

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

4170 TRADING, LLC,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 25 CH 10875
	)	
MICHAEL KOMARANSKY and THE	)	
MICHAEL KOMARANSKY TRUST U/T/A	)	
DATED MARCH 21, 2018,	)	Honorable
	)	Cecilia A. Horan,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE VAN TINE delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

ORDER

- ¶ 1 **Held:** First, we grant plaintiff's motion to strike the portions of defendants' Rule 328 supporting record that were never part of the circuit court record. We affirm the circuit court's order denying defendants' motion to compel arbitration because the operating agreement requires arbitration only where there is a dispute among members, and plaintiff is not a member. Finally, defendants forfeited their judicial estoppel argument by failing to raise it below.

¶ 2 Defendants Michael Komaransky and the Michael Komaransky Trust U/T/A dated March 21, 2018 (collectively “Komaransky”) appeal from the circuit court’s interlocutory order denying their motion to compel arbitration and stay proceedings. The motion sought to compel plaintiff 4170 Trading, LLC (4170 Trading), to arbitrate its claims under section 13.3 of the company’s operating agreement. 4170 Trading also moved in this court to strike portions of Komaransky’s Rule 328 supporting record, and we took that motion with the case. For the following reasons, we grant the motion to strike and affirm.

¶ 3 I. BACKGROUND

¶ 4 4170 Trading is a Delaware limited liability company (LLC), with its principal place of business in Chicago, that engages in proprietary trading. For purposes of this appeal, the Third Amended and Restated Operating Agreement dated May 14, 2021 (Operating Agreement) is the governing document. The Operating Agreement identifies three defined actors: “the Company” (4170 Trading itself), “the Manager” (Craig Silberberg), and “the Members” (owners of a membership interest who have been admitted as such under the agreement). Silberberg is himself a Member in addition to serving as Manager. Michael Komaransky became a Member of 4170 Trading through the Michael Komaransky Trust and remained a Member until his withdrawal in May 2022.

¶ 5 Section 13.3, titled “Dispute Resolution,” provides in relevant part: “Subject to the provisions of Article XII hereof, in the event that there shall be a dispute among the Members arising out of or relating to this Agreement or any purported breach thereof, the parties agree that all such disputes shall be first submitted to mediation.” If mediation is unsuccessful, “the parties agree that such dispute shall be resolved by final and binding arbitration” administered by ADR

Systems, Inc., or another forum the Members mutually select. The provision further states that “[s]uch arbitration will be final and binding between the parties hereto and the Company.”

¶ 6 Section 13.3 is expressly subject to Article XII. Section 12.6, part of Article XII, provides that a breach of specified restrictive covenants by a Member or Manager would cause the Company irreparable harm and that the Company is entitled, in addition to other available remedies, to temporary, preliminary, and final injunctive relief. For purposes of section 12.6, each Member and Manager also agrees to the jurisdiction and venue of state or federal courts in Illinois.

¶ 7 On October 24, 2025, more than three years after Komaransky’s withdrawal, 4170 Trading filed an 11-count complaint against him in the Cook County circuit court. The complaint alleges that Komaransky engaged in various forms of misconduct during and after his membership, which included undisclosed self-dealing in cryptocurrency products, misstatements about the value of certain holdings that inflated his compensation, and, after his departure, solicitation of 4170 Trading’s employees for a competing firm. The complaint asserts claims for breach of fiduciary duty, fraud, breach of contract, and related theories, seeking both damages and equitable relief. The complaint alleges that the Operating Agreement “does not allow for or mandate arbitration between the Company and a former member” and that there is “no provision or mechanism for arbitration *** of disputes between any member and the Company.”

¶ 8 On January 16, 2026, Komaransky moved to compel arbitration and stay the circuit court proceedings. He argued that each of the complaint’s claims arises out of or relates to the Operating Agreement and therefore falls within section 13.3’s broad, “generic” arbitration clause; that his withdrawal as a Member did not extinguish his right to compel arbitration; and that, to the extent the clause’s application was unclear, an arbitrator should decide arbitrability, both under the Illinois Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2024)) and because section 13.3’s

designation of ADR Systems, Inc., incorporated that forum's rules. 4170 Trading opposed the motion, arguing that section 13.3 reaches only disputes "among the Members," that the Company is not a Member, and that section 12.6 permits the Company to pursue its claims for injunctive relief in court. In reply, Komaransky further argued that section 13.3's references to "the parties" show that 4170 Trading, as a party to the Operating Agreement, is bound by the arbitration clause; that section 13.3's subordination to section 12.6 confirms that the Company must arbitrate except when seeking the injunctive relief authorized by section 12.6; and that this action is "functionally" a dispute between two Members, Silberberg and Komaransky. Komaransky also attached to his reply an emergency motion that 4170 Trading had filed in July 2025 in a separate action between the parties, *Michael Komaransky Trust v. 4170 Trading, LLC*, No. 2024 CH 07540 (Cir. Ct. Cook County) (the Vacatur Case), seeking to vacate a judgment entered against 4170 Trading on Komaransky's petition to confirm an arbitration award (the Emergency Motion to Vacate). In that motion, 4170 Trading had stated its belief that its claims against Komaransky would be resolved in a private arbitration under the Operating Agreement. Komaransky argued that 4170 Trading's "inconsistent position demonstrates at the very least that the arbitrator should decide the issue of arbitrability in the first instance."

¶ 9 The circuit court heard argument on June 18, 2026. Komaransky again relied on 4170 Trading's prior statements, characterizing its present position as a change of direction and arguing that Silberberg's earlier understanding of the agreement showed the parties' intent. Komaransky did not invoke the doctrine of judicial estoppel.

¶ 10 The circuit court denied the motion. It found section 13.3 unambiguous because the provision "requires there to be a dispute among the [M]embers," "Members" is a defined term that does not include 4170 Trading, and 4170 Trading therefore falls outside the dispute-resolution

clause. The court entered a written order denying the motion on June 23, 2026, and Komaransky filed a timely notice of interlocutory appeal on July 15, 2026.

¶ 11 On July 24, 2026, 4170 Trading moved in this court to strike portions of Komaransky’s Rule 328 supporting record that, according to 4170 Trading, were never part of the circuit court record in this case. The challenged materials were filed in the Vacatur Case or in a second action between the parties, *4170 Trading, LLC v. Komaransky*, No. 2025 CH 11772 (Cir. Ct. Cook County) (the Declaratory Judgment Case), or, in the case of a deposition transcript, were never filed in any case. On August 3, 2026, we entered an order taking the motion with the case.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Komaransky argues that (1) the circuit court misread section 13.3 by holding it inapplicable to a suit brought by the Company; (2) at a minimum, any question about the clause’s scope should have been referred to an arbitrator; and (3) judicial estoppel should apply to bar 4170 Trading from opposing arbitration in light of positions it took in earlier litigation. We begin with the motion to strike that we took with the appeal because it defines the record on which we decide the appeal.

¶ 14 A. Motion to Strike

¶ 15 4170 Trading asks us to strike documents included in Komaransky’s Rule 328 supporting record that were not part of the circuit court record in this case. Our review is confined to the record before the circuit court, and we may not consider documents that were not submitted to the court below. *Jackson v. South Holland Dodge, Inc.*, 197 Ill. 2d 39, 55 (2001). Rule 328 likewise contemplates a supporting record drawn from the “trial court record,” and Rule 321 defines the common law record to include documents filed, judgments and orders entered, and documentary exhibits offered and filed in the cause. Ill. S. Ct. R. 321 (eff. Oct. 1, 2021); Ill. S. Ct. R. 328 (eff.

July 1, 2017). Rule 328’s reference to “any other matter necessary to the application made” appears in the same clause and thus likewise refers to matter contained in the trial court record; it does not authorize a party to supplement the record on appeal with materials the circuit court never had before it. Consistent with those rules, this court has stricken documents placed in a Rule 328 supporting record when those documents were not part of the record below. *In re Marriage of Rosenbaum-Golden*, 381 Ill. App. 3d 65, 71 (2008).

¶ 16 The motion identifies materials from the separate Vacatur Case and Declaratory Judgment Case, including pleadings, orders, declarations, deposition materials, and hearing transcripts. No party filed, offered, or otherwise made these materials part of the record in this case. The fact that the same circuit judge presided over related proceedings does not make the records of those proceedings part of this record. Komaransky’s reply below did attach the Emergency Motion to Vacate, and that document therefore is properly before us; however, 4170 Trading (correctly) does not seek to strike it. The June 18, 2026, hearing transcript and the June 23, 2026, order likewise are properly part of the record. But the additional materials identified in paragraphs 27 and 28 of 4170 Trading’s motion were not before the underlying circuit court case for this appeal. We therefore grant the motion and strike those materials, and we disregard the factual assertions in both parties’ briefs to the extent they depend solely on those materials.

¶ 17 B. Section 13.3

¶ 18 We review *de novo* an order denying a motion to compel arbitration where, as here, the circuit court did not hold an evidentiary hearing. *Morris v. TrueAccord, Inc.*, 2025 IL App (1st) 250706, ¶ 9; *Liu v. Four Seasons Hotel, Ltd.*, 2019 IL App (1st) 182645, ¶ 22. The party seeking arbitration bears the burden of establishing both that a valid arbitration agreement exists and that the controversy falls within its scope. *Morris*, 2025 IL App (1st) 250706, ¶ 10. Although Illinois

favors arbitration, an agreement to arbitrate remains a matter of contract; parties are bound to arbitrate only those issues they agreed to arbitrate, as the agreement's language indicates, and we will not extend its scope by construction or implication. See *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001).

¶ 19 Section 13.3's language resolves the threshold question. Our objective in construing a contract is to give effect to the parties' intent as expressed in the language they chose, considering the agreement as a whole and giving effect to each provision. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 232-33 (2007). Section 13.3 begins by identifying the event that activates its dispute-resolution mechanism: "a dispute among the Members arising out of or relating to this Agreement or any purported breach thereof." "Members" is a defined term, and 4170 Trading is separately defined as the "Company." The Company is not a Member (nor does anyone contend it is), and a lawsuit brought by the Company is therefore not a dispute "among the Members." This is true regardless of Komaransky's status as a former Member.

¶ 20 Komaransky argues that section 13.3's later references to the "parties" show that every party to the Operating Agreement, including 4170 Trading, agreed to arbitrate. We disagree. The provision states that the parties will mediate "all such disputes" and arbitrate "such dispute." Those phrases refer back to the category of dispute already identified, namely, a dispute among the Members arising out of or relating to the agreement. The later sentence providing that "[s]uch arbitration" will bind "the parties hereto and the Company" likewise does not expand who may invoke the arbitration mechanism. It gives the Company an obligation to honor the result of a qualifying arbitration among Members. Indeed, by distinguishing "the parties hereto" from "the Company," that sentence confirms that section 13.3 does not use "parties" to mean the Company. Were it otherwise, the words "and the Company" would be surplusage, contrary to the presumption

that every clause of a contract serves a purpose. See *Countryman v. Industrial Comm’n*, 292 Ill. App. 3d 738, 742 (1997). Reading those later phrases to eliminate the opening “among the Members” limitation would deprive that limitation of effect. Nor does the fact that 4170 Trading is a party to and bound by the Operating Agreement mean that every provision of that agreement applies to every dispute involving the Company.

¶ 21 We also reject Komaransky’s reliance on section 13.3’s statement that it is “[s]ubject to” Article XII. In ordinary usage, contractual language making one provision “subject to” another makes the first subordinate to or limited by the second. *G3 Analytics, LLC v. Hughes Socol Piers Resnick & Dym Ltd.*, 2016 IL App (1st) 160369, ¶ 15. Thus, Article XII can limit section 13.3; it does not enlarge the class of disputes section 13.3 covers. Section 12.6 gives the Company an independent right to seek injunctive relief in Illinois courts for specified covenant violations. That right can coexist with section 13.3’s arbitration mechanism for disputes among Members, and the “subject to” language ensures that section 13.3 does not interfere with the Company’s expressly preserved remedy. Komaransky’s contrary inference that the subordination clause would serve no purpose unless the Company were otherwise required to arbitrate asks us to extend the arbitration clause to the Company by implication, which we may not do where the clause’s operative language plainly limits it to disputes “among the Members.” See *Flood*, 41 Ill. 2d at 94.

¶ 22 Komaransky next contends that this action is functionally a dispute between Members because Silberberg is a Member and controls 4170 Trading’s litigation decisions. But, as Komaransky acknowledges, an LLC is a legal entity distinct from its members, with its own rights and obligations. *Peabody-Waterside Development, LLC v. Islands of Waterside, LLC*, 2013 IL App (5th) 120490, ¶ 9. Silberberg’s authority to act for 4170 Trading does not make the Company synonymous with Silberberg, particularly where the Operating Agreement itself deliberately treats

the Company, the Manager, and Members as separate defined actors. We will not disregard those distinctions to convert the Company's lawsuit into a Member's lawsuit.

¶ 23 The broad phrase "arising out of or relating to" does not change our conclusion. A generic arbitration clause using that language is construed broadly as to the subject matter it reaches. *Morris*, 2025 IL App (1st) 250706, ¶ 13. Even assuming every count of 4170 Trading's complaint arises out of or relates to the Operating Agreement, section 13.3 still requires the dispute to be "among the Members." Because that antecedent condition is not satisfied, we need not determine claim by claim whether the complaint otherwise relates to the agreement, nor need we decide whether Komaransky's withdrawal independently affects his ability to invoke section 13.3. Because we affirm on that basis, we need not address 4170 Trading's alternative contention that section 12.6 independently entitles it to litigate its claims for injunctive relief, and its related claims, in court.

¶ 24 The circuit court also properly decided arbitrability rather than referring that threshold issue to an arbitrator. Komaransky frames this argument under the Uniform Arbitration Act, while 4170 Trading contends that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.* (2018)) governs the Operating Agreement. We need not decide which act applies, because the result is the same under either act. Under the Uniform Arbitration Act, when the language of an arbitration agreement is clear and a dispute plainly falls outside its scope, the court decides arbitrability in favor of the party opposing arbitration because there is no agreement to arbitrate that dispute. *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 445 (1988); *Salsitz*, 198 Ill. 2d at 9. Only when a broad clause leaves the scope reasonably debatable does the arbitrator initially decide the issue. *Donaldson*, 124 Ill. 2d at 447-49. Likewise, under the Federal Arbitration Act, whether an arbitration clause in a concededly binding contract applies to a particular type of controversy is

presumptively for the court to decide, absent clear and unmistakable evidence that the parties agreed to arbitrate that question. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). Here, the defined terms and the phrase “among the Members” make the answer clear. Komaransky’s reliance on ADR Systems’ rules does not alter that conclusion. Section 13.3 selects ADR Systems, or another mutually agreed forum, to arbitrate a qualifying “such dispute”; the administrative selection clause does not create an agreement to arbitrate a dispute that never triggers section 13.3 in the first place. Nor does section 13.3 supply clear and unmistakable evidence that the parties delegated questions of arbitrability to an arbitrator. The authorities Komaransky cites involved agreements providing that arbitration would be conducted in accordance with a designated forum’s rules; section 13.3 contains no such language and instead names ADR Systems as one possible administrator “or another arbitration forum that the Members may mutually agree upon.”

¶ 25

C. Judicial Estoppel

¶ 26 Komaransky separately argues, on appeal only, that judicial estoppel should bar 4170 Trading from opposing arbitration because it previously expressed a different view of arbitrability in separate litigation. As explained above, we have stricken the extra-record materials on which portions of that argument rely, including Silberberg’s July 2025 declaration and the transcript of the March 9, 2026, closing argument in the Vacatur Case. The materials properly before us include the Emergency Motion to Vacate attached to Komaransky’s reply below and the transcript of the hearing on the motion to compel. Those materials show that Komaransky used 4170 Trading’s prior statements to argue contractual intent and to characterize 4170 Trading’s position as inconsistent. But Komaransky did not invoke judicial estoppel, ask the circuit court to apply that doctrine, or address its elements. The circuit court accordingly made no findings or ruling on

judicial estoppel. Indeed, Komaransky acknowledges that a circuit court's decision on whether to apply judicial estoppel is reviewed for an abuse of discretion, a standard that presupposes a discretionary ruling by the circuit court. However, there is no such ruling here to review. A party may not present a distinct legal theory for the first time on appeal where it made no attempt to present that theory below. See *Stuckey v. Renaissance at Midway*, 2015 IL App (1st) 143111, ¶ 30. We therefore do not reach the merits of Komaransky's judicial estoppel argument.

¶ 27

III. CONCLUSION

¶ 28 For the foregoing reasons, we grant 4170 Trading's motion to strike portions of Komaransky's Rule 328 supporting record and affirm the circuit court of Cook County's order denying Komaransky's motion to compel arbitration and stay proceedings.

¶ 29 Affirmed.