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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0968**

VONCO V Duluth, LLC,
f/k/a Demolition Landfill Services, LLC,
Respondent,

vs.

Darren Saari,
Appellant.

**Filed January 13, 2014
Affirmed
Schellhas, Judge**

St. Louis County District Court
File No. 69DU-CV-12-1331

Jack Y. Perry, Diane B. Bratvold, Daniel M. White, Briggs and Morgan, P.A.,
Minneapolis, Minnesota (for respondent)

Mitchell J. Brunfelt, Colosimo, Patchin, Kearney & Brunfelt, LTD., Virginia, Minnesota
(for appellant)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this dispute arising out of a membership control agreement for a limited-liability company, appellant challenges the district court's denial of a temporary injunction. We affirm.

FACTS

Appellant Darren Saari and respondent VONCO V Duluth, LLC, f/k/a Demolition Landfill Services, LLC, entered into an employment agreement and an amended and restated member control agreement. The member control agreement identifies Demolition Landfill Services as “the ‘Company’” and Saari as a “Member[] of the Company.”

In December 2011, Veit Specialty Contracting & Waste Management terminated Saari's employment with VONCO V. In April 2012, VONCO V sued Saari, (1) alleging negligence, breach of the duty of loyalty, breach of fiduciary duty, conversion, civil theft, and unjust enrichment, and (2) requesting, among other things, a declaratory judgment, set off, and “INTERPLEADER/DEPOSIT.” VONCO V asked the court for an order, authorizing it to deposit “future Operating Distribution payments . . . with the Court as and when due,” and for release of “appropriate amount[s]” to Saari “upon the Court's determination regarding VONCO V's claims against Saari . . . in satisfaction of VONCO V's payment obligations under the Member Control Agreement.” Saari counterclaimed, asserting, among other things, claims of breach of contract and claims based on the Minnesota Limited Liability Company Act (MLLCA). He sought monetary relief and a declaratory judgment that would require VONCO V, among other things, to “mak[e] and

continu[e] to make all Operating Distribution payments to Saari under and pursuant to the Member Control Agreement and the [MLLCA].”

Saari moved for partial summary judgment on his breach-of-contract and MLLCA claims, his request for declaratory judgment, and VONCO V’s requests for set-off and “interpleader/deposit.” Alternatively, Saari moved the district court for a temporary injunction that would require VONCO V to “immediately reinstate and . . . make, both retroactively and prospectively, all of the quarterly Operating Distribution payments due and owing to [Saari], pursuant to the terms of the Member Control Agreement.”

VONCO V opposed Saari’s motions and, based in part on Minn. R. Civ. P. 67.01, asked the district court to permit it to deposit operating distributions with the court, arguing that such an order “would ensure that the desired *status quo* is maintained.”

The district court denied Saari’s motions for partial summary judgment and a temporary injunction and ordered VONCO V to deposit the operating distributions with the court administrator within ten days of the order “under Rule 67.” *See* Minn. R. Civ. P. 67.01 (permitting “a party, upon notice to every other party, and by leave of court, [to] deposit with the court all or any part of” “a sum of money”). Saari appealed from the district court’s order denying his partial-summary-judgment motion and temporary-injunction motion. In a special-term order, this court dismissed Saari’s appeal from the denial of partial summary judgment because it was “not appealable as a matter of right” but permitted Saari to proceed with his appeal from the denial of a temporary injunction.

DECISION

“A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits.” *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). “A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.” Minn. R. Civ. P. 65.02(b). “Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held.” *Miller*, 317 N.W.2d at 712. “A decision on whether to grant a temporary injunction is left to the discretion of the trial court and will not be overturned on review absent a clear abuse of that discretion.” *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993).

Saari argues that the member control agreement *required* the district court to enjoin VONCO V because section 9.06 of the agreement “entitle[s] [him] to immediate injunctive relief” as a result of VONCO V’s alleged violations of the agreement. He argues that the district court erred by not ordering VONCO V to immediately reinstate all quarterly operating distribution payments allegedly due and owing to him under the terms of the member control agreement. We disagree.

Section 9.06 of the agreement provides as follows:

9.06 Equitable Relief; Attorneys’ Fees. The parties agree that the remedy of damages at law for a *violation by a Member* or assignee of Financial Rights of any of the terms or conditions of this Agreement is an inadequate remedy. In recognition of the irreparable harm that such a violation

would cause the Company and its Members, the Members agree that in addition to any other remedies or relief afforded by law, the Company and/or one or more of its Members may obtain an injunction against an actual or threatened violation or may obtain an order *compelling the Member* to specifically perform any provisions of this Agreement, it being the understanding of the parties that both damages and an injunction or order of specific performance shall be proper modes of relief and are not to be considered alternative remedies. In the event of any such actual or threatened violation, the *violating Member* agrees to pay the costs, expenses and reasonable attorneys' fees incurred by the Company and its Members in pursuing any of its/their rights with respect to such actual or threatened violation, in addition to the actual damages sustained by the Company and/or its Members as a result thereof.

(Emphasis added.) Under the clear and unambiguous language in the agreement, VONCO V, formerly known as and referred to in the agreement as Demolition Landfill Services, is not a member; VONCO V is the “Company” under the language in the agreement. *See Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012) (stating that an appellate court reviews de novo contract interpretation as a legal question, enforcing the contract’s clear and unambiguous language).

The district court rejected Saari’s arguments that his irreparable harm is presumed under the section 9.06 language and that the court therefore need not engage in an analysis of the *Dahlberg* factors. *See generally Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965) (listing the five factors). And the court asked Saari’s attorney, “Is there any harm, other than all of us want to get paid sooner than later, of requiring Vonco to make payment of any amounts due under the agreement into court, under Rule 67?” Saari’s attorney replied in the negative. Neither in

district court nor on appeal has Saari identified any irreparable harm that he will suffer because of the denial of a temporary injunction, nor does he identify how the absence of a temporary injunction will render any legal remedies inadequate.

We conclude that section 9.06 of the member control agreement does not entitle Saari to injunctive relief and that the district court did not abuse its discretion by denying a temporary injunction. *See Bolander*, 502 N.W.2d at 205 (“The trial court did not abuse its discretion when it denied injunctive relief for failure by the appellant to prove irreparable harm or to demonstrate that its legal remedy was inadequate.”).

Saari also argues that the district court erred because it, “in effect, imposed a pre-judgment attachment” on his income and assets. *See* Minn. Stat. § 570.02, subd. 1 (2012) (stating grounds on which court may order attachment); *U.S. Bank Nat’l Ass’n v. Angeion Corp.*, 615 N.W.2d 425, 435 (Minn. App. 2000) (“[W]e have not allowed injunctive relief that creates a pre-judgment security interest when attachment would not be allowed under the statute.”), *review denied* (Minn. Oct. 25, 2000). We decline to address Saari’s argument because he did not raise it in district court until after the court had already denied his temporary-injunction motion, and the court did not address the issue in the appealed-from order. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

Saari also argues that he should not be required to post a bond or security for the reinstatement of distribution to him of quarterly operating payments. The district court

did not address his argument in its order, nor did it order him to post a bond or security in that order. We will not issue an advisory opinion on this issue. *See id*; *see also McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) (“We do not issue advisory opinions” (quotation omitted)).

We conclude that the district court did not abuse its discretion by denying Saari a temporary injunction.

Affirmed.