Dated: October 1 2010

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 09-37257
	)	
Vincent E. Stewart and	)	Chapter 7
Angela M. Wynn-Stewart,	)	
	)	
Debtors.	)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION REGARDING OBJECTION TO HOMESTEAD EXEMPTION

This case came before the court for hearing on Genoa Banking Company's Objection to Debtors' Claim of Homestead Exemption ("Objection"). [Doc. # 121]. The court held a hearing on the Objection that Debtors, their counsel and counsel for Genoa Banking Company ("Genoa") attended in person and at which the parties presented testimony and other evidence in support of their respective positions. The parties were granted leave to, and did, submit written closing arguments/memoranda of law. [Doc. ## 196, 204].

The district court has jurisdiction over this Chapter 7 case pursuant to 28 U.S.C. § 1334(a) as a case under Title 11. It has been referred to this court by the district court under its general order of reference. 28 U.S.C. § 157(a); General Order 84-1 of the United States District Court for the Northern District of Ohio. A proceeding regarding exemptions from property of the estate is a core proceeding that the court may hear and determine. 28 U.S.C. § 157(b)(1) and (b)(2)(B). For the reasons stated below, the court will sustain

the Objection.

FACTUAL BACKGROUND

In 2006, Debtor Vincent Stewart ("Stewart") purchased real property located at 3148 Deep Water Lane, Maumee, Ohio ("Maumee property") and built a home on the property that Debtors use as their residence. [Debtors' Exh. 1]. Genoa obtained a judgment against Debtors and filed a certificate of judgment lien with the Lucas County Clerk of Courts on December 5, 2007. In January 2008, Stewart quit-claimed his interest in the Maumee property to himself and his spouse, co-Debtor Angela Wynn-Stewart, jointly with rights of survivorship. [Debtors' Exh. 2].

In early April 2008, Stewart enlisted the assistance of an online company to form a Delaware limited liability company, Deep Water Real Estate LLC ("the LLC"). [*See* Debtors' Exh. 4]. Debtors are the sole members of the LLC. According to Debtors, the LLC owns no assets other than the Maumee property and has no income. Stewart testified that there is no operating agreement and that there have been no formal meetings, minutes or election of officers of the LLC.

According to Angela Wynn-Stewart, the purpose of the LLC was to hold title to the Maumee property so that Debtors' names would not be on the deed. On April 8, 2008, Debtors executed a quit-claim deed of their interests in the Maumee property to the LLC. [Debtors' Exh. 3]. The recorded mortgage loan secured by the Maumee property is, however, in Debtors' names rather than the LLC, and Debtors pay the mortgage, real property taxes, homeowner association dues, and property insurance with respect to this property and are the beneficiaries of the property insurance as well. Ms. Wynn-Stewart testified that they wanted "some anonymity" with respect to the Maumee property due to threatening phone calls they had received from tenants of rental properties owned by them. The court does not find this testimony credible. As late as February 2009, a telephone number at the Maumee property in Vincent Stewart's name is listed in the AT&T white pages for the Toledo area.[1] While there is no doubt that Debtors wanted some anonymity with respect to their residence, the more likely reason for such anonymity was to protect their residence from execution on judgments and additional judgment liens of individual creditors. From 2007 to 2009, Debtors' Statement of Financial Affairs shows numerous foreclosure and collection proceedings had been commenced against them in their individual capacities with respect to the other properties owned

[1] The court takes judicial notice of the AT&T Toledo and Vicinity white pages dated February 2009. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201(b)(2).

by them.[2] [*See* Doc. # 1, p. 49-50].

Debtors list the Maumee property on their bankruptcy Schedule A-Real Property. They identify the nature of their interest as "fee simple," while stating that it is "In Name of Deep Water Real Estate, LLC." [Doc. # 1, p.9/90].[3] On their schedules Debtors value the Maumee property at $375,000, and their Schedule D shows a first mortgage on the property in the amount of $349,242. Debtors claim an exemption on their Schedule C-Property Claimed As Exempt in the Maumee property under Ohio Revised Code § 2329.66(A)(1)(b) in the amount of $40,400. They have separately filed a motion to avoid the judgment lien held by Genoa as impairing their homestead exemption [*see* Doc. # 149].[4] Genoa filed a timely objection to Debtors' claim of exemption.

LAW AND ANALYSIS

As authorized by 11 U.S.C. § 522(b)(2), the Ohio legislature opted out of the federal exemptions provided in § 522(d). *See* Ohio Rev. Code § 2329.662. As a result, debtors for whom the applicable exemption law under § 522(b)(3)(A) is Ohio law must claim exemptions under the relevant Ohio statutes and under applicable non-bankruptcy federal law. There is no dispute that Debtors have been domiciled in Ohio for more than the 730 days preceding the date of the filing of their petition such that Ohio exemption law applies in this case. *See* 11 U.S.C. § 522(b)(3)(A). A debtor's eligibility for exemptions is determined as of the petition date. *In re Billerman*, 88 B.R. 133, 135 (Bankr. N.D. Ohio 1988); *see* Ohio Rev. Code § 2329.66(D)(1).

Under Bankruptcy Rule 4003(c), the party objecting to the exemption, in this case Genoa, has the burden of establishing that the debtor is not entitled to the claimed exemption. *In re Andrews,* 301 B.R. 211, 213 (Bankr. N.D. Ohio 2003). The standard of proof is by a preponderance of the evidence. *In re Roselle*, 274 B.R. 486, 490 n.4 (Bankr. S.D. Ohio 2002). In making this determination, and in order to further the fresh-start policy of the Bankruptcy Code, exemption statutes are generally to be liberally construed in a

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[2] The court takes judicial notice of the contents of its case docket. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201(b)(2); *In re Calder*, 907 F.2d 953, 955 n.2 (10th Cir. 1990); *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1171-72 (6th Cir. 1979) (stating that judicial notice is particularly applicable to the court's own records of litigation closely related to the case before it).

[3] Debtors also include on Schedule A a number of other real properties as owned in fee simple by one or both Debtors but identified as being in the name of other limited liability companies or entities. Debtors' ownership interests in the LLC and other entities are listed on Debtors' Schedule B-Personal Property, all as having zero value. They do not list any unexpired leases or executory contracts on their Schedule G. [*Id.* at 42/90].

[4] Genoa has also filed a motion for relief from stay so as to resume state court foreclosure proceedings on its judgment lien on the Maumee property. [Doc. # 31]. Because this motion and Debtors' motion to avoid Genoa's judgment lien depend to some extent on resolution of the Objection, the court adjourned the hearings on both motions until further order of the court.

debtor's favor. *In re Andrews*, 301 B.R. at 213. The rule that exemption statutes are to be construed liberally in favor of the debtor is also followed by the courts of Ohio. *See, e.g., Daugherty v. Central Trust Co.*, 28 Ohio St. 3d 441 (Ohio 1986); *Dennis v. Smith*, 1125 Ohio St. 120 (Ohio 1982); *Sears v. Hanks*, 14 Ohio St. 298, 301(Ohio 1863)("The [homestead] act should receive as liberal a construction as, can fairly be given to it.").

In this case, Debtors claim a homestead exemption in the Maumee property under Ohio Revised Code § 2329.66(A)(1)(b). Under this statute, a person may exempt "[t]he person's interest, not to exceed twenty thousand two hundred dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence." Ohio Rev. Code § 2329.66(A)(1)(b). The statute establishes two requirements for claiming this exemption. First, a debtor must establish that she holds "an interest" in one parcel or item of real or personal property. Second, a debtor must establish that she uses the specified property "as a residence." *In re Kimble*, 344 B.R. 546, 552-53 (Bankr. S.D. Ohio 2006).

There is no dispute that Debtors use the Maumee property as their residence. The dispute is whether Debtors have an "interest" in the Maumee property that they may exempt under § 2329.66(A)(1)(b). There also being no dispute that as of the commencement of the case the LLC holds legal title to the Maumee property, not Debtors, Genoa argues that Debtors are precluded from claiming the exemption. Debtors instead advance three theories under which they claim an exemptible "interest" in the Maumee property. First, they assert that as the sole members of the LLC they have an interest in the Maumee property. Second, they rely on Angela Wynn-Stewart's testimony that Debtors have an oral lease with the LLC to occupy the Maumee property and, citing *In re Kimble*, they argue that occupancy rights under an oral lease of real estate qualify as an "interest" under the Ohio homestead exemption statute. Third, even if their interest in the LLC does not afford them an exemptible interest in the Maumee property, Debtors invoke the alter-ego doctrine to assert that they own the Maumee property. They argue "that no real LLC exists other than as the alter ego of Debtors." [Doc. # 204, p. 3]. In effect, Debtors ask the court to disregard the separate entity of the LLC such that property of the LLC is deemed the fee simple property of Debtors as they claim on their Schedule A. [Doc. # 1, p.15/90].

Debtors' first two arguments require the court to construe the meaning and scope of the term "interest" as used in the Ohio exemption statute. 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 Mortgage Co. v. Fried*, 292 U.S. 487, 494 (1934). There is

no controlling Ohio Supreme Court authority that interprets the term "interest" in § 2329.66(A)(1)(b) under any of the theories presented in this case. In the absence of controlling state case law, the federal court's role is to "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). The Ohio Supreme Court, in turn, directs that statutory interpretation requires a court to ascertain the legislative intent in enacting a statute. *Carnes v. Kemp*, 104 Ohio St. 3d 629, 632 (Ohio 2004). "In order to determine that intent, a court must first look to the words of the statute itself," *id.,* and all statutes which relate to the same general subject matter must be read *in pari materia, id.* The Sixth Circuit directs that this court may use the decisional law of the state's lower courts and other federal courts construing state law to determine how the Ohio Supreme Court would rule on an issue of statutory interpretation. *Meridian Mut. Ins. Co.,* 197 F.3d at 1181.

I. Do Debtors Have an Interest in the Maumee Property Based on Their Ownership of the LLC?

Stewart formed the LLC in which Debtors are members as a limited liability company under Delaware law, which provides that an LLC is formed when the initial certificate of formation is filed with the Secretary of State and that its existence continues until cancellation of same. 6 Del. C. § 18-201(b). There is no evidence that the certificate of formation has been cancelled.

Under both Ohio law and Delaware law, a limited liability company is a distinct entity separate from its members. *Sugarloaf Indus. & Marketing Co. v. Quaker City Castings, Inc. (In re Quaker City Castings, Inc.)*, 337 B.R. 729 (Table), 2005 WL 3078607, *8, 2005 Bankr. LEXIS 2211, *24 (B.A.P. 6th Cir. 2005); *see* Ohio Rev. Code § 1705.01(D), (G) & (H); 6 Del. C. § 18-201(b). And under the law of both states, an individual's status as a member of a limited liability company does not result in an ownership interest in property owned by the entity. *Firstmerit Bank, N.A., v. Wash. Square Enters.*, Case No. 88798, 2007 Ohio 3920, 2007 Ohio App. LEXIS 3561, **9-10 (Ohio Ct. App. Aug. 2, 2007); 6 Del. C. § 18-701(b); *Credit Suisse Sec. (USA) LLC v. West Coast Opportunity Fund LLC*, C.A. No. 4380-VCN, 2009 Del. Ch. LEXIS 136 (Del. Ch. Ct. July 30, 2009). Debtors' membership interests in the LLC are personal property, *see* Ohio Rev. Code § 1705.17; 6 Del. C. § 18-701(b), and are defined in the same manner in both states simply in terms of the financial rights that attach to that interest, *see* Ohio Rev. Code §§ 1705.01(H) ("'Membership interest' means a member's share of the profits and losses of a limited liability company and the right to receive distributions from that company."); 6 Del. C. § 18-101(8).

Given these established statutory principles governing limited liability companies in Delaware and Ohio, and the similarity of those principles in both states, the court believes that the Ohio Supreme Court would respect the fundamental distinction between a limited liability company and its members. In

applying an early version of an Ohio exemption statute, albeit one that did not contain the term "interest," the Ohio Supreme Court treated partnership property separately from the partners and refused to allow individual partners to claim exemptions in partnership property. *Gaylord, Son & Co. v. M. Imhoff & Co.,* 26 Ohio St. 317, 322 (1875). Based on this analogous precedent and the basic statutory principles governing modern limited liability companies, which are hybrids of partnerships and corporations, this court concludes that the Ohio Supreme Court would hold that Debtors do not have an exemptible "interest" in the Maumee property within the meaning of the Ohio homestead statute as a result of their membership interests in the LLC.

II. Do Debtors Have an Interest in the Maumee Property Through Occupancy Under an Alleged Oral Lease?

At the hearing and in their closing memorandum, Debtors asserted that they occupy the Maumee property under an oral lease with the LLC, to which they quit claimed their interests, and this oral lease gives them an "interest" under the Ohio homestead exemption. The court cannot find that Debtors occupy the Maumee property under an oral lease with the LLC. This most recent characterization of their occupancy conflicts with the facts asserted in their schedules as of commencement of the case before any dispute over the exemption arose. In their Schedule A-Real Property, Debtors note that the property is in the name of the LLC but claim a fee simple interest. [Doc. #1, p. 8/90]. Schedule G is captioned "Executory Contracts and Leases" and requires a debtor to "[d]escribe all executory contracts of any nature and all unexpired leases of real or personal property." On their Schedule G, Debtors checked the box stating that they have no executory contracts or unexpired leases. [Doc. # 1, p. 42/90]. As explained below, under Ohio law, Debtors' possession of the Maumee property after they deeded their interests in the property to the LLC created nothing more than a "tenancy at will," which the court finds does not constitute an exemptible interest under § 2329.66(A)(1)(b). *See Simon v. Citimortgage, Inc. (In re Doubov)*, 423 B.R. 505, 514 (Bankr. N.D. Ohio 2010)(for purposes of claiming the Ohio homestead exemption, debtor spouse did not have an interest in real property because she had earlier quitclaimed her interest to her debtor spouse).

A "tenancy at will," is characterized by "[an] uncertainty respecting duration and the right of either party to terminate it by proper notice." *Myers v. East Ohio Gas Co.*, 51 Ohio St. 2d 121, 125 (1977); *Say v. Stoddard*, 27 Ohio St. 478, 483 (1875). In the absence of an enforceable lease, where a tenant's occupancy of premises is "under a bare permission," a tenancy at will is created. *New York Life Ins. Co. v. Simlex Prod. Corp.*, 135 Ohio St. 501, 507 (1939); *see Motor Serv. Co. v. Public Utilities Comm'n of Ohio*, 37 Ohio St. 2d 1, 6 (1974); *Manifold v. Schuster*, 67 Ohio App. 3d 251, 255 (Ohio Ct. App. 1990).

Under a tenancy at will, the tenant "has no certain indefeasible estate, nothing that can be assigned by him to any other, because the lessor may determine his will, and put him out whenever he pleases." *Stoddard*, 27 Ohio St. at 483; *see Motor Serv. Co.*, 67 Ohio St. 2d at 6 (stating that "a tenancy at will is a determinable estate, and cannot be sublet").

In *Motor Service Co.*, the Ohio Supreme Court considered the nature of a husband's and wife's interest in a home owned by the husband's sister under facts similar to those presented in this case. There was no enforceable lease between the husband and wife, who resided in the home at issue, and the husband's sister, who owned the property. The husband and wife payed the mortgage installments, insurance and property taxes on the home and the owner of the home agreed to allow the couple to live there. In addition, the parties agreed that the property could only be sold with the husband's consent. *Motor Service Co.*, 37 Ohio St. 2d at 6. On those facts, the court found that the husband and wife's legal interest in the property could "only be a tenancy at will." *Id.*

In this case, as in *Motor Service Co.*, there is no enforceable lease, Debtors occupy the property at issue, and they pay the mortgage installments, insurance and property taxes. Although a tenancy at will converts to a periodic tenancy upon payment and acceptance of rent, the record before the court does not support a finding that Debtors paid, or the LLC accepted, any rent. The mortgage loan on which Debtors make payments is a personal obligation of Debtors, as the loan is in their names rather than that of the LLC. According to Stewart, Debtors believed that they retained all incidences of ownership of the Maumee Property, notwithstanding the transfer of ownership to the LLC. They, therefore, had no reason to offer the LLC rent payments. Nevertheless, even if payments relating to the property by Debtors can be construed to be offers of rent, the evidence shows that the LLC never accepted rent payments. According to Stewart, the LLC had no income. Had the LLC accepted any payments as rent, it would have had rental income.

The court concludes, therefore, that Debtors' occupancy of the Maumee property was "under [the] bare permission" of the LLC and that their occupancy created at best a tenancy at will. The Ohio exemption statute lists the property that every person who is domiciled in this state may hold exempt "from execution, garnishment, attachment or sale to satisfy a judgment or order." Ohio Rev. Code § 2329.66(A). Another statute relating directly to the same subject matter is Ohio Revised Code § 2329.01 governing property that is in turn subject to levy and sale. Ohio Rev. Code § 2329.01. Section 2329.01 provides that "[l]ands and tenements, including vested legal interests therein, permanent leasehold estates renewable forever, and goods and chattels, not exempt by law" are liable to be taken on execution and sold. *Id.* This court believes that under the directive that legislative intent be determined from reading all statues that relate to the same subject matter *in pari materia*, the Ohio Supreme Court would look to the types of property identified as

subject to execution under § 2329.01 as informing the type of "interests" in property that are in turn made exempt from execution under § 2329.66(A)(1). *Cf. Basil v. Vincello*, 50 Ohio St. 3d 185, 191-92 (1990). An "interest" in property cannot and need not be exempt from execution or sale if is not subject to execution, garnishment, attachment or sale in the first place. Under § 2329.01, executable lands and tenements are limited to "vested legal interests" therein. *See Culp v. Jacobs*, 123 Ohio St. 109, 113 (1930)(when statute was amended in 1925 to add language "vested legal interests," the legislature intended "to limit the interest in lands and tenement liable to be taken on execution"). The only type of tenancy described in § 2329.01 as an executable "land and tenement" is a "permanent leasehold estate renewable forever." These are types of interests in real property that can also be voluntarily assigned, sold or transferred. And as construed by the Ohio Supreme Court in *Culp*, these descriptive terms serve to "limit" the interests in property that can be taken by execution. In contrast, under a tenancy by will, Debtors acquired "no certain indefeasible estate" and "nothing that can be assigned by [them] to any other," *Stoddard*, 27 Ohio St. at 483, let alone a tenancy that rises to the level of a "permanent leasehold estate renewable forever." This court finds that the Ohio Supreme Court would find that Debtors have no exemptible interest in the Maumee property within the meaning of § 2329.66(A)(1)(b) based upon the ephemeral nature of their occupancy of the property.[5]

The Sixth Circuit Court of Appeals case *Convenient Food Mart No. 133, Inc. v. Convenient Industries of America, Inc. (In re Convenient Foor Mart No. 144, Inc.*), 968 F.2d 592 (6th Cir. 1992), does not compel a different result. In that case, the Sixth Circuit held that a tenancy at sufferance under Kentucky law was property of the bankruptcy estate under § 541 of the Bankruptcy Code subject to the automatic stay. The status of a property interest as included in the bankruptcy estate under § 541 is simply a different

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[5] The court notes that even if Debtors' occupancy of the Maumee property can fairly be characterized as occurring pursuant to an oral lease of the premises, a question exists as to whether the Ohio Supreme Court would construe the term "interest" so broadly as to include such a tenancy. Bankruptcy courts are often called upon to construe the Ohio homestead and other exemptions. Other bankruptcy judges have noted that "implicit in the [exemption] statute is the fact that "interest" means some type of individual ownership interest." *In re Billerman*, 88 B.R. at 135(dicta)(citing *Gaylord, Son & Co. v. M. Imhoff & Co.*, 26 Ohio St. 317, 322 (1875)); *see In re Goodin*, 26 B.R. 160, 161 (Bankr. S.D. Ohio 1983) (stating that "to qualify for the exemption, debtor would have to show an ownership interest").

Although Debtors cite *In re Kimble*, in which a bankruptcy court also applied the term "interest" in the Ohio exemption statute in the context of facts involving an oral lease of real property, that case is distinguishable. The court in *In re Kimble* found that debtors' remainder interest in real property that they occupied pursuant to an oral lease with the life tenant was a sufficient interest in property to satisfy the "interest" requirement of Ohio's homestead exemption. *In re Kimble* does not, however, hold that an oral lease affords a judgment debtor an exemptible "interest" in a homestead property. Rather it was the debtors' remainder interest in that case that gave them the required ownership interest, while their oral lease gave them the right to use the property as their residence as is also required for eligibility to claim Ohio's homestead exemption. Thus, unlike Debtors in this case, in *In re Kimble* the debtors not only had an oral lease to occupy the property but also had an ownership interest in the property.

In any event, the court's opinion in this case does not address the sufficiency under § 2329.66 of a tenant's interest in property other than a possessory interest under a tenancy at will.

inquiry than the meaning of a state exemption statute applicable under § 522. So while the court agrees that Debtors' interest in the Maumee property is property of their estate subject to the automatic stay, from which Genoa has properly sought relief, that determination does not necessarily make that property interest exempt under Ohio Revised Code § 2329.66(A).

III. Do Debtors Have an Interest in the Maumee Property as Alter Egos of the LLC?

Application of the alter-ego doctrine is most often seen in the context of the elements that must be shown in order to pierce the corporate veil of an entity in order to impose liability on a controlling shareholder. *See, e.g., Belvedere Condo. Unit Owners' Ass'n v. R.E. Roark Companies*, 67 Ohio St. 3d 274, 288 (1993) (stating that the first element – 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 – is a concise statement of the alter ego doctrine). In *Belvedere,* the Ohio Supreme Court explained:

> That a corporation is a legal entity, apart from the natural persons who compose it, is a mere fiction, introduced for convenience in the transaction of its business, and of those who do business with it; but like every other fiction of the law, when urged to an intent and purpose not within its reason and policy, may be disregarded.

Id. at 287. The court further explained that "individual shareholders will be held liable for corporate misdeeds when it would be unjust to allow the shareholders to hide behind the fiction of the corporate entity," which will occur "only if the shareholder is indistinguishable from or the 'alter ego' of the corporation itself." *Id.* In order to impose shareholder liability under such circumstances, in addition to demonstrating that the shareholder is an alter ego of the corporation, a plaintiff must also show that control over the corporation was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and injury or unjust loss resulted to the plaintiff from such control and wrong. *Id.* at 289. "Reverse piercing" of the corporate veil is a theory, albeit one that has not been adopted in Ohio, *see Brennan v. Slone (In re Fisher)*, 296 Fed. Appx. 494, 506 (6th Cir. 2008), by which a party seeks to hold a corporate entity liable for personal debts of a shareholder or principal and requires a court to consider the same factors as when piercing the corporate veil, *Winston v. Leak*, 159 F. Supp. 2d 1012, 1018, n.5 & 7 (S.D. Ohio 2001). In *Brennan*, the court explained that veil piercing and alter ego concepts are distinct, the former asking a court "to hold A vicariously liable for B's debts, while the latter asserts that A and B are the same entity and therefore liability is direct." *Brennan*, 296 Fed. Appx. at 506.

In this case, Debtors invoke the alter-ego doctrine in order to claim a fee simple interest in the property, as they do on their Schedule A, and in turn to claim the Ohio homestead exemption in that interest. For the following reasons, the court finds that disregarding the separate entity of the LLC under the facts of this case is not appropriate.

Courts have recognized the equitable nature of theories under which the corporate entity is disregarded, *see, e.g., Brennan*, 296 Fed. Appx. at 505-06 (describing Ohio's alter ego doctrine and stating that "the separate entity of the corporation may be disregarded where the ends of justice require it."); *United States v. Toler*, 666 F. Supp. 2d 872, 886 (S.D. Ohio 2009); *Belvedere Condo. Unit Owners' Ass'n*, 67 Ohio St. 3d at 287, and have generally limited their use to third parties rather than to insiders, *see Spartan Tube & Steel, Inc. v. Himmelspach (In re RCS Engineered Prod. Co.)*, 102 F.3d 223, 226 (6th Cir. 1996) (quoting 1 Fletcher Cyclopedia on the Law of Private Corp. § 41.10 at 615 (1990) for the proposition that "[t]he corporate form may be disregarded only where equity requires the action to assist a third party"); *In re Cincom iOutsource, Inc.*, 398 B.R. 223, 232 (Bankr. S.D. Ohio 2008) (recognizing that Ohio courts have limited the alter ego doctrine to use by third parties).

Although courts in a few jurisdictions have recognized that the corporate entity may be disregarded where the principal of a company has invoked the alter ego doctrine, something more than simply the alter ego status of the corporation must be shown. *See Messick v. PHD Trucking Serv., Inc.*, 678 P.2d 791, 793 (Utah 1984) (stating that an insider may pierce the corporate veil to prevent a party outside the corporation from using the entity as a shield to defraud the insider); *Crum v. Krol*, 425 N.E.2d 1081 (Ill. App. 1981); *Roepke v. Western Nat. Mut. Ins. Co.*, 302 N.W.2d 350, 353 (Minn. 1981) (requiring a showing that no shareholder or creditor would be adversely affected); *In re Hecker*, 414 B.R. 499, 504-05 (Bankr. D. Minn. 2009) (stating that an insider must demonstrate "that it was unfair and unjust not to pierce the corporate veil").

In *In re Hecker*, cited by Genoa, the bankruptcy court acknowledged that Minnesota courts have disregarded the corporate entity and allowed a debtor to claim a homestead exemption in the debtor's residence that is owned by the corporate entity of which the debtor is the principal. *Id.* at 504. However, aware of the danger of a debtor being able to raise or lower the corporate shield depending on which position best protects the debtor's property, in determining whether the corporate entity should be disregarded under such circumstances, Minnesota courts consider not only the extent to which the corporation is an alter ego but also "whether others, such as a creditor or other shareholders, would be harmed" by disregarding the corporate entity. *Id.* at 505.

Applying the foregoing principles in this case, the court will not disregard the entity of the LLC so that Debtors may claim Ohio's homestead exemption as fee simple owners of the Maumee property. While there is little doubt that Debtors exercise such control that the LLC is their alter ego, under the facts of this case, justice does not require the equitable relief they seek. Stewart's formation of the LLC enabled Debtors to shield the Maumee property under state law, based on the fundamental distinction between an

LLC and its members discussed above, from both execution on any judgments against them and potential additional judgment liens at a time when numerous lawsuits naming them individually were being filed, *see Feinstein v. Rogers*, 2 Ohio App. 3d 96, 98 (Ohio Ct. App. 1981)(Ohio Revised Code provides two alternative methods of enforcing a judgment against real property). Any such judgment liens could not be avoided under Ohio law outside of bankruptcy, and holders thereof would be in a position to commence a foreclosure action on the Maumee property notwithstanding any homestead exemption. To the extent that the claimed homestead exemption is allowed, Debtors have filed a separate motion to avoid Genoa's judgment lien on the Maumee property under § 522(f) as impairing their exemption. *See* 11 U.S.C. § 522(f). Outside bankruptcy, Debtors' interests were best served by not being in title and not holding a fee simple interest in the Maumee property. Inside bankruptcy, Debtors' interests are best served by having the fee simple interest they claim on their schedules that they can exempt and utilize to try to avoid judgment liens under § 522(f).[6] Debtors cannot have it both ways. These facts illustrate debtors "playing fast and loose with corporate formalities, depending on which best suits [their] interests," *Hecker,* 414 B.R. at 504-05; *see In re Bianchini*, 346 B.R. 593, 596-97 (Bankr. D. Conn. 2006); *cf. In re Ekstrom*, Case No. 08-07750-SSC, 2010 Bankr. Lexis 982, *34-*41 (Bankr. Az., Mar. 23, 2010). The ends of justice require this court to sustain Genoa's Objection insofar as Debtors assert that the alter-ego doctrine now gives them a fee simple ownership interest in the Maumee property subject to the Ohio homestead exemption.

With the Maumee property legally titled in the LLC, and Debtors lacking any other basis under Ohio law to claim an exemptible "interest" therein under § 2329.66(A)(1)(b), Genoa's objection to Debtors' claimed exemption will be sustained. A separate order of the court in accordance with this memorandum of decision will be entered.

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[6] A finding that Debtors are entitled to claim an exemption in the Maumee property would not be dispositive of Debtors' motion to avoid Genoa's judgment lien under § 522(f). *See In re Streeper*, 158 B.R. 783 (Bankr. N.D. Iowa 1993)(entitlement to exemption and entitlement to avoid lien are two separate questions). The United States Supreme Court held in *Farrey v. Sanderfoot*, 500 U.S. 291 (1991), that § 522(f)(1) requires a debtor to have possessed the interest to which a lien attached, before it attached, to avoid the "fixing" of the lien on that interest. Genoa's judgment lien attached to the Maumee property with the filing of the certificate of judgment, *In re Jaber*, 406 B.R. 756, 763 (Bankr. N.D. Ohio 2009), when Stewart was in title prior to creation of any interest now claimed by Debtors in the Maumee property. It thus appears that Genoa did nothing that "fixed" a lien on any interest in the Maumee property now being claimed by Debtors, regardless whether it is exempt. *See also In re Jaber*, 406 B.R. at 762-63; *In re Vizard*, 327 B.R. 515, 519 (Bankr. D. Mass. 2005); *In re Banner*, 394 B.R. 292, 306-08 (Bankr. D. Conn. 2008)