UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

# Charging Orders

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## Charging Order History

- Origins in general partnership law
  - Designed to protect interests of other partners
    - Joint and several liability for partnership obligations
    - Partner's power to bind partnership
    - Replaced earlier law allowing creditors of partner to reach partnership property
  - Inherent application to multi-owner entities
  - TBOC 152.308
- Carried over to limited partnership law
  - TBOC 153.256
  - By definition of partner, applies to general partners and limited partners
- Carried over to limited liability company law
  - TBOC 101.112
- Focus on limited liability company law but applies to partnerships as well

# Charging Order Framework

- Who can get a charging order? TBOC 101.112(a)
  - Judgment creditor of a member
  - Judgment creditor of owner of membership interest
    - Membership interest – TBOC 1.002(54) – includes a member's share of profits and losses or similar items and the right to receive distributions, but does not include a member's right to participate in management.
- Who grants a charging order? TBOC 101.112(a)
  - Court authorized to charge membership interest of judgment debtor
- What is nature of charging order? TBOC 101.112(b)-(f)
  - Right to receive distribution to which judgment debtor otherwise entitled
  - Lien on judgment debtor's membership interest
  - Lien not subject to foreclosure
  - Exclusive remedy to satisfy judgment out of judgment debtor's membership interest
  - No effect on exemption laws applicable to membership interest
  - No right to obtain possession of or exercise remedies against property of LLC

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# Devoll v. Demonbreun et al
# San Antonio COA – 04-14-00331-CV

- Demonbreun and Dowds obtained judgment against Norris Devoll
- Demonbreun and Dowds sought turnover order against Norris Devoll's community property – including wife Paulette's undivided ½ interest in 206 Camelia Partnership
- 206 Camelia Partnership owned 50.1% by Gene Devoll and 49.9% by Paulette Devoll
- 206 Camelia Partnership's principal asset was real property valued at ~$75,000
- Two days after request for turnover order, Gene Devoll notified Paulette Devoll of her default under partnership agreement and ultimately bought out her partnership interest for $5,000
- Turnover order granted and Norris and Paulette Devoll ordered not to dispose of their community property
- Based on fraudulent transfer claim, Demonbreun and Dowds given temporary injunction ordering Gene Devoll not to "transfer, sell, encumber, or otherwise dispose of the property" owned by 206 Camelia Partnership

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# Devoll v. Demonbreun et al (cont.)

- Gene Devoll challenged temporary injunction against transfer of partnership property as violative of charging order statute
- Demonbreun and Dowds argued temporary injunction was proper under TUFTA to prevent fraudulent transfer of Paulette's partnership interest to Gene
- Court determined the charging order restrictions and the equitable remedies under fraudulent transfer laws could be harmonized and read to operate concurrently
  - TUFTA allows creditor to obtain injunction – an equitable remedy - against allegedly fraudulently transferred partnership asset
  - Charging order rules only prohibit equitable remedy against partnership property to satisfy the judgment
  - Therefore, charging order rules do not prohibit equitable remedy against partnership property in all circumstances
- Trial court may grant equitable relief to preserve partnership assets, but only the minimum reasonable restraint necessary to do so



# Devoll v. Demonbreun et al (cont.)

- Gene Devoll sought to encumber partnership asset with a lien on real property
- Court found temporary injunction protected value of Paulette Devoll's partnership interest, which was alleged to have been taken away fraudulently by Gene Devoll.
  - Temporary injunction minimized restraint on partnership business and management by not forcing sale of partnership property but rather maintaining status quo of income stream and use/operation of property while preventing Gene Devoll from encumbering property
  - Court found no partner not a part of the TUFTA suit was disadvantaged
- Court did not abuse its discretion in granting temporary injunction
- Dissent distinguished between injunction against transfer of partnership interest and partnership property – former is OK, latter is not. Noted transfer of real property to partnership not the alleged fraudulent transfer

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