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Florida Supreme Court Ruling Spells Trouble for Multimember LLCs

A recent ruling by the Florida Supreme Court will drastically impact how creditors interact with single and multimember limited liability companies (LLCs) in Florida and could potentially require a rewriting of current LLC operating agreements.

The ruling, *Olmstead v. Federal Trade Commission* (No. SC08-1009), concerned two appellants who operated an advance-fee credit card scam. The scam was operated through various corporate entities, including two single member limited liability companies in Florida. The Federal Trade Commission's suit was to recover \$10 million in awarded damages hidden in the single member LLCs. The case was brought before the Florida Supreme Court to decide whether a court could order a judgment debtor to surrender all financial interest, right and title in a single member LLC to satisfy an outstanding judgment.

The Supreme Court ruled in the affirmative, but not before rephrasing the question slightly in an attempt to minimize the ruling strictly to single member LLCs. Yet, as Justice Fred Lewis pointed out in his dissent, "...the same theories apply to multimember LLCs and render the assets of all LLCs vulnerable."

Senior M&H partner Dana Matthews couldn't agree more. "Every argument the court made, you could also use in a case if you're trying to get the membership interest in a multimember LLC.

"Everybody needs to go back and look at their operating agreements if they're in a multimember LLC and make sure there's proper language to protect the member in the event that a creditor comes in. This case is going to open the floodgates for litigation against multimember LLCs."

According to the Florida Department of State Division of Corporations, as of January 2010 there were 499,143 active LLCs in Florida.

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