN THE STATUTE. AND WORK THROUGH THIS.

SOME CALL IT JUDICIAL ACTIVISM TO REWRITE IT, AND, AND TO THE RESULT IT SEEMS TO MESET THAT THE POLICY IS THAT ASSETS CAN'T BE JUST TOTALLY AND COMPLETELY ESCAPE EVERYTHING AND I DON'T THINK THAT'S THE INTENT OF THE STATUTE BUT WE HAVE A STATUTE TO DEAL WITH.

>> I THINK YOU ARE CORRECT THAT IS NOT THE STATUTE.

SINGLE MEMBER LLCs AND I CITED THOSE, IT'S --

>> THAT'S ALL FINE.

IT SEEMS THERE ARE LAW PROFESSORS OUT THERE SAYING, YOU KNOW, AGAIN, AS I'M UNDERSTANDING THIS, WHEN I WENT TO LAW SCHOOL I GUESS I DON'T REMEMBER LLCs AND YOU KNOW I WASN'T A FAN OF BUSINESS ASSOCIATIONS AS A, AS, I HAD CORPORATIONS, I REMEMBER CORPORATIONS, I KNOW PARTNERSHIPS.

THIS STARTED OUT TO TRY TO HELP IN PARTNERSHIPS, I MEAN THAT'S WHAT -- IT WAS, ORIGINAL BASIS FOR IT WHICH IS THAT CORRECT, THAT IS THAT YOU WANTED TO PROTECT IN CASE ONE PARTNER WAS HAD GOT AN JUDGMENT THAT THE WHOLE PARTNERSHIP WOULDN'T DISSOLVE SO YOU HAVE AT THIS LLC TO REALLY PROTECT THAT. ALLOW GROUPS OF PEOPLE TO OPERATE UNDER THE AUSPICES OF A BUSINESS SHIELD.

SO TO SPEAK.

AND ALLOW THOSE WHO WANT TO OPERATE TOGETHER WITHOUT THERE BEING A DISSOLUTION OF THE PARTNERSHIP IF THERE WAS ATTACHMENT OF THE ASSETS.

IS THAT CORRECT?

>> THAT'S CORRECT.

THE WHOLE CHARGING ORDER CONCEPT COMES FROM BEING ABLE TO PICK YOUR PARTNERS AND NOT TO HAVE SOMEONE INVOLUNTARY --

>> SO WHEN THE SINGLE MEMBER LLC, WHETHER THAT WAS AMENDED IT WAS AMENDED AS I'M -- WHEN IT WAS AMENDED IT WAS BECAUSE THERE WAS A CHANGE IN THE TAX CODE IN ORDER TO TAKE ADVANTAGE OF SOMETHING IN THE TAX CODE.

IS THAT CORRECT?

>> THAT'S PARTY CORRECT.

>> SO NOBODY EVER WENT BACK TO LOOK AT THIS STATUTE AND SEE HOW IT WORKS WHEN SOMEBODY IS HAVING -- BEING A MEMBER WITH THEMSELVES.

I MEAN, WHICH IS, SORT OF AN ABSURDITY RIGHT.

A MEMBERSHIP MEETING TODAY.

AM I AVAILABLE.

I MEAN THAT'S WHAT WE'RE REALLY TALKING ABOUT HERE AND I THINK THAT'S WHAT, SO I'M STILL TRYING TO UNDERSTAND.

TELL ME AGAIN, HOW DO YOU GET AROUND THE CHARGING LIEN, CHARGING ORDER STATUTE, WHICH IS PRETTY SPECIFIC IN 6084321 THAT THE REMEDY IS ONLY THE ASSIGNMENT OF THE ECONOMIC INTEREST.

WALK ME THROUGH THAT AGAIN,
WHICH PROVISION ALLOWS US TO
LOOK AT THE WHOLE STATUTE AND
SAY THAT IS THE PROPER
INTERPRETATION?

>> I WOULD SAY FIRST TO LOOK AT
608.4434 ITSELF SAYS THAT --
YOU GET THE RIGHTS OF AN
ASSIGNEE, WHICH IS TO SAY YOU
GET THE MEMBERSHIP INTEREST
ASSIGNED TO YOU.

>> DOES THAT MAKE THEM A
MEMBER?

>> PARDON ME?

>> DOES THAT MAKE THEM A
MEMBER?

>> THEY DO NOT CAN BECOME THE
MEMBER.

AT THAT POINT THEY HAVE PASSIVE
ECONOMIC RIGHTS TO THE COMPANY.
DO NOT HAVE MANAGEMENT RIGHTS.
THE STATUTE DEFINES MEMBERSHIP
INTEREST AS BEING MUCH BROADER.
THAT'S THE FIRST STEP.

THE SECOND STEP WOULD
BE 608.432 SUB2 C PROVIDES THAT
A MEMBERSHIP INTEREST
TERMINATES UPON ASSIGNMENT.
OF THE ENTIRE MEMBERSHIP
INTEREST.

IN THIS CASE --

>> ENTIRE.

THE ENTIRE -- MEMBERSHIP
INTEREST.

>> WELL, IS IT?

LET'S BE SURE BECAUSE THAT'S
WHAT WE'RE LOOKING FOR.
HOW DOES THE STATUTE APPLY.
DOES IT REALLY?

>> YES, BECAUSE 433 SUB4 SAYS
THE MEMBERSHIP INTEREST IS, YOU
GET IT RIGHTS OF AN ASSIGNEE
INTEREST AND 433, 433 1 SAYS
THAT THE -- 432 C SAYS THE
MEMBERSHIP INTEREST TERMINATES
UPON ITS ASSIGNMENT AND AT THIS
POINT THE -- THE JUDGMENT'S A
LITTLE OVER \$10 MILLION THERE'S
SIX LLCs ACTUALLY NOT FIVE AND
THEIR COLLECTIVE VALUE MOST OF
THE ASSETS HAVE BEEN LIQUIDATED
A LITTLE OVER \$2 MILLION.

>> NOW THAT PROVISION THAT YOU
CITE IS INTENDED TO PREVENT A

MEMBER FROM ASSIGNING HIS OR HER INTEREST WITHOUT THE CONSENT OF THE OTHER MEMBERS. CORRECT?

SO IS THAT, IS ORDINARY STANDING.

>> VOLUNTARY ASSIGNMENT AS OPPOSED TO INVOLUNTARY ONE, THAT'S CORRECT THE PROVISION WHICH ALSO COMES INTO PLAY HERE WHICH WOULD BECOME SOMEWHAT MEANINGLESS IF YOU ENDED UP IF THE SITUATION PROPOSED BY THE APPELLANT, IS 608.441 SUB1 B WHICH JUSTICE LEWIS BROUGHT UP, WHICH IS IF THERE ARE NO MEMBERS, THE LLC MUST BE DISSOLVED.

ONE WAY TO APPROACH THAT WOULD BE TO REQUEST THE JUDICIAL DISSOLUTION OF THE LLC AND GET THAT THE OTHER WAY WHICH I WOULD SUGGEST WOULD BE EQUALLY EFFECTIVE AND EQUALLY CAN BE READ IS TO LOOK AT 432 SUB1 A AND 433 SUB1, WHICH SAYS.

, WHICH WHAT, WHAT PREVENTS AN ASSIGNEE FROM BECOMING A MEMBER.

IN A SALES SITUATION OR IN THIS SITUATION.

IS THE CONSENT OF THE OTHER MEMBERS.

THAT, THE OTHER MEMBERS SITUATION, LANGUAGE SIMPLY DOES NOT MAKE SENSE, WOULD NOT SEEM TO APPLY IN INSINGLE MEMBER LLC SITUATION.

>> SO WHAT'S WRONG WITH SIMPLY WHAT, AS FAR AS YOU GOT THAT THE MEMBERSHIP INTEREST WHICH HAS BEEN NOW ASSIGNED, INVOLUNTARILLY THAT MEMBER'S INTEREST TERMINATESINATES AND IT TERMINATES ANYWAY -- TERMINATES ANYWAY AS FAR AS I SEE IT BECAUSE THEY DON'T HAVE ECONOMIC INTEREST THEY CAN'T BE A MEMBER.

>> THAT'S CORRECT.

>> AND AT THAT POINT RATHER THAN SAYING THE CHARGING ORDER TAKES -- I MEAN THAT YOU GET ALL THE ASSETS THERE IS THAT AT

LEAST ONE OTHER STEP, WHICH IS THAT THE, OR THE JUDICIAL, WHATEVER, WHEREVER IT IS, HAS TO DISSOLVE THE LLC BECAUSE THERE ARE NO LONGER MEMBERS. I MEAN, THAT'S -- I DON'T KNOW -- I MEAN MAYBE WE'RE -- I DON'T KNOW IF THAT TAKES LIKE -- THAT HOOP IS, IS A WHOLE OTHER ISSUE BUT FROM MY POINT OF VIEW, THAT SEEMS LIKE IT AT LEAST IS FAITHFUL TO THE STATUTORY SCHEME.

>> A THAT WOULD BE THE WAY TO DO T. IN THE CASE OF THE FEDERAL DISTRICT JUDGE IT WAS ABOUT TWO SENTENCES LONG AS I RECALL AND IT SAID ESSENTIALLY ALL RIGHT, TITLE, AND INTEREST WAS TRANSFERRED TO THE RECEIVER IN THIS CASE BECAUSE IT GIVES SOME BACKGROUND.

THE FEDERAL TRADE COMMISSION WENT IN, BROUGHT ITS LAW ENFORCEMENT ACTION, HAD A RECEIVER PLACED OVER THE DEFENDANTS AND THEIR ASSETS, THEIR CORPORATE ASSETS AND THEIR PERSONAL ASSETS. AMONG THOSE ASSETS FOR THE LLC ESSENTIALLY IN A SENSE IN A SENSE ESSENTIAL DISSOLUTION, THE DISTRICT COURT JUDGE SAID I'M GIVING I'M ASSIGNING ALL RIGHT, TITLE AND INTEREST TO THE RECEIVER WHO HAPPENS TO ALSO BE THE RECEIVER IN THE FCC'S LAW ENFORCEMENT ACTION. THE RECEIVER THEN WAS GIVEN AUTHORITY TO LIQUIDATE THOSE ASSETS WHICH HE DID BECAUSE THAT ORDER WAS NEVER CHALLENGED.

>> THE ORDER DOESN'T SAY THAT.

>> IT DOESN'T SAY THAT.

>> IT'S THE CLASSIC KIND OF JUDICIAL TRANSFER WITHOUT DISSOLUTION LANGUAGE.

>> IT WOULD BE MUCH -- IT WOULD BE MUCH BETTER IF THE JUDGE HAD BEEN A BIT MORE EXPLICIT.

>> I MEAN HONESTLY REALLY IT IS THE KIND OF LANGUAGE THAT YOU SEE WITH REGARD TO A JUDICIAL

TRANSFER OF ASSETS OF, OF A HOME OR WHATEVER.

WE DON'T WANT TO PLAY GAMES THOUGH.

WE WANT TO GO TO WHAT DOES THE STATUTE SAY AND IT MAY BE IT'S ONLY ONE MORE ORDER ENTERED AND IS NEEDED BY THE COURT.

>> IT COULD BE CLARIFICATION OF THE EXISTING ORDER IN SITUATION OF A SINGLE MEMBER LLC AND THE ASSETS FAR EXCEED THE VALUE -- EXCUSE ME, THE JUDGMENT EXCEEDS THE ASSETS THAT IN FACT THE LLC CAN BE DISSOLVED AND WHETHER IT'S BY RECEIVER OR BY WHOEVER WOULD TAKE CARE OF THE DISTRIBUTION AND THAT COULD BE PASSED ON TO SATISFY THE JUDGE SNOOT THE ONLY QUESTION I WOULD SAY, ARE THERE OTHER THINGS YOU MUST DO IN CONNECTION WITH THE DISSOLUTION RATHER THAN JUST A SIMPLE ORDER?

>> UH.

>> I MEAN ARE THERE TAX THINGS THAT TO BE DONE AND DO YOU HAVE TO GO YOU -- YOU UNDERSTAND WHAT I'M SAYING THERE IS A DIFFERENCE BETWEEN A FORMAL DISSOLUTION PROCEEDING AND A FINANCIAL TRANSFER.

>> THAT'S -- JUDICIAL TRANSFER.

>> THAT'S WOULD BE ADVISABLE.

>> WE ARE ANSWERING A CERTIFIED QUESTION.

I GUESS THIS COURT DOESN'T HAVE TO FIGURE OUT --.

>> THE, I'LL LEAVE THAT TO YOUR HONORS.

BUT AS I SAID, THE ULTIMATE ISSUE HERE WOULD BE, YOU KNOW, EXACTLY THE MECHANICS OF HOW IT'S DONE.

THERE IS SOME SUGGESTION IN FLORIDA STATUTE THAT CAN BE A RECEIVER TO HANDLE THAT.

THE FTK IN -- FTC IN MANY LAW ENFORCEMENT ACTIONS WHETHER IT'S LLC OR REGULAR CORPORATION HAS SITUATION WHERE THEY HAVE RECEIVER HAS TO TAKE CARE OF ALL SITUATIONS, TAX CREDITOR, IT'S NOT A NOVEL SITUATION THE

COMMISSION FINDS ITSELF IN.
THE ISSUE WOULD BE JUST HAVING
TO TIE UP THE LOOSE ENDS, DOT
THE Is AND CROSS THE Ts TO DO
THAT.

WHAT WE'RE SIMPLY SAYING THERE
SHOULD BE SOME MECHANISM THAT
THE COMMISSION RUINED EITHER
ITSELF OR IN MOST CASES THROUGH
A RECEIVER WOULD BE PERMITTED
TO GET TO THESE ASSETS AND
DISSOLVE THIS.

WHAT WE TRULY THINK IS THE CASE
AND I THINK THE JUSTICE
EXPRESSED THIS IS THAT IT WAS
NOT -- THAT THIS PROVISION WAS
NOT INTENDED FOR SINGLE-MEMBER
SITUATION WHERE THERE ARE NO
INNOCENT MEMBERS WHO NEED TO
HAVE SHARE INTEREST PROTECTED,
THAT YOU SHOULD BE ABLE TO KEEP
DRIVING A FERRARI, OWNING A
NICE CONDOMINIUM SOMEWHERE, AND
OWNING IT INDEFINITELY.

>> JUSTICE LEWIS ASKED YOUR
PARTNER EARLIER IF THERE WERE A
MANAGEMENT AGREEMENT WHAT KIND
OF INTEREST WOULD, WOULD, THE
CREDITOR HAVE AND WOULD THEY
HAVE TO THEN GO THROUGH THE
CHARGING --

>> I THINK.

>> PORTION OF THE STATUTE.

>> I THINK, IT DEPENDS ON THE
SPECIFIC TERMS OF THE
MANAGEMENT ORDER YOU KNOW I
DON'T KNOW IF THE MANAGEMENT
ORDER SAID OR THE OPERATING
AGREEMENT SAID FOR EXAMPLE, THE
MANAGER CAN BE REMOVED AT THE
PLEASURE OF THE MEMBER
WHETHEREN YOU KNOW A SINGLE
MEMBER SITUATION IT WOULD BE
FAIRLY EASY.

THEY ARE GOING TO HAVE TO BUY
OUT THE MEMBER HOWEVER THAT'S
NOT INSITUATION HERE.

>> MY QUESTION REALLY GOES TO
BECAUSE THERE IS ANOTHER PERSON
THERE, THAT IS INVOLVED IN THE
LIMITED LIABILITY CORPORATION,
WOULD THAT CHANGE WHAT THE
CREDITOR WOULD HAVE TO DO IN
ORDER TO GET THE INTEREST IN

THE LLC?

>> I DON'T THINK IT WOULD HAVE TO.

I THINK THAT MANAGEMENT CONTRACT, WHATEVER IT MIGHT BE WOULD BE SIMILAR TO ANY OTHER LEGITIMATE OBLIGATION THAT THE LLC HAD IF FOR EXAMPLE THE LLC OWNED A PIECE OF REAL PROPERTY. AND HAD A MORTGAGE ON THAT PROPERTY.

THE NEW MEMBER COMING IN, THE CREDITOR COMING IN WOULD STILL HAVE TO PAY OFF THE MORTGAGE. IT JUST WOULDN'T CASH OUT.

>> BUT IF THE CREDITOR GETS INTO MANAGEMENT INTEREST IN THE LLC, THEN THEORETICALLY THIS PERSON COULD STAY THERE AND MANAGE WHEREVER.

>> I'M NOT -- I'M OUT OF TIME BUT I'M HAPPY TO RESPOND TO THAT IF I MAY.

I THINK IN THAT SITUATION IT WOULD BE AGAIN YOU MAY HAVE TO BUY OUT THE MANAGEMENT CONTRACT.

AT THE END OF THE DAY THE MANAGER IS AN EMPLOYEE OF THE LLC AND THE LLC MEMBER IS THE OWNER OF THE LLC.

THERE MAY BE AS I SAID YOU MAY HAVE TO FIRE THE MANAGER YOU MAY HAVE TO PAY HIM OR HER COMPENSATION YOU MAY BE ABLE TO TERMINATE THEM AT WILL BUT I THINK YOU WOULD HAVE TO -- LEGITIMATE CONTRACTUAL OBLIGATION HAD ENTERED INTO -- THE LLC HAD ENTERED INTO.

>> WE ARE SEEING MORE AND MORE OF THESE IN THE LEGAL LANDSCAPE OF DIFFERENT CORPORATE ENTITIES USED FOR FAMILY PLANNING AND FOR DIFFERENT KINDS OF THINGS SO I CAN REALLY CONCEIVE OF A FATHER OR GRANDFATHER SETTING UP AN LLC FOR A GRANDCHILD AND SECURING ALL OF THE BENEFITS OF IT THROUGH A MANAGEMENT AGREEMENT.

SO WE HAVE TO BE CAREFUL WHAT WE DO ON THESE THINGS BECAUSE IT CAN HAVE TENTACLES IF WE

DON'T FOLLOW THE STATUTE IS
WHAT MY CONCERN IS.

>> NO, I AGREE ENTIRELY.

YOU SHOULD FOLLOW THE STATUTE.

I WOULDN'T CONTEST THAT FOR A
SECOND HOWEVER I CAN THE
STATUTE NEEDS TO BE CONSTRUED I
HOPE IT CAN BE AND I HOPE IT
WOULD PROVIDE LUJITTIMATE
INTEREST TO PICK YOUR PARTNER,
MEMBER, FELLOW MEMBERS BUT ALSO
NOT TO BE ABLE TO USE -- LAWS
TO BE ABLE TO HIDE ASSETS FROM
LAW ENFORCEMENT PURPOSES OTHER
CREDITORS -- AND OTHER
LEGITIMATE CREDITORS AS WELL.

>> WITH THAT, MR. ^SINGER, YOU
HAVE USED MORE THAN YOUR TIME.

>> THANK YOU VERY MUCH, YOUR
HONOR.

I BELIEVE YOU HAVE USED YOUR
TIME BUT WE WILL GIVE YOU TIME
TO SUM UP ANY PARTICULAR ISSUE
THAT YOU'D LIKE TO.

>> I HAVE A COUPLE COMMENTS
THAT I BELIEVE ARE TO THE
POINT.

FIRST OF ALL, THE ISSUE OF
WHETHER THE ASSIGNEE BECOMES
MEMBER, I DON'T BELIEVE THEY
DO, AS I SAID, AND IN FACT,
6084322 A SAYS THAT THE
ASSIGNMENT OF A MEMBERSHIP
INTEREST DOES NOT ENTITLE THE
ASSIGNEE TO BECOME OR TO
EXERCISE ANY RIGHTS OR POWERS
OF A MEMBER.

THE ASSIGNMENT DOES NOT PUT THE
JUDGMENT CREDITOR IN AS A
MEMBER.

THE LEGISLATURE WE BELIEVE HAS
SET FORTH ITS PLAIN INTENT IN
THE TWO SECTIONS OF THE
STATUTES THAT WE HAVE BEEN
TALKING TODAY AND WE THINK
THAT'S WHAT THE COURT SHOULD BE
LOOKING AT AND CERTAINLY AS
JUSTICE LEWIS BROUGHT UP, THERE
ARE PROVISIONS FOR OPERATING
AGREEMENTS.

IT MAY NOT APPLY IN THIS
SPECIFIC CASE, BUT WE'RE HERE
LOOKING AT THE INTERPRETATION
OF THIS ENTIRE STATUTE.

AND WE BELIEVE THAT THE LEGISLATURE DID NOT INTEND TO DIFFERENTIATE BETWEEN SINGER -- SINGLE OR MULTIMEMBER LLC. NOW WE'VE LOOKED AT A NUMBER OF DIFFERENT SCENARIOS WHAT ABOUT THE SITUATION WHERE WE HAVE A MULTIMEMBER LLC 99% AND 1%. ARE WE THEN SAYING THAT, WELL, LEGISLATURE DIDN'T REALLY MEAN THAT TO APPLY AS A CHARGING ORDER TO THAT BECAUSE THERE'S -- ESSENTIALLY NO INTEREST TO BE RECOGNIZED BEYOND THE 99% INTEREST THAT MAYBE SUBJECT TO A JUDGMENT. OUR PROVISION IS, YOUR HONORS, THAT WE NEED TO LOOK AT THE PLAIN MEANING OF THE STATUTE, WHAT THE LEGISLATURE INTENDED AND THAT IS THE REMEDY WE SHOULD BE LOOKING AT. THERE ARE INFINITE SCENARIOS THAT MAY OR MAY NOT APPLY IN ALL OF THESE DIFFERENT SITUATIONS BUT I THINK THAT WE ARE BOUND BY THE LEGISLATIVE INTENT IN THIS STATUTE AS IT'S EXPRESSED AND THE LEGISLATURE HAS NOT INDICATED THAT A SINGLE MEMBER LLC SHOULD BE TREATED THAN A MULTIMEMBER LLC WITH REGARD TO THE CHARGING LIEN REMEDY OF ANY JUNGMENT -- JUDGMENT CREDIT. >> THANK YOU, MR.^LITTLE. THANKS BOTH FOR YOUR ARGUMENTS.