

The Louisiana Fourth Circuit Adds To The Growing Body Of Law Regarding Inspection Rights Of LLC Members

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In a recent case decided by the Louisiana Fourth Circuit Court of Appeal, *Jarquin v. Pontchartrain Partners, L.L.C.*, No. 2019-0737, 2020 La. App. LEXIS 137 (La. App. 4 Cir. Jan. 22, 2020), the plaintiff, an LLC member, filed a petition for writ of mandamus against the defendant LLC after the company refused to allow the plaintiff access to certain company records in violation of La. R.S. 12:1319 of the Louisiana Limited Liability Company Act.

La. R.S. 12:1319(B) grants members of limited liability companies the right to inspect company records, and provides that, unless otherwise stated in the company's articles or operating agreement, a member may:

- (1) At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours.
- (2) Obtain...upon reasonable demand the following: (a) True and complete information regarding the state of the business and financial condition of the limited liability company. (b)a copy of the limited liability company's federal and state income tax returns for each year. (c) Other information regarding the affairs of the limited liability company as is just and reasonable.
- (3) Demand a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

At the time the petition in *Pontchartrain Partners* was filed, plaintiff Jarquin had already initiated litigation against the individual members of defendant Pontchartrain Partners, L.L.C. ("PPLLC") alleging that the members wrongfully removed Jarquin from his position as co-manager of PPLLC in violation of the company's operating agreement and Louisiana law. In connection with this initial suit, Jarquin had issued a subpoena duces tecum to PPLLC seeking specific financial and tax records of PPLLC. PPLLC filed a motion to quash the subpoena, which was set for hearing on November 30, 2018.

In July 2018, while PPLLC's motion to quash was still pending, Jarquin submitted written notice to PPLLC requesting, in his capacity as a member of PPLLC, to copy and inspect the same financial and tax records he sought under the subpoena duces tecum. PPLLC refused Jarquin's request, prompting Jarquin to file a petition for writ of mandamus against PPLLC in August 2018 asserting that, as a member of PPLLC, he was entitled under La. R.S. 12:1319 to copy and inspect the requested company records.

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On September 25, 2018, PPLLC, by majority vote of its members, executed a limited liability company resolution removing Jarquin as a member of PPLLC. PPLLC subsequently filed an opposition to Jarquin's petition asserting, among other things, that 1) Jarquin had no inspection rights because he was removed as a member by virtue of the September 2018 resolution, and 2) a writ of mandamus was an improper means to obtain the records because they could be obtained by ordinary process through the subpoena issued to PPLLC in the initial suit, which sought the same records.

The Louisiana Fourth Circuit rejected both of these arguments, affirming the district court's decision in favor of Jarquin. First, Jarquin was entitled to inspect the records because, at the time he initially requested the records in July 2018 and filed the petition for writ of mandamus in August 2018, "he was still a member of PPLLC's board, and the documents sought were limited to the time period in which he was a board member." (The court's opinion frequently refers to the PPLLC members as "board members," but it is unclear whether it makes any distinction between "members" and "board members." However, plaintiff's appellate brief filed in the suit against PPLLC's members refers to plaintiff as a "member and co-manager." See Plaintiff/Appellant, Timothy L. Jarquin Original Brief, *Jarquin v. Blanks*, No. 2019-0157, 2018 La. App. Ct. Briefs LEXIS 427 (La. App. 4 Cir. Mar. 26, 2018)). Furthermore, PPLLC could not circumvent La. R.S. 12:1319 by simply relying on the fact that Jarquin was no longer a member, given that "PPLLC kicked [Mr. Jarquin] out and then denied him the documents on the basis that he was not a member."

The court also held that a writ of mandamus was the proper means to obtain the records, despite the pending subpoena in the initial suit, because Jarquin sought the writ "in his capacity as a board member of PPLLC pursuant to La. R.S. 12:1319." The court noted that, under La. C. C.P. art. 3864, a writ of mandamus may be directed against a limited liability company "to compel the 'recognition of the rights of the limited liability company's members'" where "there is a clear and specific legal right to be enforced or a duty to be performed." As a member of PPLLC, Jarquin was entitled to copy and inspect the requested records pursuant to La. R.S. 12:1319. By wrongfully failing to comply with Jarquin's request, PPLLC "failed to recognize that right," and therefore, Jarquin properly petitioned the court for writ of mandamus to enforce that right.

The Fourth Circuit's decision in *Jarquin* may give some LLC members hope in light of the Louisiana Fifth Circuit Court of Appeal's decision in *Khoobehi Props., LLC v. Baronne Dev. No. 2, L.L.C.*, 16-506 (La. App. 5 Cir. 3/29/17), 216 So. 3d 287, 296, in which the court refused to apply inspection rights to a former LLC member seeking records that existed during his time as member, on the basis that La. R.S. 12:1319 did not apply to non-members. In *Khoobehi*, however, the plaintiff had voluntarily sold his membership interest months before filing suit demanding an accounting.

Importantly, the *Jarquin* decision did not add to the body of Louisiana jurisprudence regarding whether an assignee of an LLC membership interest has the right to inspect LLC records before such assignee has been admitted as a member of the LLC. Courts addressing this issue have held that such an assignee lacks inspection rights, which are reserved for members pursuant to La. R.S. 12:1319(B). See *Channelside Servs., LLC v. Chrysochoos Grp., Inc.*, 194 So. 3d 751, 761-62 (La. App. 4 cir. 2016); *Kinkle v. R.D.C., L.L.C.*, 889 So.2d 405, 413 (La. App. 3 Cir. 12/8/04).

KEY TAKEAWAYS:

First, Louisiana limited liability companies seeking to restrict LLC members' inspection rights granted under La. R.S. 12:1319 must explicitly provide for such a restriction in writing in the company's articles of organization or operating agreement. Second, while La. R.S. 12:1319 has been interpreted by Louisiana courts to apply only to LLC members, a *former* LLC member may still be entitled to copy and inspect company records, at least if the former member made the request to inspect and filed the suit to enforce inspection rights while still a member. Third, the fact that LLC records may already be the subject of a pending subpoena duces tecum by the same plaintiff may not prevent the plaintiff from enforcing inspection rights under La. R.S. 12:1319 as well. Lastly, a person who buys or sells a membership interest in an LLC may be wise to negotiate for the contractual right to inspect and copy, at any time, records pertaining to the time period when the seller is or was a member.