**Reversed, Rendered and Remanded and Opinion Filed May 5, 2025**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-23-00020-CV**

**LUXOTTICA OF AMERICA INC. F/K/A LUXOTTICA RETAIL NORTH AMERICA INC., Appellant**
**V.**
**JEFFREY GRAY, DAWN GRAY, AND BRAVE OPTICAL, INC., Appellees**

**On Appeal from the 101st Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-17-07929**

# MEMORANDUM OPINION

Before Justices Kennedy, Barbare, and Lee[1]
Opinion by Justice Lee

## I. INTRODUCTION

In this commercial dispute, appellant Luxottica of America Inc. f/k/a Luxottica Retail North America Inc. appeals a final judgment following a jury verdict in favor of appellees Jeffrey Gray, Dawn Gray, and Brave Optical, Inc. Luxottica also appeals the December 30, 2022 "Order Granting [Appellees'] Motion for Sanctions and to Hold [Luxottica] in Contempt" (sanctions and contempt order).

[1] Justice Ken Molberg and Justice Erin Nowell were originally members of this panel. When their terms expired on December 31, 2024, Justice Mike Lee succeeded Justice Molberg on this panel, and Justice Cynthia Barbare succeeded Justice Erin Nowell on this panel.

Luxottica raises four issues on appeal—three regarding the judgment, and one regarding the sanctions and contempt order. For the reasons below, we (1) reverse the portion of the final judgment in favor of Brave Optical and against Luxottica on its claims for common-law fraud, civil conspiracy, and statutory fraud and render judgment that Brave Optical take nothing on such claims; (2) reverse the sanctions and contempt order against Luxottica; and (3) remand to the trial court to (a) enter judgment in favor of Luxottica, and against Brave Optical, in the amount of $394,277.02 on Luxottica's counterclaim for breach of contract for failure to pay royalty and advertising fees and (b) to determine the amount of attorneys' fees to which Luxottica is entitled as a prevailing party on this counterclaim.

## II. BACKGROUND

This is the third time these parties have been before us in connection with this lawsuit.[2] In the first of our earlier memorandum opinions, we described in detail the circumstances surrounding the parties' dispute and the commercial transaction central to it.[3] For brevity's sake, we need not repeat all of that information here.

This appeal involves appellees' claims against Luxottica, and Luxottica's counterclaims against appellees, arising from various agreements relating to the July 2016 sale to appellees of two Pearle Vision franchise stores by Alex and Milana

[2] *See Luxottica of Am. Inc. v. Gray*, No. 05-19-01013-CV, 2020 WL 7040980, at *1 (Tex. App.—Dallas Dec. 1, 2020, no pet.) (mem. op.) (Luxottica's interlocutory appeal of order denying motions to dismiss under the Texas Citizens Participation Act); *Luxottica of Am. Inc. v. Gray*, No. 05-22-00279-CV, 2022 WL 4396146, at *1 (Tex. App.—Dallas Sept. 23, 2022, no pet.) (mem. op.) (dismissal, per Luxottica's request, of its interlocutory appeal of temporary injunction).

[3] *See Gray*, 2020 WL 7040980, at *1–3.

Gutman, and their company, Gutman Vision, Inc. (the Gutman parties), who are not parties to this appeal.

In July 2017, appellees sued the Gutman parties regarding the transaction and circumstances leading up to it. In March 2019, in a third amended petition, appellees added claims against Luxottica, the Pearle Vision franchisor, and EyeMed Vision Care LLC, a Luxottica-owned vision insurance benefits administrator. Appellees amended their petition twice more, and in their fifth amended petition, appellees asserted claims against Luxottica for common law fraud; assisting, encouraging, and participating in common law fraud by the Gutmans; conspiracy to commit fraud; negligent misrepresentation; fraud by non-disclosure; and statutory fraud under Texas Business and Commerce Code § 27.01.

Luxottica and EyeMed generally denied appellees' claims and asserted various affirmative defenses. Luxottica also asserted various counterclaims against appellees, including claims for breach of contract; money had and received; suit on a sworn account; injunctive relief or appointment of a receiver; tortious interference; defamation; and conspiracy.

On March 10, 2022, the trial court entered a temporary injunction barring Luxottica from:

> "[i]nterfer[ring] in any way with [appellees'] business operations at Store Nos. 8655 or 8683 including, but not limited to, prohibiting the use of the Pearle Vision System and the Marks (as defined), or contacting any third party such as Google or Warrantech and informing them that any of [appellants'] locations are closed[.]"

On March 29, 2022, the trial court clarified: (1) the temporary injunction only referred to actions meant to "force [appellees] to close down Store #8655"; (2) does not prohibit appellant from pursuing claims against appellees in federal court; and (3) does not prohibit Luxottica "from sending statements of account, franchise reports, or other franchise-related materials that are not for the purpose of closing Store #8655 to [appellees.]"

Appellees' claims against the Gutman parties were dismissed before trial, and the only parties that appeared at trial were appellees, Luxottica, and EyeMed. EyeMed is not a party to this appeal.

Trial occurred in September 2022 and lasted five days.

Trial was bifurcated into two phases, with the second phase limited to the amount of exemplary damages to be assessed against Luxottica and awarded to Brave Optical, if any, depending on the answers to the jury's questions in the first phase. Eleven witnesses testified, and more than 250 exhibits were admitted into evidence. Twenty questions were submitted to the jury in the first phase, and the jury answered one question in the second phase.[4] All twelve jurors agreed on the

[4] Eight of these questions asked about matters that determined Luxottica's or Brave Optical's liability for the other party's claims. As to Luxottica, the jury found Luxottica committed fraud on Brave Optical (question 1), participated in the commission of fraud by non-disclosure that damaged Brave Optical (question 2), was a part of a conspiracy with the Gutman parties to commit fraud that damaged appellees (question 3), and Luxottica's fraud was committed in a transaction regarding real estate (question 7). As to Brave Optical, the jury found Brave Optical failed to comply with an agreement to pay Luxottica monthly royalty and advertising fees (question 9), received money that belongs to Luxottica for royalty and advertising fees (question 11), did not fail to comply with its agreement not to engage, directly or indirectly, in any activities that would be detrimental to or interfere with the reputation or goodwill of Luxottica (question 13), and did not intentionally interfere with contracts between Luxottica and its franchisees

answers to the last three questions in the first phase and the only question in the second phase. For the other questions that the jury answered, only ten of the twelve jurors agreed.

After the verdict, the parties filed various motions, and on December 12, 2022, the trial court heard three motions: (1) appellees' motion for judgment; (2) Luxottica's motion for judgment notwithstanding the verdict; and (3) appellees' motion for show cause order, contempt, and sanctions. The trial court took those matters under advisement at the conclusion of the hearing, and on December 30, 2022, the trial court signed the sanctions and contempt order and the final judgment.

In the sanctions and contempt order, which the trial court later clarified on February 20, 2023, the trial court found that on several occasions, Luxottica knowingly and willfully violated the trial court's orders signed on March 10, 2022 and March 29, 2022, adjudged Luxottica in contempt for the violations enumerated in the sanctions and contempt order, and ordered Luxottica, as a sanction, to pay the following amounts to appellees through their counsel within ten calendar days of the date of the sanctions and contempt order: $1.5 million "as a monetary sanction to punish [Luxottica] for its contemptuous and sanctionable conduct" and $82,757.00

(question 15). Other questions asked about damages (questions 4, 5, 6, 10, 12, 14, 16, and the only question asked during the second phase of trial), attorneys' fees (questions 8 and 17), and whether there was clear and convincing evidence that the harm to Brave Optical was from the actions by Luxottica the jury found in response to questions 1 through 3 (questions 18, 19, and 20).

as appellees' reasonable and necessary attorneys' fees incurred in this matter and as a consequence of Luxottica's actions.

In the judgment, the trial court did the following, among other things:

- rendered judgment for Brave Optical and against Luxottica on all claims asserted against Luxottica and ordered that Brave Optical recover from Luxottica the following items and amounts, subject to certain offsets for a settlement credit and amounts awarded on counterclaims, as set forth in the judgment:
    - actual damages in the amount of $1.5 million;
    - exemplary damages in the amount of $3 million;
    - reasonable and necessary attorneys' fees in the amount of $598,440 for the prosecution of the case through the date of the judgment;
    - costs of court;
    - post-judgment interest on all amounts awarded to Brave Optical at the rate of five percent per annum, compounded annually, from the date the judgment is rendered until all amounts are paid in full;
    - conditional appellate attorneys' fees of up to $200,000 for the anticipated reasonable and necessary attorneys' fees that would be incurred by Brave Optical for representation in the court of appeals and in the Texas Supreme Court;
- rendered judgment against Brave Optical on all claims asserted against EyeMed and ordered that Brave Optical take nothing on such claims;
- rendered judgment against Brave Optical and in favor of Luxottica on Luxottica's counterclaim for breach of contract for failure to pay royalty and advertising fees, held that Luxottica is entitled to a credit in the amount of $394,277 against the total amount awarded to Brave Optical against Luxottica, and ordered that the sum of $394,277 be set off against the total amount Brave Optical was awarded against Luxottica;

- rendered judgment against Brave Optical and in favor of Luxottica on Luxottica's counterclaim for attorneys' fees for breach of contract, held that Luxottica is entitled to a credit in the amount of $11,960 against the total amount Brave Optical was awarded against Luxottica, and ordered that the additional sum of $11,960 be set off against the total amount which Brave Optical was entitled to recover against Luxottica;

- rendered judgment in favor of appellees and against Luxottica and ordered that Luxottica take nothing on Luxottica's counterclaims for a suit on a sworn account; money had and received; failure to comply with a contractual agreement not to engage, directly or indirectly, in any activities that would be detrimental to or interfere with the reputation or goodwill of Luxottica; intentional or tortious interference with contracts between Luxottica and its licensees or franchisees; defamation; conspiracy to accomplish tortious interference and defamation; injunctive relief; and appointment of a receiver;

- held that Luxottica is entitled to a dollar for dollar settlement credit in the amount of $80,000 against the total amount awarded to Brave Optical against Luxottica as a result of the settlement reached between Brave Optical and the Gutman parties; and

- ordered, after applying all credits for settlement and for recoveries on counterclaims, Brave Optical recover judgment against Luxottica in the amount of $4,612,203 and that Brave Optical recover all costs of court against Luxottica, together with interest on all amounts awarded in the Judgment, at the rate of five percent per annum, compounded annually, from the date of entry of the judgment until paid in full; and

- ordered, in the event of an appeal of the judgment in which Brave Optical prevails, Brave Optical shall automatically recover certain specified amounts totaling up to $200,000.

## III. ANALYSIS

Luxottica raises four issues on appeal: (1) as a matter of law, appellees cannot recover on their claims against Luxottica; (2) the award of lost-profits damages rests entirely on inadmissible, legally insufficient evidence; (3) the trial court abused its

discretion in entering the $1.5 million sanction; and (4) this court should render judgment for Luxottica on its counterclaims.

### A. Brave Optical's Claims Against Luxottica

In its first and second issues, Luxottica argues we should reverse the judgment against Luxottica, both because appellees cannot recover on their claims against Luxottica as a matter of law (first issue) and because the award of lost profits to Brave Optical is based on inadmissible, legally insufficient evidence (second issue).

We begin our analysis with the first issue and construe it as a legal sufficiency challenge to the jury's findings in response to questions one through three of the court's charge, in which the jury found Luxottica (1) committed fraud on Brave Optical, (2) participated in the commission of fraud by non-disclosure that damaged Brave Optical, and (3) was a part of a conspiracy with the Gutman parties to commit fraud that damaged appellees.

When a party challenges the legal sufficiency of the evidence to support an adverse finding on which it did not have the burden of proof, the party must demonstrate that no evidence supports the finding.[5]

To determine whether legally sufficient evidence exists to support the finding, we "must view the evidence in the light favorable to the verdict, crediting

[5] *Graham Cent. Station, Inc. v. Peña*, 442 S.W.3d 261, 263 (Tex. 2014) (per curiam); *Oncor Elec. Delivery Co. LLC v. Quintanilla*, No. 05-19-01331-CV, 2022 WL 9809712, at *3 (Tex. App.—Dallas Oct. 17, 2022, pet. denied) (mem. op.).

favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not."[6]

"Evidence is legally insufficient to support a jury finding when (1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of a vital fact."[7]

The "final test for legal sufficiency" is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review."[8]

Luxottica argues the judgment against it cannot withstand legal sufficiency review because various agreements disclaim reliance and conclusively negate the justifiable reliance needed in order for Brave Optical to prevail on its claims against Luxottica, making Brave Optical unable, as a matter of law, to recover on its claims for common-law fraud, civil conspiracy, and statutory fraud based on alleged misrepresentations involving the sale of the stores.

We agree that justifiable reliance is an essential element of each claim.[9]

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[6] *City of Keller v. Wilson*, 168 S.W.3d 802, 807, 827 (Tex. 2005).

[7] *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 613 (Tex. 2016); *see Marathon Corp. v. Pitzner*, 106 S.W.3d 724, 727 (Tex. 2003) (per curiam).

[8] *City of Keller*, 168 S.W.3d at 827; *see Office of Att'y Gen. v. Rodriguez*, 605 S.W.3d 183, 192 (Tex. 2020).

[9] *See Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) (fraud and negligent misrepresentation); *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 182 (Tex. 1997) (statutory fraud); *Miller Global Props., LLC v. Marriott Int'l, Inc.*, 418 S.W.3d 342, 350 (Tex. App.—Dallas 2013, pet. denied) (fraudulent inducement and negligent representation); *see also Envirodigm, Inc. v. Tex. Instruments, Inc.*, No. 05-22-00359-CV, 2023 WL 4101357, at *7 (Tex. App.—Dallas June 21, 2023, pet. denied) (mem. op.) (fraud, fraud by nondisclosure, fraudulent inducement, negligent misrepresentation, and promissory estoppel).

Based on the plain terms of the "Assignment and Assumption of License Agreement" (assignment agreement), "Franchise Agreement" (license agreement),[10] and "Purchase Agreement" (purchase agreement) for each store, we conclude the evidence conclusively negates the justifiable reliance element of Brave Optical's claims for common-law fraud, civil conspiracy, and statutory fraud. The assignment agreement for each store, signed in June 2016 by Luxottica and Brave Optical, indicated that Brave Optical "is familiar with all obligations being assumed" under the license agreement and ancillary agreements and that it "irrevocably and absolutely assumes each and every duty and obligation of [Gutman Vision]." The license agreement for each store states, "No representations or warranties have been made by [Luxottica] regarding Franchisee's future success relating to the Franchise Business, and Franchisee did not rely on any incidental statements about success made by [Luxottica], its affiliates or employees." The purchase agreement contained an "as-is" provision (stating, in part, the business/property is being conveyed "AS IS WHERE IS, WITHOUT WARRANTY EXPRESSED OR IMPLIED"), included a related disclaimer of representations and warranties (acknowledging "Seller has made no representations about the business in order to induce Buyer to buy the business or property"), and made the sale contingent on the

[10] The recitals in each assignment agreement state, "[I]n May of 2013, [Luxottica] changed the terminology associated with its franchise system, and the terminology changes shall be reflected . . . as follows: (i) "Franchisor" shall be referred to as "Licensor"; (ii) "Franchisee" shall be referred to as "Licensed Operator"; (iii) "Franchise Agreement" shall hereinafter be referred to as "License Agreement"; and (iv) "Store' shall hereinafter be referred to as the "EyeCare Center[.]"

results of due diligence by appellees, which was later confirmed to have been completed to their satisfaction.

We hold the evidence conclusively negates the element of justifiable reliance necessary for Brave Optical to prevail on its claims for common-law fraud, civil conspiracy, and statutory fraud based on alleged misrepresentations involving the sale of the stores.[11]

We sustain Luxottica's first issue and, as a result, need not consider its second issue.[12]

### B. Contempt and Sanctions Order Against Luxottica

In Luxottica's third issue, Luxottica argues the trial court abused its discretion by entering the $1.5 million sanctions and contempt order.

As an initial matter, we questioned our jurisdiction to hear the appellant's challenge of sanction and contempt order, and we requested additional briefing.[13] Luxottica responded that the order was premised upon a motion seeking inherent sanctions and reads as if it is a sanctions order, actually grants appellees' motion for sanctions, and should be considered within our appellate jurisdiction. Alternatively,

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[11] *See Gardiner*, 505 S.W.3d at 613 ("Evidence is legally insufficient to support a jury finding when . . . the evidence establishes conclusively the opposite of a vital fact."); *Swanson*, 959 S.W.2d at 181–82 (rejecting assertion that fraud by non-disclosure does not require element of reliance, holding that disclaimer of reliance precludes the claimants' statutory fraud claim, and rendering judgment that appellees take nothing on their claims); *Miller*, 418 S.W.3d at 350 (stating, "Where a contract between the parties directly contradicts the alleged misrepresentations, there can be no justifiable reliance" and affirming summary judgment on claims for fraudulent inducement and negligent misrepresentation).

[12] *See* TEX. R. APP. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

[13] Contempt orders are not appealable and are reviewable only by a petition for writ of mandamus or habeas corpus. *In re Janson*, 614 S.W.3d 724, 727 (Tex. 2020) (per curiam) (orig. proceeding). If the contemnor is not jailed, the proper vehicle to challenge the contempt order is a petition for writ of mandamus. *Id.*

Luxottica asks us to consider their brief as a petition for writ of mandamus to the extent the order is one of contempt. Appellee maintains this is an appeal of a contempt order that cannot be reviewed on appeal absent a writ of mandamus. We agree with appellant that the order is unclear whether the sanctions are assessed pursuant to the court's inherent power to sanction or as a contempt order.

Appellee's motion upon which the sanctions and contempt order was entered is entitled "Motion for Show Cause Order, Contempt and Sanctions against Luxottica." It seeks sanctions both "pursuant to Tex. R. Civ. P. 692, and (the court's) inherent authority." It cites case law for the premise that courts have "inherent power to sanction for abuse of the judicial process" and complains about the conduct of Luxottica both within and outside the present litigation. The motion briefs the "traditional core functions of the court," violations of which may be sanctioned pursuant to the court's inherent authority.[14] But, the motion also seeks sanctions per Rule 692, *i.e.*, for contempt.

The trial court's "clarified" order granting the sanctions is similarly unclear as to the basis for ordering the sanctions. The trial court included within the clarified order fourteen conclusions of law, covering the gamut between civil contempt, criminal contempt, and inherent power sanctions. It adjudges that "[Luxottica] is in

[14] *See generally Union Carbide Corp. v. Martin*, 349 S.W.3d 137, 147 (Tex. App. – Dallas 2011, no pet.). We note that the motion does not cite to the seminal inherent authority case, *Brewer v. Lennox Hearth Products, LLC*, 601 S.W.3d 704 (Tex. 2020), perhaps because appellees recognize that Luxottica's conduct about which they complain does not reach the high bar for bad faith outlined by the Supreme Court in that case.

contempt" for violations of two orders, then orders that "Plaintiff's Motion for Sanctions is hereby GRANTED."

However, we conclude that we do not need to determine whether the order is a sanctions order or a contempt order, nor do we need to remand this issue to the trial court for clarification. The order fails review both as a sanctions order and as a contempt order.

*1. The Order as a Sanctions Order*

The decision to impose sanctions involves two distinct determinations: (1) whether conduct is sanctionable and (2) what sanction to impose.[15] To support a sanction imposition: (1) bad faith is required; (2) bad faith can exist without explicitly violating a rule, statute, or ethical code of conduct; and (3) direct evidence of bad faith is not required.[16]

The trial court's clarified order lists thirty-seven findings of fact in support of the sanctions award. Many of these were about the business dispute leading to the contested issues that were tried. These do not appear to have been the basis for the sanctions order. Another pair of the findings found that Luxottica breached the temporary injunctions, without stating how the orders were violated.

The injunctions, and the proceedings thereon, were not a model of clarity. The first temporary injunction was signed on March 10, 2022. Five days later, the court,

[15] *See Brewer*, 601 S.W.3d at 718.
[16] *See id.* at 716.

acting through an assigned senior justice, granted Luxottica summary judgment on all claims asserted against it. Luxottica requested a clarification of the status of the temporary injunction. The court, again acting through the assigned senior justice, denied a temporary injunction. At this point, no injunction remained against Luxottica and judgment had been granted to Luxottica on all claims.

The presiding judge of the trial court then set aside all the orders signed by the assigned senior justice and, on March 29, 2022, the trial court "modified" the temporary injunction. The record reflects that Luxottica was formally served the temporary injunction on April 19, 2022.

One of the findings of fact found that Luxottica caused store 8655 to be designated as "closed" multiple times on multiple platforms (Google, Facebook, Yellow Pages, etc), in violation of the temporary injunction. However, the record demonstrates that Luxottica's communications to third-parties marking appellees' store as "closed" were made *before* the March orders forbidding such an action. While the third parties may not have changed appellees' store's designation until *after* the March orders, when Luxottica was made aware of the "closed" markings, Luxottica worked with the third parties to change the designation to "open." The record further reflected that the closed designations were all cleared by the April 19 service of the temporary injunction on Luxottica.

Perhaps an argument can be made that Luxottica did not act toward the third parties with sufficient vigor to cause the sites to change the "closed" designations to

"open." However, as in *Brewer*, "[l]eaving the matter entirely in a third party's hands could arguably constitute gross negligence…but it does not give rise to a reasonable inference of bad faith."[17]

Eight of the findings of fact involve other litigation in another forum. A suit was concurrently pending in the United States District Court for the Eastern District of Texas. Luxottica brought that suit pursuant to the Lanham Act[18], seeking to protect its intellectual property. In the March 29 modified injunction, the trial court expressly authorized Luxottica to bring claims against appellees in the federal forum. Luxottica was ultimately unsuccessful in the federal forum. The eight findings are critical of Luxottica's strategy in and representations to the federal court, concluding that appellees "were required to defend against Luxottica's filings in federal court which caused them to incur significant attorneys' fees which, in turn caused Plaintiffs to default on their SBA loan."

Bad faith supporting the sanctions order cannot be found in this record related to the federal litigation, especially considering the March 29 order expressly recites, "The Temporary Injunction does not prohibit Luxottica of America Inc. from pursuing claims against Plaintiffs in federal court."

Considering the foregoing, we hold that, in construing the order as a sanctions order, the order cannot stand because findings of and evidence of bad faith are

[17] *Id.* at 724.
[18] 15 U.S.C. § 1051.

absent. "Bad faith is not just intentional conduct but intent to engage in conduct for an impermissible reason, willful noncompliance, or willful ignorance of the facts."[19] Such conduct is not found in the Findings of Fact or in the record presented to the trial court in support of the motion for sanctions.

The second part of the sanctions analysis is the determination of what sanction to assess. The remaining findings of fact appear geared toward the trial court providing its analysis.[20] Because we find an absence of bad faith in this record, we do not need to analyze whether the trial court properly determined the sanction to be assessed.

*2. The Order as a Contempt Order*

As requested, and to the extent necessary, we exercise our discretion to construe Luxottica's brief as a petition for writ of mandamus challenging the sanctions and contempt order as an abuse of the trial court's discretion.[21]

Mandamus review is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court."[22] To obtain mandamus relief, appellant must show (1) the trial court clearly abused its discretion, and (2) there is no adequate remedy by appeal.[23] A trial court abuses its discretion if it acts in an arbitrary or unreasonable

[19] *Id.* at 718-19.

[20] *E.g.*, FOF 19, "Luxottica is a huge world-wide organization." The balance of the finding relates to Luxottica's balance sheet and profit and loss statement.

[21] *See CMH Homes v. Perez*, 340 S.W.3d 444, 452-53 (Tex. 2011).

[22] *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004).

[23] *In re Reece*, 341 S.W.3d 360, 364 (Tex. 2011) (orig. proceeding).

manner without reference to any guiding rules or principles.[24] Contempt orders that do not involve confinement can only be reviewed through the exercise of mandamus jurisdiction.[25]

Luxottica argues the temporary restraining order was void because it failed to set forth in specific, unambiguous, and reasonably detailed terms, the acts to be restrained and the reasons for its issuance. Appellant reasons that because the temporary restraining order underlying the contempt judgment was void, so is the contempt judgment. We agree.

In the contempt and sanctions order, Luxottica was found to have knowingly and willfully violated the March orders on several occasions. The trial court identified the following relevant injunctive provisions in its clarified sanctions and contempt order:

> It is therefore ORDERED that the Luxottica Defendants SHALL NOT:
> (a) Interfere in any way with Plaintiffs' business operations at Store Nos. 8655 including, but not limited to, prohibiting the use of the Pearle Vision System and the Marks (as defined), or contacting any third party such as Google or Warrantech and informing them that any of Plaintiffs locations are closed;
> (b) Require any change of appearance at Store Nos. 8655;
> (c) Interfere in any way with Plaintiffs' point of sale system, Acuity Logic.

Texas Rule of Civil Procedure 683 mandates: "every restraining order shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe

[24] *Walker v. Gutierrez*, 111 S.W.3d 56, 62 (Tex. 2003).
[25] *In re Long*, 984 S.W.2d 623, 625 (Tex. 1999).

in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained…"[26]

A criminal-contempt conviction for disobedience of a court order requires proof beyond a reasonable doubt of (1) a reasonably specific court order, (2) a violation of the order, and (3) willful intent to violate the order.[27] Because criminal contempt is a harsh remedy, appellate courts strictly require clarity in the underlying court order.[28] A trial court abuses its discretion if it holds a person in contempt for violating an ambiguous order.[29] The order must spell out the details of compliance in clear, specific, and unambiguous terms so that the person will readily know *exactly* what duties or obligations are imposed upon him or her.[30] If the order's interpretation requires inferences or conclusions about which reasonable persons might differ, it cannot support a contempt judgment.[31]

The temporary restraining order in this case does not meet these standards. It requires appellant to refrain from *interfering* in any way while laying out a mere two examples of what "interfering" would constitute, "but not limited to" them. Luxottica was left to impermissibly speculate what other actions would constitute interference. This required inference renders the temporary restraining order

[26] TEX. R. CIV. PROC. 683.
[27] *In re Janson*, 614 S.W.3d at 727.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*

impermissibly vague.[32] Even if Luxottica were to have all possible avenues of impermissible interference spelled out for them, it is unclear which "business operations" would have to be interfered with in order to violate the temporary restraining order.

The temporary injunction's failure to specify – with reasonable detail and clarity and without reference to other documents - the precise conduct prohibited makes the order too uncertain when measured against Rule 683 and therefore too uncertain to enforce by contempt.[33]

Because the underlying temporary restraining order was too vague as to the specific acts being prohibited, a contempt conviction for the violation of the temporary restraining order cannot stand. There can be no "flagrant disregard" of the court's order because there was no clear, unequivocal recitation of the acts upon which a contempt finding could be made.[34]

We additionally reiterate the discussion above regarding the order considered as a sanctions order. It is not clear, based on this evidence, that the temporary injunction was violated by Luxottica. The evidence certainly does not reach beyond

[32] *In re Luther*, 620 S.W.3d 715, 723 (Tex. 2021) ("The temporary restraining order's failure to specify—with reasonable detail and clarity and without reference to other documents—the precise conduct prohibited makes the order too uncertain when measured against Rule 683 and therefore too uncertain to enforce by contempt.").

[33] *See In re Janson*, 614 S.W.3d at 727 (clarity in orders underlying contempt is strictly required); *Ex parte Slavin*, 412 S.W.2d at 44 (order should "spell out the details of compliance in clear, specific and unambiguous terms"); *see also Qwest Commc'ns Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (temporary restraining order that does not strictly comply with Rule 683 is subject to being declared void and dissolved).

[34] *See Reece*, 341 S.W.3d at 366 n. 10 (An act must impede, embarrass, or obstruct the court in the discharge of its duties in order to constitute constructive contempt. In this context, "obstruction includes the flagrant disregard of a court order.")

a reasonable doubt. The communications to third parties about the closure of store 8655 pre-dated the injunctions. The trial court authorized pursuit of the federal court litigation. We find that the trial court failed to identify specific violations of the March injunctions, supported by evidence of same, sufficient to support a contempt finding. The sanctions and contempt order, to the extent it sounds in contempt, was issued in an arbitrary and unreasonable manner without reference to any guiding rules or principles. The trial court therefore abused its discretion in finding contempt and rendering the order as a contempt order.

*C. Conclusion Regarding the Sanctions and Contempt Order*

Because the order fails as both as a sanctions order and as a contempt order, we reverse the trial court's imposition of a $1.5 million sanction against Luxottica.

### C. Luxottica's Counterclaims Against Brave Optical

In its fourth issue, Luxottica argues that if we reverse the trial court's judgment on its other issues, we should render judgment in Luxottica's favor in the amount of $394,277.02[35] on its counterclaims against Brave Optical for breach of contract and money had and received and should remand for further proceedings to determine the attorney's fees to which Luxottica is entitled as the prevailing party. Appellees did not respond to this in their appellate brief and did not appeal.

[35] In certain portions of its principal brief, Luxottica asks that we render judgment in its favor in the amount of $395,277.02, but in other portions, it refers to the amount as $394,277.02. We construe the request for the higher figure as simply a typographical error, as the record reflects the jury entered $394,277.02 as its answer to questions ten and twelve, the damage questions relating to those claims.

We overrule Luxottica's fourth issue to the extent it concerns its counterclaim for money had and received. The trial court ordered, as a matter of law, that Luxottica take nothing on that counterclaim,[36] and Luxottica has not challenged that ruling on appeal. We "may not reverse a trial court judgment on a ground not raised."[37]

As to Luxottica's counterclaim for breach of contract for failure to pay royalty and advertising fees, the judgment's description of Luxottica's award as a set off or a credit is no longer appropriate in light of our resolution of Luxottica's first issue.[38] Considering that resolution, we could enter judgment in favor of Luxottica, and against Brave Optical, in the amount of $394,277.02, but we do not do so, as we conclude remand is needed in order to determine the amount of attorneys' fees to which Luxottica is entitled as a prevailing party on this counterclaim.

Thus, we sustain Luxottica's fourth issue only to the extent described herein, and we remand to the trial court to (1) enter judgment in favor of Luxottica, and against Brave Optical, in the amount of $394,277.02 on Luxottica's counterclaim

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[36] The judgment states, in part:

> The [trial court] finds, as a matter of law, that there is no evidence to support the finding of the jury regarding [Luxottica's] claim for money had and received in response to [questions eleven and twelve] in the jury verdict, and that the jury's answer to [those questions] should be disregarded. The Court further finds that the jury's award of damages in response to [those questions] is duplicative of the jury's award of damages in response to Question 9 and 10, and consequently should be disregarded for that additional reason. The court therefore RENDERS judgment against [Luxottica] on any counterclaim or cause of action against [Brave Optical] for money had and received.

[37] *See Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 782 (Tex. 2020).

[38] As it did with Luxottica's damages award, the judgment also described the attorneys' fees award of $11,960 to Luxottica as a set off or credit to be applied against the amounts awarded to Brave Optical.

for breach of contract for failure to pay royalty and advertising fees and (2) to determine the amount of attorneys' fees to which Luxottica is entitled as a prevailing party on this counterclaim.

## IV. CONCLUSION

We (1) reverse the portion of the final judgment in favor of Brave Optical and against Luxottica on its claims for common-law fraud, civil conspiracy, and statutory fraud and render judgment that Brave Optical take nothing on such claims; (2) reverse the sanctions and contempt order against Luxottica; and, (3) remand to the trial court to (1) enter judgment in favor of Luxottica, and against Brave Optical, in the amount of $394,277.02, on Luxottica's counterclaim for breach of contract for failure to pay royalty and advertising fees and (2) to determine the amount of attorneys' fees to which Luxottica is entitled as a prevailing party on this counterclaim.

/Mike Lee/
MIKE LEE
JUSTICE

# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

LUXOTTICA OF AMERICA INC. F/K/A LUXOTTICA RETAIL NORTH AMERICA INC., Appellant

No. 05-23-00020-CV V.

JEFFREY GRAY, DAWN GRAY. AND BRAVE OPTICAL, INC., Appellees

On Appeal from the 101st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-17-07929.
Opinion delivered by Justice Lee.
Justices Kennedy and Barbare participating.

In accordance with this Court's opinion of this date, the judgment of the trial court as to Brave Optical's claims for common-law fraud, civil conspiracy, and statutory fraud is **REVERSED** and judgment is **RENDERED** that Brave Optical take nothing on such claims. We **REVERSE** the sanctions and contempt judgment against Luxottica and **REMAND** to the trial court to enter judgment in favor of Luxottica, and against Brave Optical, in the amount of $394,277.02 on Luxottica's counterclaim for breach of contract for failure to pay royalty and advertising fees and to determine the amount of attorneys' fees to which Luxottica is entitled as a prevailing party on this counterclaim.

It is **ORDERED** that appellant LUXOTTICA OF AMERICA INC. F/K/A LUXOTTICA RETAIL NORTH AMERICA INC. recover its costs of this appeal from appellees JEFFREY GRAY, DAWN GRAY. AND BRAVE OPTICAL, INC.

Judgment entered this 5th day of May, 2025.