COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

EDUARDO FUENTES Y., INDIVIDUALLY, AND DERIVATIVELY ON BEHALF OF FOX HOLDING COMPANY, AND DERIVATIVEVLY ON BEHALF OF TEXAS INTERNATIONAL GAS & OIL COMPANY, AND DERIVATIVELY ON BEHALF OF CENTRO ADMINISTRATIVO F-SIETE, S.A. DE C.V., AND DERIVATELY ON BEHALF OF COMPLEJO INDUSTRIAL FUENTES, S.A. DE C.V.,	§	No. 08-20-00093-CV
	§	Appeal from the
	§	County Court at Law Number Seven
	§	of El Paso County, Texas
	§	(TC#2016DCV0781)
	§	

Appellant,

v.

CESAR FUENTES, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF TEXAS INTERNATIONAL GAS & OIL COMPANY, FOX HOLDING COMPANY, ROSA YAMEL FUENTES Y., INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF ROSA MAGALI FUENTES YANAR A/K/A ROSA MAGALI FUENTES YANAR, CENTRO ADMINISTRATIVO F-SIETE, S.A. DE C.V., AND COMPLEJO INDUSTRIAL FUENTES, S.A. DE C.V.,

Appellees.

O P I N I O N

This is an interlocutory appeal from the denial of Appellant Eduardo Fuentes Y.'s (Eduardo) application for temporary injunction. The underlying case arises out of a dispute between siblings who are shareholders of two family-owned businesses, Texas International Gas & Oil Company (TIGO) and Fox Holding Company (Fox Holding). After Eduardo was removed as president of TIGO, and during the pendency of the underlying suit, Eduardo sought a temporary injunction prohibiting Cesar and Yamel from continuing to operate TIGO without him serving as president. On appeal, Eduardo contends he met his evidentiary burden to establish his entitlement to relief. Finding no abuse of discretion by the trial court, we affirm.

I. BACKGROUND

A. The parties and family-owned businesses

Eduardo is one of three adult children of Eduardo F.V. (Eduardo F.V.), the family patriarch. Eduardo's siblings include Cesar Fuentes (Cesar), Rosa Yamel Fuentes Y. (Yamel), and his late sister, Magali Fuentes Y. (Magali), who passed away in 2015.[1] Eduardo F.V. and his father, Valentin Fuentes, founded TIGO, a retail and wholesale liquid propane gas dealer located in El Paso. TIGO is regulated by the Texas Railroad Commission (TRRC). One hundred percent of the stock of TIGO is owned by its parent company, Fox Holding, a Nevada corporation. Shares in Fox Holding are owned by CAFSA, which is 98% owned by Eduardo F.V. CAFSA is a Mexican business located in Juarez, Mexico.

The amended articles of incorporation of Fox Holding created five classes of stock, A, B, C, D, and E, and provided for a Board of Directors consisting of seven directors. Class A contained

[1] The record contains documents and references referring to Magali as Magaly. The parties also seem to use the different spellings interchangeably.

480 shares of stock and designated CAFSA as the sole shareholder. Classes B through E each contained 130 shares of stock and designated the children of Eduardo F.V. as shareholders. Eduardo served as president of TIGO since 2014, while his siblings—Cesar, Yamel, and Magali—held stock but never previously worked for TIGO prior to the underlying lawsuit.

According to Fox Holding's bylaws, the shareholders of Class A stock would elect three directors and the shareholders of Classes B through E would each elect one director for a total of seven directors. In 2004, the share distribution and directors for each class were as follows:

Class	Shareholder	Number of Shares	Directors
A	CAFSA	480	Eduardo F.V. Humberto Valles Jay Magness
B	Magaly	130	Magali
C	Cesar	130	Cesar
D	Yamel	130	Yamel
E	Eduardo	130	Eduardo

The current share distribution and directorship of Fox Holding forms the central issue of the underlying lawsuit. Essentially, Appellees contend that in 2013, CAFSA transferred its 480 shares to Eduardo F.V., individually, and he, in turn, transferred those shares to his children in equal shares. Eduardo contends this transfer never occurred, but if it did, he asserts it was *void ab initio* as it violated Fox Holding's shareholder's agreement.

B. Procedural background

1. The derivative lawsuit

In March 2016, Cesar individually filed an original petition against three parties: Eduardo,

Eduardo's son, Eduardo Fuentes G.[2], and TIGO. The lawsuit alleged it was brought on behalf of Fox Holding and the company's shareholders. Cesar asserted claims of breach of fiduciary duty, misappropriation of company money, negligence, gross negligence, conversion, and fraud, all in relation to defendants' operation of TIGO. Subsequently, Cesar amended the suit to include Yamel as a defendant, alleging she and Eduardo had conspired to divert TIGO's funds. Multiple amended pleadings followed throughout the next few years.[3]

On April 10, 2019, Yamel and Cesar voted to remove Eduardo as president of TIGO, which stripped him of all managerial authority. In place, Yamel was named TIGO's president, while Cesar became secretary and treasurer. On the same day, Cesar filed his fourth amended petition adding causes of action including fraud by nondisclosure, constructive trust, conspiracy, unjust enrichment, theft liability, and accounting. The amended petition also included a request for an ex parte temporary restraining order (TRO) against Eduardo and his son, claiming it was necessary to prevent them from "utilizing, removing, or secreting TIGO property especially in light of their removal and termination." The TRO was also sought to ensure no breach of the peace. The trial court granted the request and issued a TRO restraining Eduardo from utilizing, accessing, possessing, secreting, or destroying financial resources and personal property of TIGO. The trial court also set the matter for a temporary injunction on April 23, 2019. No hearing was ever held on the temporary injunction, and the TRO eventually expired.

On October 30, 2019,[4] Eduardo filed a counterclaim, crossclaim, and third-party petition against Cesar, Yamel, TIGO, and Fox Holding, asserting claims of breach of fiduciary duty, breach

[2] Eduardo Fuentes G., was elected vice-president of TIGO. The youngest Eduardo is not a party to this appeal

[3] Yamel was removed as a defendant in the fourth amended petition.

[4] Eduardo contends a delay in proceedings was caused due to "a conflict of interest" with his attorney.

of contract, and civil conspiracy. Eduardo sought a declaratory judgment declaring as follows: that the actions taken by Yamel and Cesar in April 2019 were null and void, that he was the lawfully elected president of TIGO, that the board of directors and officers of Fox Holding and TIGO remained as they were prior to the "illegal action" by Yamel and Cesar, and that Yamel and Cesar were not directors or officers of Fox Holding or TIGO. After amending his pleading, Eduardo requested "supplemental relief in the form of a temporary and permanent injunction" permitting him to resume his normal duties and responsibilities as TIGO's president and prohibiting Cesar and Yamel from interfering with his duties. Eduardo asserted that he, Fox Holding, and TIGO would suffer imminent, irreparable harm unless Cesar and Yamel were enjoined due to TIGO being operated illegally and in violation of the rules and regulations of the TRRC.

2. The temporary injunction hearing

On January 15, 2020, the trial court heard Eduardo's request for an emergency temporary restraining order requesting he be reinstated as president of TIGO and for Cesar and Yamel to be restrained from interfering with his duties as president. Eduardo argued the evidence would show he was the only person with the right of control of TIGO and it was currently being operated in violation of TRRC requirements. In support, Eduardo submitted a copy of provisions of the Texas Administrative Code and of rules of the TRRC, asking the trial court to take judicial notice of each. Eduardo also submitted as evidence his own affidavit and a second affidavit from a former TIGO employee. He argued that Yamel and Cesar were acting in violation of Fox Holding governing documents. As to irreparable harm, Eduardo argued that Cesar and Yamel were operating TIGO without a proper license. The hearing ended with a postponement. It was continued in chambers on January 21, 2020, at which time the parties agreed the matter of the temporary injunction would be considered based on written briefs and evidence submitted to the court.

Through additional briefing, Eduardo later argued the actions taken by Yamel and Cesar in April 2019 were in violation of Fox Holding bylaws and its shareholder agreement. Eduardo's briefing also attached a declaration of Marcos Molina Castro, a licensed Mexican attorney, averring the transfer of 480 shares of stock to Eduardo F.V. were unlawful. Additionally, Eduardo asserted the operation of TIGO was in violation of rules of the TRRC because no company representative currently held the proper category "E" license needed to store, sell, transport, and distribute liquid propane gas because he was the previous representative that held the proper "[C]ategory E" license issued by the Commission. Responding, Appellees asserted that Yamel and Cesar's action in April 2019 was properly done and in accord with governing documents. Appellees asserted that in May 2013, CAFSA transferred its stock in Fox Holding to Eduardo F.V. Then, Eduardo F.V. transferred the 480 shares to his four children in equal shares, giving each 120 additional shares. Appellees contend the shareholder registry subsequently read as follows:

Class	Shareholder	Number of Shares	Directors
A	CAFSA	0	N/A
B	Magali	250	Magali
C	Cesar	250	Cesar
D	Yamel	250	Yamel
E	Eduardo	250	Eduardo

Appellees assert there were no longer any directors elected by Class A shareholders, as no Class A shareholders then existed. Each sibling remained the director of their respective Class. In July 2015, Magali passed away and bequeathed her shares to Yamel.

In support, Appellees presented documentation of unanimous consents, shareholder agreements, special meeting resolutions and certificates of the transferred stock. Additionally,

Appellees provided a counter-affidavit from Sergio Mauricio Cisneros Castro, who was also a licensed Mexican attorney, who averred that transfers from CAFSA to Eduardo F.V., and from Eduardo F.V. to his children, were all done properly. Appellees also asserted that because of the transfer of shares in 2013, Cesar and Yamel made up a proper quorum of directors. In April 2019, Cesar and Yamel voted to elect themselves as directors of Class C and D. Additionally, Yamel voted to elect herself as director of Class B, having inherited Magali's shares. Cesar and Yamel sent notice of a special meeting of Fox Holding's board of directors to Eduardo, to which Eduardo sent a response. Through the special meeting, Yamel was appointed as president and Cesar was appointed as secretary and treasurer of Fox Holding. As the sole shareholder of TIGO, Fox Holding, acting through Cesar and Yamel, removed the existing directors of TIGO and elected them as directors.[5] As directors of TIGO, Cesar and Yamel then voted to remove Eduardo as president of TIGO. Yamel was then appointed as president and Cesar was appointed as secretary and treasurer.

Eduardo asserted any alleged transfers were in violation of Fox Holding's shareholder's agreement and were *void ab initio*. He also takes the position that he had never seen the documents presented by Appellees, and they were forged.

On March 13, 2020, the trial court held a hearing solely for the purpose of giving a ruling on Eduardo's application for temporary injunction. At the hearing, the trial court admitted seven exhibits offered by Eduardo in support of the application for temporary injunction, including affidavits and documentation from the TRRC. At the close of the hearing, the trial court denied the request for injunctive relief. On March 26, 2020, the trial court entered a written order of that

[5] Appellees do not state who the previous director of TIGO was prior to removal. Our review of the record shows Eduardo F.V. was the previous sole director of TIGO in 2014 but there is no showing when or if this changed.

denial. No findings of fact or conclusions of law were requested or filed. This appeal followed.[6]

II. DISCUSSION

In one issue on appeal, Eduardo asserts the trial court abused its discretion in denying his application for temporary injunction. He argues the trial court was presented with undisputed evidence demonstrating his removal as TIGO's president was a violation of Fox Holding and TIGO's governing documents, and following his removal, he contends TIGO's operations have been conducted in violation of the safety rules of the TRRC.

A. Standard of Review

"A temporary injunction is an extraordinary remedy and does not issue as a matter of right." *Butnaru v. Ford Motor Co*., 84 S.W.3d 198, 204 (Tex. 2002). Granting or denying a temporary injunction is within the sound discretion of the trial court and its decision is subject to reversal only for a clear abuse of discretion. *Id*. "The trial court abuses its discretion when it acts arbitrarily, unreasonably acts without reference to guiding rules or principles, or misapplies the law to the established facts of the case." *Hous. Auth. of City of El Paso v. City of El Paso*, 141 S.W.3d 663, 666 (Tex. App.—El Paso 2004, no pet.). We review the evidence in the light most favorable to the trial court's order, indulge every reasonable inference in its favor, and defer to the trial court's resolution of any conflicting evidence. *Butnaru*, 84 S.W.3d at 204. The trial court does not abuse its discretion if some evidence reasonably supports the trial court's ruling. *Davis v. Huley*, 571 S.W.2d 859, 861 (Tex. 1978). We refrain from reviewing the merits of the underlying case, but only review the order granting or denying the injunction. *Butnaru*, 84 S.W.3d at 211.

B. Applicable Law

[6] Appellees Cesar and Fox Holding join in Appellee Yamel's brief. TEX. R. APP. P. 9.7 (permitting any party to join in or adopt by reference all or any part of a brief filed in an appellate court by another party in the same case).

The purpose of a temporary injunction is to preserve the status quo between the parties pending a trial on the merits. *Walling v. Metcalfe,* 863 S.W.2d 56, 57 (Tex. 1993). Status quo is defined as "the last actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). To obtain a temporary injunction, the movant must plead and prove three elements: "(1) a viable cause of action, (2) a probable right to recovery, and (3) a probable, imminent, and irreparable injury in the interim." *Housing Authority of City of El Paso v. City of El Paso*, 141 S.W.3d 663, 667 (Tex. App.—El Paso 2004, no pet.). The probable right to relief is shown by alleging a cause of action and presenting evidence that tends to sustain it. *Walling,* 863 S.W.2d at 57; *Florie v. Reinhart*, No. 01-16-00603-CV, 2017 WL 817166, at *7 (Tex. App.—Houston [1st Dist.] Mar. 2, 2017, no pet.) (mem. op.). An injury is irreparable if the injured party's damages cannot be measured by any certain pecuniary standard or cannot be adequately compensated in damages. *Butnaru*, 84 S.W.3d at 204.

C. Analysis

1. Status quo

We first address Eduardo's argument that the trial court abused its discretion in denying his request to restore the status quo. Eduardo asserts the trial court altered the status quo when it granted Appellees' TRO in April 2019, contending the order removed Eduardo as president of TIGO. Appellees counter by pointing out the TRO merely prohibited Eduardo from taking certain acts regarding TIGO's business, but it did not in fact remove him as president. We conclude the TRO is not properly before this Court. Eduardo asserted no complaint about the TRO to the trial court and, in any event, it subsequently expired by its own terms. TEX. R. APP. P. 33.1(a)(1) (requiring presentation of a complaint to the trial court by a timely request, objection, or motion as a prerequisite to a complaint for appellate review).

Eduardo secondly asserts the status quo of the case should be defined as the how things existed when he served as president of TIGO, that is, how things existed the first three years of the litigation and the several years before. Again, the status quo is the "last actual, peaceable, non-contested status that preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004); *Pharaoh Oil & Gas, Inc. v. Ranchero Esparanza, Ltd*., 343 S.W.3d 875, 882 (Tex. App.—El Paso 2011, no pet.). The status quo cannot be a violation of the law but if the essential question of the lawsuit it whether the status quo is a violation of the law, such determination should generally be made with a full trial on the merits. *In re Newton*, 146 S.W.3d at 652; *Pharaoh Oil & Gas, Inc*., 343 S.W.3d at 882.

The full meaning of a controversy is not limited to the commencement of an underlying lawsuit but can refer to the set of circumstance in place when the specific complaint is made. *See Tri-Star Petroleum Co., Tipperary Corp.*, 101 S.W.3d 583, 588 (Tex. App.—El Paso 2003, pet. denied). Although Eduardo contends the undisputed evidence showed the actions taken in April 2019 were void and TIGO was being operated illegally, his assertion is unsupported by this record. Contrary to his assertion, Appellees presented evidence supporting their contention that their actions were valid. Because of this evidentiary dispute, the validity of the stock transfers and of the subsequent vote remains a matter of factual dispute. Given the deference we must give to the trial court, it could have rationally determined the last peaceable, non-contested status between the parties was the status prior to Eduardo's request for temporary injunction requesting reinstatement and removal of Yamel and Cesar. *See id.* (holding the trial court rationally determined the last peaceable status during the lengthy litigation was prior to a "new controversy" as to whether Tri-Star must comply with votes for removal of defendant operator). At this stage of the litigation, it was not yet ripe for the trial court to resolve this contested issue. Thus, we conclude the trial court

acted within its discretion in finding the status quo meant how things existed prior to Eduardo bringing forth his complaint. *Id*.

2. Probable, Imminent, and Irreparable Injury

As a preliminary matter, Appellees allege that the only irreparable harm alleged by Eduardo in his sworn petition is his contention that Fox Holding and TIGO were being operated illegally, in violation of the rules and regulations of the TRRC. Eduardo's first amended counterclaim and third-party petition requesting declaratory and injunctive relief stated as follows:

> [Eduardo] also requests a Temporary Restraining Order, Temporary and Permanent Injunction permitting [Eduardo] to resume his normal duties and responsibilities as President of TIGO and prohibiting [Cesar] and [Yamel] from interfering with [Eduardo]'s discharge of his duties and from taking any further actions to change the directors or officers of [Fox Holding] or TIGO. [Eduardo] would show that unless [Cesar] and [Yamel] are enjoined as requested herein, [Eduardo], [Fox Holding], and TIGO will suffer imminent, irreparable harm, among other things, because TIGO is being operated illegally and in violation of the rules and regulations of the Texas Railroad Commission.

In briefing to this Court, Eduardo contends the wording used in his pleading refers to illegal corporate actions by Cesar and Yamel, as well as violations of the rules of the TRRC. He contends his petition for injunctive relief is "properly sworn[,] verified, and is replete with allegations regarding the illegalities of the harm alleged to have been suffered by both Eduardo and TIGO."

In reviewing Eduardo's pleadings requesting a temporary injunction, his supplemental briefs submitted to the trial court, the arguments he made during relevant hearings, and his briefing with this Court, we note he essentially makes three arguments. First, Eduardo presented the trial court with considerable argument that TIGO was being operated in violation of the rules and regulations of the TRRC. Second, he argued that Yamel and Cesar were acting in violation of Fox Holding's bylaws and its shareholder's agreement. Lastly, he argued he and the business itself would suffer irreparable harm in the form of lost profits, lost sales, and loss of salary.

As a result, the question at hand is whether Eduardo proved by the evidence presented, that probable, imminent, and irreparable harm would result if his request for a temporary injunction was not granted.

a. Violation of the Texas Railroad Commission rules and requirements

The presentation of evidence in front of the trial court and the additional briefs submitted thereafter focused heavily on Eduardo's allegation that Fox Holding and TIGO would suffer probable imminent and irreparable harm with TIGO being operated in violation of rules of the TRRC. Eduardo asserted that TIGO operated as a liquid propane gas dealer. In order to store, transport, sell, and ultimately export propane gas, he claimed the TRRC required a company representative to pass an examination for a category "E" license. He further asserted that he had obtained such category "E" license while serving as president of the company. He alleged his removal as president left TIGO without a licensed, company representative.

Eduardo referred the trial court to a renewal application from September 30, 2019, showing the listed company representative as "John D. Magness." Eduardo suggested the designation was fraudulent and a misrepresentation because Magness no longer worked for the company. He further submitted the affidavit of John D. Magness in which he averred that he no longer worked for TIGO and he had not given his consent for his name to be submitted as a company representative. A second renewal application listed Eduardo as the company representative and Eduardo further argued it was also fraudulent.

In response, Cesar argued these discrepancies amounted to a nonissue because the business had obtained the appropriate license through their chief financial officer and manager, Armando

Licon.[7] In a supplemental response following the January hearing, Cesar further asserted that TIGO had believed that only a category "C" license was needed to operate the liquid propane gas business. However, "in an abundance of caution," Arturo Ramirez obtained a Class "E" license, and he was retained by the company.[8]

In rebuttal, Eduardo disputed the issue had been rectified. Instead, he requested the trial court take judicial notice of multiple published reports from the TRRC providing lists of company representatives. Through these reports, Eduardo attempted to prove that neither Licon nor Ramirez were listed in these published reports. Appellees countered, however, with a copy of Ramirez's certificate, plainly showing designations for "retail and wholesale dealer," and "delivery service and installation." As the sole finder of fact, we must defer to the trial court's resolution of disputed facts. The trial court's implied finding that licensing deficiencies had been cured was supported by evidence of record.

Even if an issue remained over TIGO not having a licensed, company representative, Eduardo did not establish on this record that irreparable harm would result absent him being restored as TIGO's president. Eduardo essentially argued that operation of TIGO in violation of safety rules was illegal and that no monetary damages would compensate for such violation of rules. The flaw in this argument is the assumption it makes that Cesar and Yamel would continue to violate governing documents by operating without a proper license; and that it ignores their attempts to cure the issue by retaining a representative with a Class "E" license. A temporary

[7] Cesar also explained the business listed Eduardo in the renewal application in good faith on the belief that it was sufficient to have someone licensed on the board. When they discovered it had to be an employee of the business, they "got the manager on a plane to Austin to take the exam."

[8] On January 21, 2020, Appellees supplemented proof of additional attempts to rectify the issue and have a proper company representative with a proper license. The trial court had the supplemented evidence before it prior to the decision to deny the temporary injunction was made on March 26, 2020.

injunction will not be proper when the claimed injury is merely speculative and based on fear and apprehension of injury. *Fuentes v. Union de Pasteurizadores de Juarez Sociedad Anonima de Capital Variable*, 527 S.W.3d 492, 501 (Tex. App.—El Paso 2017, no pet.). Showing probable and imminent injury is not satisfied by evidence that the harm or injury is "possible" or "feared." *Hotze v. Hotze*, No. 01-18-00039-CV, 2018 WL 3431587, at *4 (Tex. App.—Houston [1st Dist.] July 17, 2018, no pet.) (citing *Camp Mystic, Inc. v. Eastland*, 399 S.W.3d 266, 276 (Tex. App.—San Antonio 2012, no pet.)); *see also Matrix Network, Inc. v. Ginn*, 211 S.W.3d 944, 947–48 (Tex. App.—Dallas 2007, no pet.) (stating business projections were merely speculative and did not demonstrate why a damage figure to compensate it for any lost business or other damages at the conclusion of the trial on the merits would not be sufficient). Here, Eduardo's fear of a shutdown is merely speculative and could not form the basis for a temporary injunction.

b. Violation of governing documents

Eduardo also asserts he proved imminent and irreparable harm in showing Cesar and Yamel usurped control of Fox Holding and TIGO, in violation of governing documents of both corporations, thereby ousting him unlawfully from TIGO's presidency. Eduardo argues the resulting damage cannot be measured by any pecuniary standard when shareholders or directors take actions in derogation of the rights of another shareholder or director.

We first note this argument was not presented to the trial court. As explained above, the evidence the trial court heard and received in additional briefing was limited to allegations pertaining to TIGO operating without a proper license. Although Eduardo presented evidence alleging transfers of shares of Fox Holding were void and other actions impacting shareholders were improper, he made no argument to the trial court asserting such derogation of rights caused irreparable harm. Said differently, in connection to this allegation, no argument was made that

such harm would result if Eduardo was not restored to the status as president of TIGO.

Even so, we conclude the argument fails. First, Eduardo cites a case where three common stock shareholders of a corporation elected themselves as directors of the corporations, then officers of the corporation, and redeemed the preferred stock of another shareholder who was not in attendance of the meeting. *L.D. Brinkman Investment Corporation v. Brinkman*, No. 04-16-00651-CV, 2017 WL 1684836, at *2 (Tex. App.—San Antonio Apr. 26, 2017, no pet.) (mem. op.). The shareholder with preferred stock held her own meeting and elected herself as the sole director and officer of the corporation. *Id*. The preferred stock shareholder requested injunctive relief requesting to be recognized as the sole shareholder and officer of the corporation and a request to enjoin the other shareholders from interfering with her duties as the director and officer. *Id*. After presenting evidence showing her shares constituted a majority vote, that the other shareholders meeting lacked a quorum, and the redemption of her shares required approval by a properly constituted board, the trial court granted the temporary injunction. *Id*. 4–5. On appeal, the Fourth Court of Appeals found "it was within the trial court's discretion to infer the evidence established an intent by [minority shareholders] to continue to operate [the corporation] in derogation of [majority shareholder's] rights as the sole director and officer." *Id*. at *6. The Court further found the shareholders continuing action in derogation of the majority shareholder's rights could not be measured by any certain pecuniary standard. *Id*.

Eduardo further points to a case where a temporary injunction was granted by a trial court where one shareholder was restrained from altering, enlarging, or increasing the members of the board of directors beyond the present two directors and from allowing payment of personal expenses by use of corporation funds without proper documentation. *Florie*, 2017 WL 817166, at *6–7. The First Court of Appeals held the trial court had sufficient evidence to support the

conclusion that the one shareholder would continue to act in violation of the rights of the equal shareholder and director and such damage would not have an adequate remedy at law. *Id*. 12–13.

We find the procedural posture of Eduardo's cited cases differs significantly from the issue at hand. In both cases, the trial court essentially found there was malintent on behalf of the shareholders in their actions to diminish another shareholder's rights. Our sister courts were faced with the issue on whether the trial court's granting of a temporary injunction was an abuse of discretion. *Brinkman*, 2017 WL 1684836, at *2; *Florie*, 2017 WL 817166, at *6–7. In doing so, our sister courts found the trial court's implied findings and conclusions were supported by the evidence. Here, however, we are faced with a different question. We must determine whether the trial court's denial of a temporary injunction was supported by the evidence and not otherwise an abuse of discretion. For this reason, we find these cases distinguishable and not persuasive.

Lastly, Eduardo points to a prior decision by this court in which we reversed the trial court's denial of a temporary injunction. *Housing Authority of El Paso*, 141 S.W.3d at 668. However, *Housing Authority* concerned a governmental entity governed by the Texas Government Code. *Id*. at 665–66. In that case, we found the trial court abused its discretion in misapplying the law as there was uncontroverted evidence that the number of board of commissioners could not be increased unilaterally as such was unauthorized by law. *Id*. at 667–68. We found the probable, imminent, and irreparable harm resulting from the illegally constituted board of commissioners not authorized by Texas law could not be adequately compensated in damages. *Id*. at 668. For the reasons explained above, Eduardo has not proved a probable, imminent, and irreparable harm absent his reinstatement as president.

Additionally, Eduardo was not removed as a shareholder or as a member of the board of directors of Fox Holding. He remained, and still remains, the holder of Class E stock. He remains

a member of the board of directors and retains all his shareholder interest. At most, Eduardo was removed as president of TIGO and restrained from operating the day-to-day business of the company. On this record, Eduardo has failed to prove he would be irreparably harmed by denial of a temporary injunction restoring him to the presidency of TIGO.

c. Lost sales and earnings

Lastly, Eduardo argued he had worked for the company his entire life while Cesar and Yamel had never worked there prior to April 2019. Eduardo argued he was not receiving his salary and he had concerns about decreasing business sales.

If a legal remedy is available—typically monetary damages—then a party cannot also get an injunction as well. *Pike v. Texas EMC Management, LLC*, 610 S.W.3d 763, 792 (Tex. 2020). Here, Eduardo fails to establish that possible loss of sales, or his personal loss of wages, will cause him irreparable harm. There is no evidence that any such loss endured by Eduardo would not properly be addressed through a money judgment should he prevail following a trial on the merits. Therefore, such losses would not constitute irreparable harm for purposes of Eduardo's request for temporary injunction. *Id*. at 793.

In sum, Eduardo has not shown how a rendered judgment following trial would be ineffectual. *See Matrix Network, Inc.*, 211 S.W.3d at 948*; see also Guillermo Benavides Garza Inv. Co. v. Benavides*, No. 04-13-00453-CV, 2014 WL 3339555, at *4 (Tex. App.—San Antonio July 9, 2014, no pet.) (mem. op.) (findings that assuming a removal of appellant as director is voted on and appellant still prevails on his causes of actions, no showing that his right to relief on those causes of actions would be diminished or threatened after trial on the merits).

After reviewing the record before the trial court and viewing the evidence in the light most favorable to its order, we conclude that Eduardo failed to show he would suffer probable,

imminent, and irreparable injury, as he has not shown that removal of him as president will affect any right to relief that he may have on any of his causes of action. Because we decide Eduardo has not demonstrated irreparable injury absent a temporary injunction, we need not decide whether the causes of actions alleged by Eduardo are cognizable under Texas law or whether he has shown a probable right to relief on those causes of action. TEX. R. APP. P. 47.1. For the same reason, we need not address Appellees' argument on delay.

Eduardo's sole issue is overruled.

III. CONCLUSION

The trial court's judgment is affirmed.

GINA M. PALAFOX, Justice

November 18, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.