

PUBLICATION

What the Mahalo??

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Although commonly known, judgment creditors rarely utilize the charging order as a collection mechanism. This may change as a result of recent case law developments.

The charging order has long been recognized in the partnership context as a mechanism by which judgment creditors can satisfy judgments by garnishing a judgment debtor's partnership distributions without interfering with the partner's other rights and obligations or the partnership's ability to continue operating as a going concern. *See generally*, Pomeroy, Chad J., Think Twice: Charging Orders and Creditor Property Rights, 102 Kentucky L.J. 705 (2014). The remedy has been incorporated into limited liability company (LLC) law from its inception but may vary by state. *Id.* at 706.

In Georgia, the statutory right to collect a judgment from an LLC member's distributional interests is governed by O.C.G.A. § 14-11-504, which provides generally:

On application to a court of competent jurisdiction by any judgment creditor of a member or of an assignee of a member, the court may charge the limited liability company interest of the member or such assignee with payment of the unsatisfied amount of the judgment with interest." O.C.G.A. § 14-11-504 (2010).

Until recently, the above statutory language, which mirrors uniform language adopted by most other states, left at least two questions unanswered: (1) whether an "application" for a charging order needed to be filed as a separate law suit; and (2) if so, whether the judgment creditor was required to establish jurisdiction over the LLC which was subject to the charging order.

On February 19, 2015, the Georgia Court of Appeals definitively answered both questions in the negative. *See Mahalo Invs. III, LLC v. First Citizens Bank & Trust Co.*, 2015 Ga. App. LEXIS 51 (Ga. Ct. App., February 15, 2015). Relying on the plain and unambiguous language of the statute, the Georgia Court of Appeals held that (1) an order charging a member's interest in a limited liability company with payment of an unsatisfied judgment need not be initiated as a separate action but may be issued by the court that entered the underlying judgment in the same action; and (2) it is not necessary that the court have jurisdiction over the limited liability company to enter a charging order. *Id.*

The *Mahalo* decision represents a substantial victory for Georgia judgment creditors inasmuch as it clarifies the procedure for obtaining a charging order and confirms that judgment creditors need not domesticate their judgments and obtain separate jurisdiction over an out-of-state LLC in order to exercise their statutory rights. Rather, the judgment creditor can immediately seek a charging order in the same court that awarded its judgment without regard for the court's jurisdiction (or lack thereof) over an LLC, and presumably without any notice to the LLC whatsoever.

While the judiciaries in many other states with similar charging order statutes have not published opinions on the topic, *Mahalo* represents a developing nationwide trend towards a practical, efficient, and creditor-friendly interpretation of charging order statutes. *See also*, e.g., *Bank of Am., N.A. v. Freed*, 2012 IL App (1st) 110749 (Ill. App. Ct. 1st Dist. 2012) (affirming award of charging orders against 72 LLC's and limited partnerships, holding that a court only needs jurisdiction over the judgment debtor to enter a charging order under the Illinois

Limited Liability Company Act); *Rockstone Capital, LLC v. Mktg. Horizons, Ltd*, 2013 Conn. Super. LEXIS 1621 (Conn. Super. Ct. July 17, 2013) (denying debtor's motion to dismiss on jurisdictional grounds, holding that jurisdiction over the LLC was not necessary and there are no constraints in the Connecticut Limited Liability Act that would limit its application to domestic LLC's); *compare, Koh v. Inno Pacific Holdings Ltd.*, 54 P.3d 1270 (Wash Ct. App. 2002)(upholding the award of a charging order, holding that the Washington trial court had jurisdiction over the LLC because the LLC was organized in Washington).

The practical and substantial effect of the broad *Mahalo* ruling should not be understated. As a result of *Mahalo*, judgment creditors in Georgia enjoy much greater and more efficient access to the economic interests of their judgment debtors with interests in LLC's **and partnerships alike**.¹ Whenever possible, creditors should consider their available fora before filing suit and utilize this and similar precedent to circumvent other states' less favorable laws for attaching a judgment debtor's LLC interest.

¹ In *Mahalo*, the appellant debtors argued that the Eleventh Circuit Court of Appeals opinion in *Prodigy Centers/Atlanta v. T-C Assoc.*, 127 F.3d. 1021 (11th Cir. 1997) stands for the proposition that a judgment creditor must file a wholly separate action to request a charging order against a partnership interest; however, the Georgia Court of Appeals declined to adopt this interpretation, indicating that the issue at hand was not directly ruled upon in *Prodigy*, and instead pointed to the Georgia Supreme Court's holding in *Brown v. King*, 266 Ga. 890, 891 (1996) for the proposition that a separate order from the court where the judgment is entered is all that is required to charge a debtor's interests in a limited liability company, limited liability partnership, or partnership in Georgia.