

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Knollman-Wade Holdings, LLC,	:	
Plaintiff-Appellee,	:	No. 14AP-595
v.	:	(C.P.C. No. 08CVH-14002)
Platinum Ridge Properties, LLC,	:	(ACCELERATED CALENDAR)
Defendant-Appellant,	:	
FLG Hospitality Services, LLC et al.,	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on April 28, 2015

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*Harris, McClellan, Binau & Cox, P.L.L., and Michael A. Coleman, for appellee.*

*Charles W. Hess, for appellant Platinum Ridge Properties, LLC.*

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶1} Defendant-appellant, Platinum Ridge Properties, LLC ("PRP") appeals a judgment of the Franklin County Court of Common Pleas which granted the motion of plaintiff-appellee, Knollman-Wade Holdings, LLC ("KWH") and issued a charging order permitting KWH to charge PRP's interest in a limited liability company with payment on PRP's unpaid judgment.

{¶2} On September 30, 2008, KWH filed a complaint against PRP, FLG Hospitality Services, LLC ("FLG") and Crosswoods Hotel Investors, LLC ("CHI").

According to the allegations in KWH's complaint, on August 1, 2006, KWH invested \$275,000 in an entity known as Diversified Hotels, LLC ("DH"), for the purpose of acquiring and/or renovating certain hotel properties. One of the hotel properties, Homewood Suites Extended Stay Hotel ("HS"), was owned by CHI. On August 14, 2006, PRP sent a letter to KWH guaranteeing that if KWH became unsatisfied with its ownership interest in DH, PRP would purchase KWH's interest at a price necessary for KWH to have achieved a 10 percent annual return on its investment. The letter further stated that KWH was to provide written notice of its intent to exercise its option to sell no later than August 1, 2008. Thereafter, FLG verbally committed to honor the terms of the sell option. On July 21, 2008, KWH provided written notice of its intent to exercise its option to sell; however, PRP and FLG verbally informed KWH of their refusal to honor the guaranty. In its complaint, KWH asserted causes of action for breach of guaranty and notice of lis pendens<sup>1</sup> against the HS property.

{¶3} On December 1, 2009, the trial court entered a consent judgment in favor of KWH and against PRP and CHI in the amount of \$288,330.07. On April 7, 2010, CHI filed a motion to vacate the December 1, 2009 judgment. On April 14, 2010, the parties filed an agreed entry vacating KWH's judgment against CHI only.<sup>2</sup>

{¶4} In an effort to collect on its judgment against PRP, KWH, on May 12, 2014, filed a motion, pursuant to R.C. 1705.19(A), for an order charging PRP's membership interest in a limited liability company, Platinum Polaris Investors, LLC ("PPI"), with the entire unpaid balance of the consent judgment with interest. It is undisputed that KWH submitted a proposed charging order with its motion. On June 9, 2014, PRP filed a memorandum in opposition to KWH's motion. Therein, PRP did not object to the issuance of a charging order, but argued that KWH's proposed charging order was too broad in scope and did not precisely track the language set forth in R.C. 1705.18(A). The parties agree that PRP submitted a proposed alternative charging order with its memorandum.

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<sup>1</sup> Ohio's lis pendens statute, R.C. 2703.26, states that "[w]hen a complaint is filed, the action is pending so as to charge a third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title."

<sup>2</sup> The record contains an identical agreed entry filed on April 20, 2014.

{¶5} On July 10, 2014, the trial court granted KWH's motion and issued a charging order against PRP's membership interest in PPI. There is no dispute that the trial court's charging order incorporated the exact language included in KWH's proposed charging order.<sup>3</sup> On July 28, 2014, PRP filed a notice of appeal from the trial court's July 10, 2014 charging order.

{¶6} On appeal, PRP sets forth a single assignment of error for this court's review:

The trial court erred as a matter of law in its Charging Order dated on July 10, 2014, when it failed to apply the unambiguous statute, Revised Code Section 1705.18, but instead interpreted it which resulted in the trial court having legislated from the bench when it read into the statute language that does not exist therein which is a violation of the doctrine of separation of powers.

{¶7} We note initially that the parties do not dispute the underlying facts in this appeal. Rather, the dispute surrounds the trial court's interpretation and application of R.C. 1705.18 to the undisputed facts.

{¶8} Pursuant to R.C. 1705.19(A), a judgment creditor of a member of a limited liability company may apply to the court of common pleas to charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. A charging order is a judgment creditor's sole and exclusive remedy to satisfy a judgment against the membership interest of a limited liability company member. R.C. 1705.19(B). A membership interest is defined by R.C. 1705.01(H) as a "member's share of the profits and losses of a limited liability company and the right to receive distributions from that company."

{¶9} R.C. 1705.19 further provides that to the extent the membership interest is charged, "the judgment creditor has only the rights of an assignee of the membership interest as set forth in section 1705.18 of the Revised Code." In turn, R.C. 1705.18(A) provides that "an assignment of a membership interest does not dissolve the company or

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<sup>3</sup> The parties' proposed charging orders are not included in the record certified to this court. Accordingly, our review is limited to the charging order issued by the trial court. See *Edward Leonard, Treasurer, Franklin Cty., Ohio v. Pilkington*, 10th Dist. No. 14AP-650, 2015-Ohio-1432, ¶ 16-17.

entitle the assignee to become or to exercise any rights of a member. An assignment entitles the assignee only to receive, to the extent assigned, the distributions of cash and other property and the allocations of profits, losses, income, gains, deductions, credits, or similar items to which the assignee's assignor would have been entitled."

{¶10} The charging order issued by the trial court in the present case states, in relevant part, as follows:

**IT IS, FURTHER ORDERED, ADJUDGED and DECREED** that any and all payments, including but not limited to distributions of earnings and withdrawals of capital and / or the distributions of cash and / or other property and the allocations of profits, losses, income, gains, deductions, credits, or similar items which would otherwise accrue or be made to or through Judgment Debtor PRP by Platinum Polaris Investors, LLC, an Ohio limited liability company, or any of its members, and / or to which Judgment Debtor PRP is, would or will be or has been entitled under the Operating Agreement of Platinum Polaris Investors, LLC, an Ohio limited liability company, statute or otherwise, and as contemplated in Ohio Revised Code § 1705.19(A), and notwithstanding any agreement or provision to the contrary, be made instead **to Knollman-Wade Holdings, LLC** \* \* \*.

(Emphasis sic.)

{¶11} PRP does not challenge the trial court's issuance of a charging order; rather, PRP contends the charging order is too broad in scope and does not precisely track the language set forth in R.C. 1705.18(A). PRP specifically takes issue with two phrases included in the charging order which do not appear within R.C. 1705.18—"withdrawals of capital" and payments made "through Judgment Debtor PRP."

{¶12} KWH responds that R.C. 1705.18(A) allows a judgment creditor who obtains a charging order against a judgment debtor's membership interest in a limited liability company to accede to all the "financial rights" that attach to the interest, which would include "withdrawals of capital" and payments made "through" the judgment debtor.

{¶13} Statutory interpretation is a question of law subject to de novo appellate review. *State v. Banks*, 10th Dist. No. 11AP-69, 2011-Ohio-4252, ¶ 13, citing *State v. Certain*, 180 Ohio App.3d 457, 2009-Ohio-148, ¶ 11 (4th Dist.). When conducting such a review, an appellate court does not defer to the trial court's determination. *Nkanginieme*

*v. Ohio Dept. of Medicaid*, 10th Dist. No. 14AP-596, 2015-Ohio-656, ¶ 13, citing *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶ 8.

{¶14} The primary goal of statutory interpretation is to ascertain and give effect to the General Assembly's intent in enacting the statute. *Brooks Capital Servs., L.L.C. v. 5151 Trabue Ltd.*, 10th Dist. No. 12AP-30, 2012-Ohio-4539, ¶ 16, citing *Yonkings v. Wilkinson*, 86 Ohio St.3d 225, 227 (1999). In determining legislative intent, we must first look to the plain language of the statute. *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, ¶ 11, citing *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81 (1997). We consider the statutory language in context, construing words and phrases according to the rules of grammar and common usage. *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, ¶ 16, citing *State ex rel. Stoll v. Logan Cty. Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-333, ¶ 34. If the language is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory interpretation. *Banks* at ¶ 13, citing *State v. Palmer*, 10th Dist. No. 09AP-956, 2010-Ohio-2421, ¶ 20. An unambiguous statute must be applied, not interpreted. *Id.* at ¶ 13, citing *Palmer* at ¶ 20.

{¶15} In addition, "[c]ourts must give effect to the words explicitly used in a statute \* \* \* rather than deleting words used, or inserting words not used, in order to interpret an unambiguous statute." *Harding v. Conrad*, 121 Ohio App.3d 598, 601 (10th Dist.1997), citing *State v. Taniguchi*, 74 Ohio St.3d 154, 156 (1995). *See also Clark v. State Bd. of Registration for Professional Engineers & Surveyors*, 121 Ohio App.3d 278, 284 (9th Dist.1997) ("statutory language is not to be enlarged or construed in any way other than that which its words demand"); *Ohio Bur. of Workers' Comp. v. Shaffer*, 10th Dist. No. 13AP-67, 2013-Ohio-4570, ¶ 17 ("A court must apply an unambiguous statute in a manner consistent with the plain meaning of the statutory language; it may not simply add words.").

{¶16} The charging order issued by the trial court impermissibly expands the scope of R.C. 1705.18(A). The plain language of the statute does not include either "withdrawals of capital" or payments made "through" a judgment debtor as items subject to a charging order. Rather, R.C. 1705.18(A) expressly provides that an assignee such as KWH is entitled only to receive "the distributions of cash and other property and the allocations of profits, losses, income, gains, deductions, credits, or similar items" to which

PRP would be entitled. Had the General Assembly intended what KWH contends, it could have employed language to that effect. Because it did not, we conclude the trial court erred in inserting these phrases into the charging order.

{¶17} KWH provides this court no compelling reason to expand the scope of R.C. 1705.18(A) to include "withdrawals of capital" and payments made "through" a judgment creditor as items subject to a charging order. KWH does not argue that it will be unable to collect on its judgment against PRP in the absence of this additional language in the charging order.

{¶18} Moreover, the cases cited by KWH in support of its position are unavailing. In *Banc One Capital Partners v. Russell*, 8th Dist. No. 74086 (June 24, 1999), and *FirstMerit Bank, N.A. v. Xyran, Ltd.*, 8th Dist. No. 98740, 2013-Ohio-1039, the issue was whether a judgment creditor who obtains a charging order against a judgment debtor who is a member of a limited liability company is entitled to membership or management rights in the limited liability company. In both cases, the court determined that a judgment creditor who obtains a charging order receives only "financial rights" and is not entitled to become a member of, or exercise management rights in, the limited liability company, unless otherwise provided in the limited liability company's operating agreement. The scope of such "financial rights," including whether such "financial rights" include "withdrawals of capital" and/or payments made "through" the judgment debtor, was not at issue.

{¶19} For the foregoing reasons, we sustain PRP's assignment of error, reverse the judgment of the Franklin County Court of Common Pleas, and remand this matter to that court to enter a new charging order which precisely tracks the language of R.C. 1705.18(A).

*Judgment reversed and  
cause remanded with instructions.*

TYACK and LUPER SCHUSTER, JJ., concur.

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