



UNITED STATES DISTRICT COURT

**Western District of Washington
United States Courthouse
700 Stewart Street, Suite 15229
Seattle, Washington 98101**

Thomas S. Zilly
Senior Judge

May 31, 2018

Honorable John D. Bates
United States District Court
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 4114
Washington, DC 20001

Re: Citizenship of Non-Corporate Entities for Purposes of Diversity Jurisdiction

Dear Judge Bates:

I write to you as the chair of the Advisory Committee on the Federal Rules of Civil Procedure to request that the Committee consider a revision to Rule 7.1 or a new rule to address the problem of determining the citizenship of a limited liability company ("LLC") or similar entity in a diversity case. This letter is a follow-up to our recent telephone conversation about this subject.

Two cases I am handling will illustrate the problem. In the *Stalwart Capital* case, I had a 10-day jury trial about 2 years ago that resulted in a defense verdict and a substantial award of attorneys' fees. On appeal, after full briefing, the Ninth Circuit remanded for further findings as to whether there was diversity jurisdiction when the case was originally filed. Plaintiff and three of the defendants are limited liability companies, meaning that each party is a citizen of each state in which its owners/members "are citizens." *Johnson v. Columbia Prop. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). When *Johnson* was decided, every circuit to address the issue had treated an LLC like a partnership for purposes of diversity. This approach is consistent with the Supreme Court's refusal to extend the corporate citizenship rule to non-corporate entities. *See Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990); *see also Americold Realty Trust v. Conagra Foods, Inc.*, 136 S.Ct. 1012 (2016) (holding that citizenship of a real estate investment trust was based on the citizenship of its members, not just the trustee).

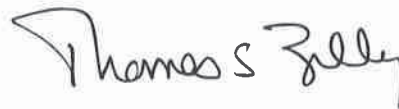
In a second case, involving a suit by an LLC against a judgment debtor, a trust, and a trustee, the plaintiff moved for a preliminary injunction, and massive briefs and declarations followed. Although a Rule 7.1 disclosure was filed, it did not address the *Johnson* problem. I requested additional briefing and the matter remains pending.

These cases illustrate the problem in diversity cases when an LLC, trust, or similar entity is a party. I believe some expanded disclosures would help us to avoid unnecessary diversity-based litigation in the federal courts. Attached is a recent article from the *New York Times* (April 30, 2018) relating to the common use of LLCs to hold real property and the difficulty in establishing true ownership.

I ask the Committee to consider a rule that would require disclosure of the names and citizenship of any member or owner of an LLC, trust, or similar entity. We are presently exploring a local rule to address this problem, but I believe other courts will face the same uncertainty in dealing with these issues.

As a former member and chair of the Advisory Committee on the Federal Rules of Bankruptcy Procedure (2004-2007), I understand the importance of your work and the necessary process in developing national rules. I thank you in advance for any consideration of this request.

Kind personal regards,

A handwritten signature in black ink that reads "Thomas S. Zilly". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas S. Zilly

Enc.

cc w/enc: Chief Judge Ricardo S. Martinez
U.S. District Court, Western District of Washington

The New York Times

Anonymous Owner, L.L.C.: Why It Has Become So Easy to Hide in the Housing Market

A way to protect property owners from personal liability has also turned out to be handy for enabling problematic behavior, like laundering money or being a bad landlord.

By **Emily Badger**

April 30, 2018



Parcel surveys of Memphis have revealed that a majority of the most blighted properties belong to L.L.C.s. Many have effectively gone out of business without selling the homes, leaving their ownership in limbo. Robert Rausch for The New York Times

When Sean Hannity, the popular Fox News host, was revealed this month to be a property owner and landlord of considerable scale, it highlighted how opaque the housing market has become.

Owning real estate in limited liability companies, as The Guardian reported that Mr. Hannity does, is a perfectly legal and increasingly popular practice. But the whiff of secrecy — and the umbrage Mr. Hannity has taken after the secret got out — speaks to the growing role of L.L.C.s in the nation's housing market.

L.L.C.s shield property owners from personal liability while obscuring their identities. In some cases, so much anonymity also enables money laundering, and it can mean that tenants struggle to hold landlords accountable, that cities fail to fix blight and that researchers can't answer basic questions about the housing market.

As much as people may want to keep their financial dealings private, the housing market has long been an unusually transparent place.

“We basically have a property system where you're supposed to be able to look up who owns what property,” said Dan Immergluck, a professor at Georgia State University. “Our English system of property recording doesn't really give you that privacy. People can look up what my property taxes are any time they want.”

L.L.C.s have eroded that expectation. There is little good national data tracking the rise of L.L.C.s. But in 2015, according to the Rental Housing Finance Survey from the Census Bureau and the Department of Housing and Urban Development, about 15 percent of all rental properties were owned by L.L.C.s, limited liability partnerships or limited partnerships. That represented one-third of all rental units, and that can include single-family houses or apartment buildings.

Put another way: 92 percent of rental properties in America back in 1991 were held by individual owners whose names tenants could easily know. By 2015, that number had fallen to 74 percent, driven largely by the growth of L.L.C.s, although the market today includes other kinds of institutional investors as well.

In the single-family market, which includes investors who built rental empires after the housing crash and others who've used empty properties to store wealth, about 9 percent of home sales last year were to L.L.C.s, according to ATTOM Data Solutions, a real estate data company. That's twice the share a decade ago. The rent-to-own company Vision Property Management, for example, has bought homes across 24 states through nearly two dozen L.L.C.s.

In his own research, Mr. Immergluck tried to identify the largest buyers of foreclosed properties in the Atlanta area. But because one unidentified buyer could be behind many L.L.C.s, it's hard to know who is acquiring the most property, or which property owners are behind the most code violations or the most evictions.

That makes it impossible for city officials to aim scarce resources at the most problematic owners. And it makes it hard for researchers to know, for example, if property has become concentrated among fewer owners.

Because the stakes are so high and the spillovers significant, there has always been a public element to private property, said Susan Pace Hamill, a law professor at the University of Alabama who has written about L.L.C.s since the late 1980s.

"Should tenants have a right to know who they're renting from?" she said. "Should cities have a right to know who owns the property? The answer is a resounding yes."

L.L.C.s today hide what should be public information, she argues.

"I am quite disturbed by that," she said. "Having participated in the evolution of L.L.C.s from their early days, I feel like they're being abused."

Wyoming passed the first L.L.C. statute in 1977 at the prodding of oil and gas interests, creating an entity with the liability protections of a corporation without the tax responsibilities of one. Hardly anyone took advantage of the tool, and few states followed until the I.R.S. blessed L.L.C.s a decade later. They then quickly became the entity of choice for all kinds of businesses, and by the mid-1990s, all 50 states had L.L.C. laws.

In Milwaukee, according to research by a Harvard doctoral student, Adam Travis, L.L.C.s have grown to about a quarter of the rental market in the two decades since they became legal in the state.

The original idea was never specifically about real estate, and anonymity wasn't particularly the appeal. But over time, Ms. Hamill said, state laws have made it easier to conceal who's behind L.L.C.s. So they have simultaneously grown more common and less transparent.

L.L.C.s are required to list a registered agent who can receive legal and government notifications, but they're often not required to name the people who financially benefit from the investments.

Luxury condominiums in New York, like these in the Time Warner Center at Columbus Circle, are popular with foreign billionaires, many of whom conceal their identity behind L.L.C.s.

Emon Hassan for The New York Times

The downsides of all of this have become clear, at both high and low ends of the market. In expensive cities like New York and Miami, L.L.C.s have helped foreign investors launder money through luxury condo purchases. In poorer cities like Memphis and Milwaukee, they have enabled investors to walk away from vacant properties and tax bills.

For renters, or tenants mired in rent-to-own contracts, these entities mean they often don't know whom they're dealing with — or who's evicting them.

These consequences worry even real estate lawyers who advise their clients to use L.L.C.s.

“The lawyer in me that represents clients says ‘privacy, secrecy, keep my people out of the papers,’ ” said William Callison, a lawyer in Denver who specializes in L.L.C. and affordable housing law. “The policy guy in me says, ‘Well, wait a second.’ ”

Why? “Because good things happen in the light,” he said, “and bad things happen in the dark.”

In Memphis, parcel surveys of the city have revealed that a majority of the most blighted properties belong to L.L.C.s. Many have effectively gone out of business without selling the homes, leaving their ownership in limbo. When the city has tried to hold some responsible, there is no one to contact — the duties of those listed as registered agents having expired along with the companies.

“The liability protections we're talking about are liability protections from external forces,” said Steve Barlow, a Memphis lawyer who directs Neighborhood Preservation, Inc., a group trying to fight blight there. L.L.C.s are supposed to personally shield owners from, say, a tenant who breaks an ankle on the property. “It shouldn't be a protection from you, yourself abandoning it,” he said.

There should be a way, he and Ms. Hamill believe, to keep the liability and tax benefits of L.L.C.s without all the secrecy. Unless or until there is, cities like Memphis are left with properties no one wants to buy and frustration from the public.

“I hear that in community meetings all the time: ‘What's being done with this property? Why can't you guys do something with it?’ ” said Robert Knecht, the director of public works in Memphis. “You have to explain to them our job is to get the owner to court.”

But it is no easy thing to get a faceless company to court.

Matthew Goldstein contributed reporting.

Emily Badger writes about cities and urban policy for The Upshot from the San Francisco bureau. She's particularly interested in housing, transportation and inequality — and how they're all connected. She joined the Times in 2016 from The Washington Post. @emilybadger

A version of this article appears in print on April 30, 2018, on Page B1 of the New York edition with the headline: The Opaque World of Ownership by L.L.C.