

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Christy and Michael Scrivner,)	
Complainants,)	
v.)	Case No. SC-2008-0409
)	
House Springs Sewer Company, Inc.,)	
Respondent.)	

STAFF’S SUGGESTIONS IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its Suggestions states:

1. On June 25, 2008, the Complainants Christy and Michael Scrivner filed a Complaint against the Respondent House Springs Sewer Company. The Complainants questioned the amount of the tap fee (the contribution in aid of construction fee) being charged by House Springs Sewer Company for their new restaurant (Pogolino’s pizzeria located in House Springs).

2. On January 30, 2009, during the hearing of this case, Mr. Scrivner explained that he and his wife are the member owners of MCMML Limited Liability Company and that the company owns the restaurant (Tr. 140-141).

3. House Springs Sewer Company presented an oral motion to dismiss the complaint because the Scrivners were not proper parties (Tr. 162-62).

4. The Staff agrees that the Complaint should be dismissed.

5. A limited liability company (LLC) is basically a hybrid between a corporation and a partnership. An LLC has many of the advantages available to corporations and, if structured appropriately, has the advantage of being taxed as a partnership for federal income tax purposes.

Missouri Practice, Legal Forms, Vol. 7A, §50:1.

7. The Missouri Limited Liability Act, which authorizes the formation of limited liability companies in Missouri, dates only to 1993.

8. As discussed in the *Missouri Practice* treatise, Vol. 25, *Business Organizations*, §8.1:

Many practitioners have wondered whether the courts will apply corporate common law to matters involving limited liability companies. This appears to be the case.¹ In P.D. 2000, in addition to referring to the limited liability company as a “limited liability corporation” and P.D. 2000’s “corporate birth,” the court, in addressing the issue of whether a contract entered into before P.D. 2000 was organized became its obligation after it was organized, relied on corporate common law to resolve the matter.² If this becomes a continuing trend, then many issues involving corporations will similarly apply to limited liability companies. These may include such concepts as piercing the corporate veil and oppression of minority shareholders.

9. A shareholder of a corporation is without standing to sue in his individual capacity for damages to the corporation; this is the case even if all shareholders join in the suit. *Cook v. Cook*, 143 S.W.3d 709, 711 (Mo.App. W.D. 2004). Standing cannot be waived, may be raised at anytime by the parties, and may even be addressed *sua sponte* by the trial court or by an appellate court. *Id.* If a party lacks standing, the court must dismiss the case because it does not have jurisdiction of the substantive issues presented. *Id.*

10. Section 347.061.1 RSMo states:

Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

11. Section 347.069.1 RSMo states, in part:

¹ See *P.D. 2000, L.L.C. v. First Financial Planners, Inc.*, 998 S.W.2d 108 (Mo.App. 1999).

² *Id.*

A member, manager, employee, or agent of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce such person's right against or duty or liability to the limited liability company.

12. The Complainants, as members of a limited liability company, are without standing in their individual capacities to pursue this Complaint because MCMM Limited Liability Company is the party in interest.

WHEREFORE, the Staff suggests that the Commission should dismiss this Complaint.

Respectfully submitted,

/s/ **William K. Haas**

William K. Haas

Missouri Bar No. 28701

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)
william.haas@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of February 2009.

/s/ **William K. Haas**