

IT IS SO ORDERED.

Dated: 09:30 AM April 16 2012



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 11-52625
)	
MONAE (NMN) BREECE,)	CHAPTER 7
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	MEMORANDUM DECISION REGARDING
)	OBJECTION TO EXEMPTION

This matter is before the Court on the chapter 7 trustee's objection to debtor's claimed homestead exemption [docket #9] and debtor's response thereto [docket #13]. The Court held a hearing on the matter at which it issued findings of fact and conclusions of law regarding whether debtor used the real property at issue as her residence. Counsel then filed supplemental pleadings regarding whether debtor could properly claim a homestead exemption in such property. Those pleadings were timely filed and the matter was taken under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

I. BACKGROUND

Monae Breece filed a voluntary chapter 7 bankruptcy petition on July 5, 2011. On Schedule A - Real Property debtor claims an ownership interest in 2124 Greencrest Drive in Uniontown, Ohio (the “Real Property”). Debtor uses the Real Property as her residence¹ and on her Schedule C - Property Claimed as Exempt, debtor claimed a \$21,625.00 exemption in the Real Property pursuant to Ohio Revised Code (“ORC”) § 2329.66(A)(1) (the “Homestead Exemption”). The Real Property is titled to Gardenia Breeze an Ohio limited liability company (the “LLC”). Debtor is the sole shareholder in the LLC. The mortgage indebtedness on the Real Property is a personal liability of debtor.

II. DISCUSSION

Under Bankruptcy Rule 4003(c), the party objecting to an exemption has the burden of establishing that the debtor is not entitled to the claimed exemption. *In re Toland*, 346 B.R. 444, 446 (Bankr. N.D.Ohio 2006). In order to further bankruptcy’s goal of providing debtors with a fresh-start, exemptions are to be liberally construed in favor of the debtor. *Id.*

Debtor claims the Homestead Exemption under ORC § 2329.66(A)(1)(b) which provides that a person may exempt “[t]he person’s interest, not to exceed twenty-one thousand six hundred twenty-five dollars, in one parcel or item of real property that the person or the dependent of the person uses as a residence.” Thus, to properly claim an exemption under this statute, a debtor must establish that she holds “an interest” in the real property used as a residence.

¹ Pursuant to debtor’s testimony at the initial hearing the Court determined that debtor uses the Real Property as her residence. All findings of fact issued at the initial hearing are hereby incorporated by this reference as if fully rewritten herein.

The chapter 7 trustee contends that, because the Real Property is legally owned by the LLC and not debtor, ORC § 2329.66(A)(1)(b) does not apply. Debtor argues that her sole ownership of the membership interests in the LLC satisfies the “interest” requirement of the exemption statute or, in the alternative, that she should be allowed to invoke the alter-ego doctrine to assert an ownership interest in the Real Property because “both the debtor and her LLC are one in the same . . . such that their liabilities are direct.”

A. *Whether Debtor Has an “Interest” in the Real Property Pursuant to ORC § 2329.66(A)(1)(b)*

In applying state statutory law a federal court must give the state statute “the meaning and effect attributed to it by the highest court of the state, as if the state court’s decision were literally incorporated into the enactment, whatever the federal tribunal’s opinion as to the correctness of the state court’s views.” *Burns Mortg. Co. v. Fried*, 292 U.S. 487, 494 (1934). Because there exists no controlling authority from the Ohio Supreme Court that, for the purposes of the issue raised in this case, interprets the term “interest” in ORC § 2329.66(A)(1)(b), this Court must “ascertain how the [Ohio Supreme Court] would rule if it were faced with the issue.” *Meridian Mut. Ins. Co. v. Kellman*, 197 F.3d 1178, 1181 (6th Cir. 1999). This Court may look to the decisional law of the state’s lower courts and other federal courts construing state law in making its determination. *Id.*

Pursuant to Ohio law, a limited liability company is a distinct legal entity that is separate from its members. *Disciplinary Counsel v. Kafele*, 843 N.E.2d 169, 173 (Ohio 2006); ORC § 1705(D)(2)(e). Like shares in a corporation, a membership interest in a limited liability company is personal property and a member has no ownership interest in the property owned by the limited liability company. *State v. Noe*, 2009 WL 5174163 *18 (Ohio Ct. App. 2009); ORC § 1705.17. *Cf. Jost v. Burr*, 590 N.E. 2d 828, 830 (Ohio Ct. App. 1990) (“It is a fundamental principle of corporate

structure that shareholders have no ownership interest in corporate-owned property.”). Accordingly, this Court concludes that if the matter were put before it, the Ohio Supreme Court would find that debtor’s sole ownership of the membership interests in the LLC would not confer upon her an “interest” in the Real Property pursuant to ORC § 2329.66(A)(1)(b).

B. *Whether Debtor May Invoke the Alter Ego Doctrine*

Application of the alter-ego doctrine is most often invoked by a third party requesting to pierce the corporate veil and impose liability on a controlling shareholder. *Belvedere Condo. Unite Owners’ Ass’n v. R.E. Roark Cos.*, 617 N.E.2d 1075, 1085 (Ohio 1993).

The corporate form may be disregarded and individual shareholders held liable for corporate misdeeds when (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.

Id. at 1086 (citing *Bucyrus-Erie Co. v. Gen. Products Corp.*, 643 F.2d 413 (6th Cir. 1981)). The party seeking to ignore the corporate form bears the burden of proof and “the corporate entity should be disregarded only when justice cannot be served in any other way.” *LeRoux’s Billylre Supper Club v. Ma*, 602 N.E.2d 685, 689 (Ohio Ct. App. 1991) (citing *Auglaize Box Board Co. v. Hinton*, 126 N.E. 881, 885 (Ohio 1919)).

Application of the alter-ego doctrine is, generally, limited to use by third parties. *See, e.g., In re Cincom iOutsource, Inc.*, 398 B.R. 223, 232 (Bankr. S.D. Ohio 2008) (noting that Ohio courts limit application of the alter ego doctrine to third parties). However, a few courts have permitted the principal of a company to invoke the alter ego doctrine in certain limited circumstances. For instance, in *Roepke v. Westerns Nat. Mut. Ins. Co.*, the Minnesota Supreme Court permitted “reverse

piercing” of the corporate veil to enable decedent’s surviving spouse and minor children to stack no-fault insurance coverages on six vehicles owned and insured by a corporation. In that case, the decedent was the president and sole shareholder of the named insured corporation, the vehicles insured were used as family vehicles and neither decedent nor his household owned any other vehicles. *Roepke v. Western Nat. Mut. Ins. Co.*, 302 N.W.2d 350 (Minn. 1981). Although it allowed “reverse piercing,” the Court specifically limited its holding to the facts peculiar to that case. *Id.* at 353. *See also Crum v. Krol*, 425 N.E.2d 1081 (Ill. Ct. App. 1981) (allowing an insider to pierce the corporate veil to prevent a third party outsider from using the corporate entity as a shield to commit fraud).

In the case at bar, debtor seeks to invoke the alter-ego doctrine to claim a direct ownership interest in the Real Property and, thus, enable her to claim the Homestead Exemption. Although debtor did not observe corporate formalities as to the LLC, justice does not mandate that the corporate formalities of the LLC should be ignored simply as a means to allow debtor to claim the Homestead Exemption.

III. CONCLUSION

Based upon the foregoing the Court finds that the chapter 7 trustee has met her burden of showing that debtor is not entitled to the Homestead Exemption. An order sustaining the trustee’s objection will be entered separately in this case.

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cc (via electronic mail):
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