

STATE OF NORTH CAROLINA  
MACON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13 CVS 719

CHUCK STRUM,

Plaintiff,

v.

ULTIMA WNC DEVELOPMENT,  
LLC, ULTIMA HOLDINGS, LLC,  
ROBERT M. ULLMANN,  
Individually, RHS HOLDINGS, LLC,  
R. HARDY SMITH, Individually, and  
MARILIN HOLDINGS, L.L.L.P.,

Defendants.

**CHARGING ORDER AGAINST  
ULLMANN'S ECONOMIC INTEREST  
IN CERTAIN LLCs  
(N.C.G.S. § 57D-5-03)**

1. **THIS MATTER** is before the Court upon Plaintiff and judgment creditor Chuck Strum's ("Plaintiff") Motion for Entry of Charging Order (N.C.G.S. § 57D-5-03) (the "Motion") in the above-captioned case. (ECF No. 38.)

2. The Court, after considering the Motion, accompanying briefs, exhibits, and other appropriate matters of record, makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW** and concludes, in the exercise of its discretion, that the Motion should be **GRANTED in part** and **DENIED in part** for the reasons set forth below.

I.

FINDINGS OF FACT

3. On 24 July 2015, this Court entered a Consent Order Confirming Arbitration Award (the "Judgment"), granting a judgment in favor of Plaintiff and against Defendants Robert M. Ullmann ("Ullmann") and Ultima WNC

Development, LLC (“Ultima WNC”), in the principal amount of \$401,582.00, plus post-judgment interest at the legal rate. (ECF No. 36.)

4. According to Plaintiff, “the [J]udgment . . . remains unsatisfied.” (See Mot. Entry Charging Order (N.C.G.S. § 57D-5-03) ¶ 2 [hereinafter “LLC Mot.”], ECF No. 38.)

5. Plaintiff has been unable to locate any assets of Ullmann, in his individual capacity, in North Carolina.

6. Plaintiff served Ullmann with a Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property on 19 April 2022. (See Aff. Service Kevin A. Rust, ECF No. 41; Notice Right Have Exemptions Designated, ECF No. 46.) No response appears of record.

7. Also on 19 April 2022, Plaintiff filed the Motion, a supporting brief, and exhibits. (See LLC Mot.; LLC Mot. Ex. A, ECF No. 38.1; LLC Mot. Ex. B [hereinafter “LLC Info.”], ECF No. 38.2; Br. Supp. Entry Charging Orders, ECF No. 39.)

8. Plaintiff’s writ of execution had not been returned by the Macon County, North Carolina Sheriff as of 11 May 2022.

9. In a series of e-mails dated 24 and 25 May 2022 to the Court’s law clerk and copying all counsel of record, former counsel for Ullmann confirmed that he no longer represents Ullmann and former counsel for Ultima WNC confirmed that former counsel no longer represents Ultima WNC.

10. Recognizing that Ullmann may be proceeding pro se, and in the interests of fairness in the particular circumstances of this case, the Court entered a Scheduling Order on 27 May 2022, which (i) directed Plaintiff to serve Ullmann with a copy of the Motion and the Scheduling Order and file a certificate reflecting service thereof; (ii) directed counsel for Ullmann to promptly enter a notice of appearance or, if Ullmann chose not to retain counsel, directed Ullmann to create a user account with the Court's electronic filing system and associate himself with the case; (iii) directed Plaintiff to file a supplementary brief to address certain specific issues; and (iv) set out a briefing schedule for the Motion. (*See* Scheduling Order, ECF No. 47.)

11. The following day, Plaintiff filed his Memorandum and Motion to Expedite Hearing and Briefing Schedule on Motions for Charging Orders, (Mem. and Mot. Expedite Hr'g and Br. Schedule Mots. Charging Orders, ECF No. 49), and, in response, the Court entered an Amended Scheduling Order on 31 May 2022, shortening the briefing schedule for the Motion, (Am. Scheduling Order, ECF No. 50).

12. Plaintiff timely filed certificates reflecting service of the Motion, Scheduling Order, and Amended Scheduling Order on Ullmann. (*See* Certificate Service of ECF Nos. 37–38, 42, 46–47, ECF No. 48; Certificate Service of ECF No. 50, ECF No. 51.) In compliance with the Amended Scheduling Order, Plaintiff filed a Supplemental Brief in Support of Motions for Charging Orders and supporting

exhibits on 3 June 2022. (Suppl. Br. Supp. Entry Charging Orders [hereinafter “Suppl. Br.”], ECF No. 52; Suppl. Br. Exs. A–I, ECF No. 52.1.)

13. No counsel has made an appearance on behalf of Ullmann or Ultima WNC nor has Ullmann created a user account with the Court’s electronic filing system.

14. Ullmann did not file a response to the Motion and, as such, the Motion is unopposed and shall be treated as uncontested. *See* BCR 7.6 (“If a party fails to file a response within the time required . . . , the motion will be considered and decided as an uncontested motion.”); 7.11 (“[T]he failure to timely file a brief or supporting material waives a party’s right to file the brief or supporting material.”). Plaintiff’s Motion is now ripe for resolution, and the Court elects to rule on the Motion without a hearing. *See* BCR 7.4.

## II.

### CONCLUSIONS OF LAW

15. Chapter 57D of the North Carolina General Statutes, commonly known as the “North Carolina Limited Liability Company Act” (the “Act”), N.C.G.S. § 57D-1-01, governs “the internal affairs of every LLC,” including a determination of “the rights and duties of interest owners, managers, and other company officials[.]” *id.* § 57D-1-02(a).

16. Under the Act, an “interest owner” is defined as “[a] member or an economic interest owner[.]” *id.* § 57D-1-03(15), and an “economic interest” is defined as “[t]he proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right

of the owner of the interest to receive distributions from the limited liability company[.]" *id.* § 57D-1-03(10). An "economic interest owner" "owns an economic interest but is not a member [of the LLC]." *Id.* § 57D-1-03(11).

17. Section 57D-5-03(a) provides as follows:

On application to a court of competent jurisdiction by any judgment creditor of an interest owner, the court may charge the economic interest of an interest owner with the payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.

18. Furthermore, "[t]he entry of a charging order is the exclusive remedy by which a judgment creditor of an interest owner may satisfy the judgment from or with the judgment debtor's ownership interest." *Id.* § 57D-5-03(d).

19. Plaintiff seeks to charge the Judgment against Ullmann's interest in thirteen<sup>1</sup> limited liability companies ("LLCs") registered in North Carolina. (*See* LLC Mot. ¶¶ 3–7.) Exhibit B to the Motion includes various filings with the North Carolina Secretary of State<sup>2</sup> in which Ullmann represents that he is a member, member-manager, and/or manager of each of these LLCs. (*See generally* LLC Info.)

20. A manager is not necessarily a member of an LLC. *See* N.C.G.S. § 57D-3-20(d) (stating that while "[a]ll members by virtue of their status as members are

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<sup>1</sup> The filing for Ultima Carolina, LLC appears twice in Exhibit B. (*See* LLC Info. 3, 15.) Citations to the page numbers of this document refer to the electronic PDF page numbers as there are no page numbers on the pages themselves.

<sup>2</sup> "The Court may take judicial notice of public filings available on the North Carolina Secretary of State's official website." *Banc of Am. Merch. Servs., LLC v. Arby's Rest. Grp., Inc.*, 2021 NCBC LEXIS 60, at \*5 n.3 (N.C. Super. Ct. June 30, 2021) (citing N.C. R. Evid. 201(b), (c)).

managers of the LLC,” “[i]f the operating agreement provides or otherwise contemplates that members are not necessarily managers by virtue of their status as members, then those persons designated as managers in, or in the manner provided in, the operating agreement will be managers”). Because an LLC’s members, as opposed to its managers, are the interest owners, *see id.* § 57D-1-03(15), the Court can only enter a charging order against Ullmann’s interest in those LLCs in which he is a member.

21. According to the Secretary of State filings in Exhibit B, Ullmann is a member of RMU/Carpenter, LLC; a member/manager of Ultima Interiors, LLC; and a managing member of Ultima WNC, Ultima Carolina, LLC, Ultima Real Estate Investments SC, LLC, Camp Creek Associates, LLC, and Fontana Trace Associates, LLC. (*See* LLC Info. 2–3, 5, 8–10, 15–16.) However, the filings for the remaining six LLCs—Greenleaf Realty, LLC; Ultima Junaluska Development, LLC; Ultima Holdings, LLC; Dills Cove Associates, LLC; Ullmann Suntech, LLC; and Wildflower Residence Club, LLC—only list Ullmann as a manager. (*See* LLC Info. 1, 4, 6–7, 11–14.)

22. Nevertheless, the Court was able to access the articles of organization for Greenleaf Realty, LLC; Ultima Junaluska Development, LLC; Dills Cove Associates, LLC; and Wildflower Residence Club, LLC on the North Carolina Secretary of State’s website and confirm that Ullmann is a member of each of these LLCs. *See Articles of Organization Limited Liability for Greenleaf Realty, LLC* (SOSID: 1129835) (filed Dec. 30, 2009), available at <https://www.sosnc.gov/>; *Articles*

*of Organization Limited Liability for Ultima Junaluska Development, LLC* (SOSID: 0761011) (filed Jan. 11, 2005), available at <https://www.sosnc.gov/>; *Articles of Organization Limited Liability for Dills Cove Associates, LLC* (SOSID: 0996579) (filed Aug. 17, 2007), available at <https://www.sosnc.gov/>; *Articles of Organization Limited Liability for Wildflower Residence Club, LLC* (SOSID: 1056527) (filed July 31, 2008), available at <https://www.sosnc.gov/>.

23. The remaining two LLCs, Ultima Holdings, LLC and Ullmann Suntech, LLC, are both foreign LLCs incorporated in Georgia. (See LLC Info. 6, 12.) The Court was unable to locate any filings on either the North Carolina Secretary of State website or the Georgia Secretary of State website that indicate that Ullmann is a member of these two LLCs, nor is there any other evidence in the current record to support Plaintiff's assertion that Ullmann is a member of these two LLCs. Accordingly, the Court will deny Plaintiff's Motion with respect to Ultima Holdings, LLC and Ullmann Suntech, LLC without prejudice to Plaintiff's right to renew the Motion as to these entities should Plaintiff uncover evidence establishing that Ullmann is a member of these LLCs.

24. Because Ullmann has presented no evidence to refute the North Carolina Secretary of State filings that show that he is a member of the remaining eleven LLCs (the "NC LLCs"), the Court concludes that Ullmann is an interest owner of each of the NC LLCs.

25. The Court further concludes that Plaintiff is a judgment creditor of Ullmann since there is no evidence that the Judgment has been assigned or cancelled

and the public record reveals that the Judgment remains unsatisfied.

26. Accordingly, the Court concludes that, on Plaintiff's Motion, it may charge Ullmann's economic interest in the NC LLCs with the payment of the unsatisfied amount of the Judgment with interest. *See* N.C.G.S. § 57D-5-03; *see also Am. Bank Ctr. v. Barker*, No. 3:18-MC-103-MOC-DCK, 2019 U.S. Dist. LEXIS 120685, at \*3–5 (W.D.N.C. July 17, 2019) (entering a charging order against Barker's ownership interests in several LLCs pursuant to section 57D-5-03).

27. Plaintiff seeks the following additional relief in the Motion:

- a. prohibit the NC LLCs "from making any loans to any member or anyone else without either Court approval or approval of the Plaintiff";
- b. prohibit the NC LLCs from making "capital acquisitions without either Court approval or approval of the Plaintiff";
- c. prohibit the NC LLCs and their members from "undertak[ing], enter[ing] into, or consummate[ing] any sale, encumbrance, hypothecation, or modification of any interest therein, without either Court approval or approval of the Plaintiff";
- d. prohibit the NC LLCs and their members or managers from "alter[ing], chang[ing], or modify[ing] any compensation plan or structure without either Court approval or approval of the Plaintiff"; and
- e. require each NC LLC to provide Plaintiff with a list of current members that identifies the percentage of their ownership interest in the LLC, a current balance sheet and income statement, a copy of the



operating agreement, and advance written notice before any distribution is made. (See LLC Mot. ¶¶ 8–15.)

28. Section 57D-5-03 does not permit the Court to grant the additional relief Plaintiff seeks. Under the plain language of the statute, “the judgment creditor has *only* the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.” N.C.G.S. § 57D-5-03 (emphasis added). The Act does not authorize the Court to permit a judgment creditor to exercise the judgment debtor’s membership rights in the LLC, nor can the Court enjoin the judgment debtor, or the other members of the LLC, from exercising their membership rights. See *First Bank v. S&R Grandview, LLC*, 232 N.C. App. 544, 549 (2014) (“Although the newly revised [Act] does not apply to this case, . . . the clarified portions of section 57D-5-03 support our conclusion that the General Assembly did not intend for section 57C-5-03 to effectuate an assignment, enjoin a debtor-member from exercising managerial rights, or cause a debtor-member to cease to be a member in the LLC.”).

29. Plaintiff’s reliance on N.C.G.S. § 1-358 does not change this result. That section permits the Court to “forbid a transfer or other disposition of, or any interference with, the *property of the judgment debtor* not exempt from execution.” N.C.G.S. § 1-358 (emphasis added). The Court has no authority to restrict the ability of the NC LLCs to transfer or otherwise dispose of their assets, because those assets are owned by the NC LLCs, not Ullmann. Ullmann’s property consists of his ownership interests in the NC LLCs and, as a judgment creditor, Plaintiff is

only entitled “to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.” *Id.* § 57D-5-03. The Court will therefore deny Plaintiff’s Motion with respect to the additional relief requested.

30. **WHEREFORE**, based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

a. Plaintiff’s Motion is hereby **GRANTED in part** as follows:

(1) Pursuant to N.C.G.S. § 57D-5-03, a Charging Order is hereby **ENTERED** against the economic interests of Ullmann in the NC LLCs for payment of the Judgment.

(2) According to the Secretary of State, Ullmann is the manager of all of the NC LLCs and, in his capacity as such, Ullmann is hereby **ORDERED** and **DIRECTED** to file with the Court and the Clerk of Macon County Superior Court, within fifteen (15) days of being served with this Charging Order, a sworn statement reporting to the Court all amounts now due or that may become due (insofar as they are known) or distributable or payable to Ullmann by reason of his economic interests in those entities at the time of service of this Charging Order. In such sworn statement, Ullmann shall state the value, at the time of service of this Charging Order, of both the capital and income accounts attributable to the interests of Ullmann in each of the respective NC LLCs.

(3) In the event subsequent amounts become due or distributable or payable to Ullmann by reason of his economic interests in the NC LLCs, Ullmann is hereby **ORDERED** and **DIRECTED** to file with the Court and the Clerk of Macon County Superior Court, within fifteen (15) days of such amounts becoming due or distributable or payable, a sworn statement reporting to the Court such amounts. In such sworn statement, Ullmann shall state the value, as of the date of filing such statement, of both the capital and income accounts attributable to the interests of Ullmann in each of the respective NC LLCs.

(4) The NC LLCs shall make no distributions, allocations, dividends, or any payment whatsoever to Ullmann on account of his ownership interests in such NC LLCs until the Judgment is satisfied or further order of the Court. This expressly prohibits Ultima WNC from making any distributions, allocations, dividends, or payments to Ullmann that Ultima WNC derives or receives from any ownership interests it may have in the other NC LLCs.

(5) Under penalty of this Court's contempt powers, Ullmann, as the manager of the NC LLCs, is hereby further **ORDERED** and **DIRECTED** to pay directly to Plaintiff all distributions, allocations, dividends, or payments that otherwise would be paid

to Ullmann with respect to his ownership interests in such NC LLCs until the Judgment is satisfied or further order of the Court. Such payment shall be made by certified funds made out to Carruthers & Roth, P.A. and delivered to P.O. Box 540, Attn: Kevin Rust, Greensboro, NC 27402.

(6) If Ullmann receives any distributions, allocations, dividends, or payments on account of his ownership interest in a NC LLC in violation of this Charging Order, Ullmann shall immediately deliver all such distributions, allocations, dividends, or payments on account of his ownership interest to Plaintiff. Such payment shall be made by certified funds made out to Carruthers & Roth, P.A. and delivered to P.O. Box 540, Attn: Kevin Rust, Greensboro, NC 27402.

(7) Ullmann is enjoined and prohibited from circumventing the terms or purposes of this Charging Order.

b. Plaintiff's Motion is **DENIED in part** as follows:

(1) Plaintiff's Motion as to Ultima Holdings, LLC and Ullmann Suntech, LLC is **DENIED without prejudice** to Plaintiff's right to renew the Motion as to these entities should Plaintiff uncover evidence establishing that Ullmann is a member of these LLCs.

(2) Plaintiff's Motion as to the additional relief requested in Paragraphs 8–15 is **DENIED**.

- c. Plaintiff is hereby **ORDERED** and **DIRECTED** to serve a copy of this Charging Order upon Ullmann and the NC LLCs in the manner provided by Rule 4(j)(8) of the North Carolina Rules of Civil Procedure.
- d. This Charging Order shall remain in effect until further order of this Court or until the Judgment is fully satisfied, in which event Plaintiff shall serve a Notice of Satisfaction of said Judgment within five (5) days of receipt of the final payment on such Judgment.

**SO ORDERED**, this the 16th day of June, 2022.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge