

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 11-15433
)
KASHMIR SINGH,) Chapter 7
)
Debtor.) Judge Jessica Price Smith
) (Heard by Chief Judge Pat E. Morgenstern-
) Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

The debtor claimed a \$15,000.00 exemption as to his interest in the partnership Airport Taxi Service and as to the partnership assets. The trustee objects. (Docket 83, 85, 87, 88). For the reasons stated below, the trustee’s objection is overruled in part and sustained in part.¹

Ohio Revised Code § 2329.66(A)(14) provides for an exemption of a “person's right in specific partnership property, as exempted by division (B)(3) of section 1775.24 of the Revised Code or the person's rights in a partnership pursuant to section 1776.50 of the Revised Code, except as otherwise set forth in section 1776.50 of the Revised Code[.]” OHIO REV. CODE § 2329.66(A)(14).² Section 1775.24(B)(3) in turn states that a partner’s right in specific partnership property is exempt, except on a claim against the partnership. OHIO REV. CODE

¹ Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), and it is within the court’s constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

² The debtor’s right to exempt this property is governed by Ohio law. 11 U.S.C. § 522(b); OHIO REV. CODE § 2329.662.

§ 1775.24(B)(3).³ And § 1776.50 provides for a charging order against a partner's economic interest in a partnership:

(A) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(B) A charging order constitutes a lien on the judgment debtor's economic interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(C) At any time before foreclosure, an interest charged may be redeemed by any of the following:

- (1) The judgment debtor;
- (2) One or more of the other partners by using property other than partnership property;
- (3) One or more of the other partners, with the consent of all of the partners whose interests are not so charged, by using partnership property.

³ The trustee argued that § 1775.24(B)(3) no longer applies under § 2329.66(A)(14) because the section was repealed effective January 1, 2010. However, this argument fails under generally recognized principals of statutory construction. “Where a reference statute incorporates the terms of one statute into the provisions of another act, the two statutes co-exist as separate legislative enactments, each having its appointed sphere of action. As neither statute depends on the other’s enactment for its existence, repeal of the provision in one enactment does not affect its operation in the other statute.” 1A Sutherland Statutes and Statutory Construction § 23.33 (7th ed.) (quotation marks and citations deleted). The Ohio Supreme Court applies this statutory principal. *See State, ex rel. Fritz v. Gongwer*, 151 N.E. 752, 745 (Ohio 1926) (referring to legislation by reference and noting that “For this purpose the law referred to is, in effect, incorporated with and becomes a part of the one in which reference is made, and so long as that statute continues, will remain a part of it.”). Consequently, § 1775.24(B)(3) continues in effect as referenced in § 2329.66(A)(14).

(D) Nothing in this chapter deprives a partner of any right under exemption laws with respect to the partner's interest in the partnership.

(E) This section provides the exclusive remedy by which a judgment creditor of a partner, or partner's transferee, may satisfy a judgment out of the judgment debtor's economic interest in the partnership.

OHIO REV. CODE § 1776.50.

The court heard this matter on September 18, 2012. At that time,⁴ the debtor claimed that he is entitled to an exemption as to both the partnership property and his partnership interest. The trustee acknowledged that the debtor's interest in partnership property is exempt, but argued that § 1776.50 affords him the ability to reach the debtor's interest in the partnership. The disputed issue is, therefore, whether the debtor's partnership interest is exempt under the terms of § 1776.50.

Judge Richard Speer addressed this issue in *In re Foos*, 405 B.R. 604 (Bankr. N.D. Ohio 2009), where, in a well-reasoned opinion, he concluded that § 1776.50 does not create an exemption for a partner's interest in a partnership. Instead, the section provides that a court may charge a partner's economic interest in the partnership, which charging order "does not function to protect a debtor's interest in a partnership, but rather is a statutorily created means for a creditor of a judgment debtor who is a partner of others to reach the debtor's beneficial interest in the partnership, without risking dissolution of the partnership." *Id.* at 609 (internal quotation marks and citation deleted). Under § 1776.50, "a charging order constitute[s] the 'exclusive remedy for a judgment-creditor, and by extension a trustee in bankruptcy, against a debtor's

⁴ These arguments differ somewhat from those stated in their filings.

economic interest in a partnership.” *Id.* at 610. Conversely, “a debtor’s right to claim their partnership interest exempt under § 2329.66(A)(14) is confined to the limited protections afforded to debtors with respect to ‘charging orders’ under § 1776.50.” *Id.*

Consequently, for the reasons stated, the trustee’s objection to the debtor’s claim of exemption in the partnership property is overruled, while the trustee’s objection to the debtor’s claim of exemption in his partnership interest in Airport Taxi Service is sustained.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge