

**Reversed and Rendered and Opinion Filed August 4, 2025**



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

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**No. 05-24-00297-CV**

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**AGUSTIN ALARCON, Appellant  
V.  
HUGO CESAR SANTOYO, D/B/A H&A LANDSCAPING, Appellee**

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**On Appeal from the County Court at Law No. 2  
Collin County, Texas  
Trial Court Cause No. 002-00006-2021**

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**MEMORANDUM OPINION**

Before Chief Justice Koch, Chief Justice Wright<sup>1</sup>, and Justice Evans<sup>2</sup>  
Opinion by Justice Evans

Following a jury trial, the trial court entered final judgment against Agustin Alarcon (“Alarcon”) for tortiously interfering with his company’s contract with Hugo Cesar Santoyo d/b/a H&A Landscaping (“Santoyo”) and awarding Santoyo actual and exemplary damages. Alarcon appeals the judgment claiming, among other

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<sup>1</sup> The Hon. Carolyn Wright, Chief Justice, Assigned

<sup>2</sup> The Hon. David Evans, Justice, Assigned

things, that the evidence at trial was not legally sufficient to support the jury's verdict. We reverse and render.

## **Background**

### **A. Factual Background**

Alarcon is married to Melissa Hayward ("Hayward") and together they formed Alarcon Construction Group, LLC ("ACG"). Both Alarcon and Hayward were the sole members and managers of ACG from the time of its formation until ACG shut down at the end of 2019 and forfeited its right to do business in Texas.

In 2018 and 2019, the primary business of ACG was building fast food restaurants. ACG had cash flow issues and when ACG needed additional capital to pay its creditors and subcontractors, Hayward provided funds through a personal business line of credit and allowed ACG to use her personal credit cards. Hayward was personally responsible for the debts incurred on the line of credit and the charges incurred on the credit cards. Hayward also provided ACG short term loans on checks drawn from her law firm bank account. Hayward testified at trial that she did this to provide the capital necessary for the company to continue operations. The funds allowed ACG to perform and pay contractors and subcontractors on the restaurant construction projects so ACG could complete the projects and obtain profits. Hayward further testified that ACG had to pay down the line of credit in order to continue to draw money from the line of credit. Similarly, ACG paid Hayward's

credit cards down to utilize the thirty-day float that credit cards provided. These decisions were made to manage ACG's cash flow and continue its business operations. When the projects failed to provide profits, Hayward could no longer continue to provide access to her credit cards and lines of credit. When ACG closed down in 2019, Hayward was not reimbursed in full.

In July 2018, ACG entered into a contract with the Texas Department of Transportation ("TXDOT") to perform landscaping services in exchange for payment in the amount of \$80,900 ("TXDOT Contract"). ACG then entered into a subcontract with Santoyo in which Santoyo agreed to perform the landscaping services described in the TXDOT Contract for payment totaling \$45,000 ("Subcontract"). ACG received payment in the amount of \$71,425 from TXDOT which was the total amount owed to ACG for the work it requested.

Alarcon, the CEO of ACG, determined which bills were paid and which were not. Alarcon testified that ACG did not have sufficient funds to pay Santoyo and its other expenses. Alarcon further testified that he prioritized payments on his wife's credit cards and the line of credit over other payments in order to keep the business operating and allow the construction projects to proceed. Alarcon also elected to make certain payments over others in order to avoid mechanics' liens and material liens being placed on the projects. Alarcon paid himself a salary and management fees during this same time period where he determined which bills should be paid

and which should not be paid. As reported in its tax filings, ACG reported a loss of \$117,047 for its 2018 ordinary business income and a loss of \$90,530 in 2019.

On April 3, 2019, Santoyo picked up a check from ACG and requested payment of the remaining balance owed to him under the Subcontract. On or about May 15, 2019, Santoyo received his last payment from ACG in the amount of \$10,000. In total, Santoyo received payments totaling \$23,000 of the \$45,000 owed to him by ACG.

## **B. Legal Background**

On December 31, 2020, Santoyo filed a petition against ACG and Alarcon alleging claims of breach of contract, promissory estoppel and negligent misrepresentation.

On March 19, 2021, Santoyo filed a First Amended Petition adding claims including tortious interference with contract. Santoyo filed a second and third amended petition. In his Fourth Amended Petition, Santoyo added Hayward as a defendant, nonsuited ACG, and reduced the claims to a sole claim of tortious interference of contract against Alarcon. On July 6, 2023, Santoyo filed a Fifth Amended Petition without material changes. On August 31, 2023, the trial court entered an Order of Partial Nonsuit in regard to Hayward.

On November 21 and 22, 2023, the trial court presided over a jury trial on Santoyo's claim for tortious interference with contract. At the close of Santoyo's

case, Alarcon moved for a directed verdict which the trial court denied. At the end of the trial, the jury found that Alarcon intentionally interfered with the contract between Santoyo and ACG.

On November 30, 2023, the trial court signed a Final Judgment which awarded Santoyo \$22,000 in economic damages and \$150,000 in exemplary damages.

On December 12, 2023, Alarcon filed a Motion for Judgment Notwithstanding the Verdict. The trial court did not rule on this motion and this appeal timely followed.

## **Analysis**

### **A. Standard of Review**

Alarcon challenges the legal sufficiency of the evidence to support the jury's verdict that Alarcon tortiously interfered with the contract. The standard of review for factual and legal sufficiency remains the same whether a judge or a jury served as factfinder. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996); *Desta v. Anyaoha*, 371 S.W.3d 596, 598 (Tex. App.—Dallas 2012, no pet.).

In a legal sufficiency review, we consider the evidence in the light most favorable to the trial court's findings and indulge every reasonable inference that would support them. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable trier of fact could, and disregard contrary

evidence unless a reasonable trier of fact could not. *Id.* at 827. We will sustain a challenge to the legal sufficiency of the evidence if (1) there is a complete lack 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) there is no more than a scintilla of evidence offered to prove a vital fact, or (4) the evidence conclusively establishes the opposite of the vital fact. *Pike v. Texas EMC Mgmt., LLC*, 610 S.W.3d 763, 783 (Tex. 2020). In a factual sufficiency review, a finding will be overturned only if it is so against the great weight and preponderance of the evidence or so lacking in evidentiary support as to be clearly wrong and unjust. *Ortiz*, 917 S.W.2d at 772.

### **B. Analysis**

In his first issue, Alarcon argues that the evidence at trial was legally insufficient to support the jury's verdict that Alarcon tortiously interfered with the Subcontract. To succeed on this challenge, Alarcon must show that that there is no more than a scintilla of evidence to support one of or more of the elements of tortious interference. *Holloway v. Skinner*, 898 S.W.2d 793, 796 (Tex. 1995). The elements of a cause of action for tortious interference with a contract are: (1) the existence of a contract subject to interference; (2) the occurrence of an act of interference that was willful and intentional; (3) the act was a proximate cause of the plaintiff's damage; and (4) actual damage or loss occurred. *Id.* at 795-96.

In his brief, Alarcon asserts that Santoyo failed to prove that Alarcon willfully or intentionally tortiously interfered with the Subcontract. The alleged act of interfering with an entity's contract by its officer must be performed in furtherance of the officer's personal interests so as to preserve the logically necessary rule that a party to a contract, the entity, cannot tortiously interfere with its own contract. *Id.* at 796. The Texas Supreme Court has specifically held that the plaintiff has the burden to show that the defendant officer acted in a fashion so contrary to the entity's best interests that his actions could *only* have been motivated by personal interests. *Id.* The "mere existence of a personal stake in the outcome" such as drawing a salary is not sufficient to constitute proof that the officer committed an act of willful or intentional interference. *Id.* "Furthermore, an agent cannot be held to have acted against the principal's interests unless the principal has objected." *Latch v. Gratty, Inc.*, 107 S.W.3d 543, 545 (Tex. 2003) (citing *Powell Indus., Inc. v. Allen*, 985 S.W.2d 455, 457 (Tex. 1998) (per curiam)).

Here, Santoyo had to prove more than Alarcon benefitted from the breach. Santoyo had to prove that Alarcon acted willfully and intentionally to serve Alarcon's personal interests at the expense of ACG. To support the jury's findings of tortious interference, there must be evidence that Alarcon personally benefitted from decisions that were inconsistent with his duty to ACG, and that were directly

connected to ACG's decision not to pay Santoyo and that ACG objected to Alarcon's conduct. *Latch*, 107 S.W.3d at 545.

In reviewing the record, we conclude there is no evidence of a willful or intentional act of interference or that ACG objected to Alarcon's apportionment of its inadequate resources among its creditors. The record establishes that ACG had cash flow problems and that Alarcon prioritized payments on his wife's credit cards and the line of credit over other payments to keep the business operating and allow the other construction projects to continue. Testimony at trial provided that ACG did not have sufficient funds to pay Santoyo and its other expenses and keep the business operational. Alarcon had to prioritize between competing claims because there were not enough funds to pay all of ACG's obligations. Hayward's testimony established that ACG paid her credit cards down in order to take advantage of the thirty-day float that credit cards provided ACG.

There is no evidence that Alarcon personally benefitted from electing to pay obligations other than the debt owed Santoyo. Further, the fact that Alarcon paid himself a salary as CEO and management fees during this same time period is not sufficient evidence of a personal benefit. *See Holloway*, 898 S.W.2d at 798 (“[A] personal benefit limited to the continued entitlement to draw a salary or derivative of the improved financial condition of the corporation does not raise a triable issue of fact in this type of tortious interference case.”); *Powell Indus., Inc.*, 985 S.W.2d

at 457 (“A corporate officer’s mixed motives—to benefit both himself and the corporation—are insufficient to establish liability.”). Finally, there is no evidence ACG objected to Alarcon’s decisions regarding which creditors did not get paid. *Latch*, 107 S.W.3d at 545. On this record, we conclude that there is no evidence that the decision to breach the Subcontract was so contrary to ACG’s best interests that it could only have been motivated by the pursuit of Alarcon’s personal interests.

In his brief, Santoyo argues that it “was in Alarcon’s personal interest to keep sending his wife hundreds of thousands of dollars to pay on her credit cards, which were not ACG obligations or debts.”<sup>3</sup> As stated above, both Hayward and Alarcon testified that Hayward allowed ACG to use her credit cards to keep the business operating and allow the construction projects to proceed. In order to demonstrate tortious interference, it was Santoyo’s burden to prove Alarcon acted willfully and intentionally to serve Alarcon’s personal interests at the expense of ACG. No such evidence was presented at trial. Because Santoyo failed to introduce any evidence tending to prove that Alarcon committed an act so contrary to ACG’s best interests

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<sup>3</sup> Santoyo also argues that Alarcon used and benefited from the airline miles accrued on Hayward’s credit cards which ACG paid down. The accrual of airline miles, as with Alarcon’s salary or management fees, are not sufficient evidence of a personal benefit and constitute, at best, a mixed motive. *See Powell Indus., Inc.*, 985 S.W.2d at 457.

that it could only have been motivated by the pursuit of personal interests, there is no evidence that Alarcon tortiously interfered with the Subcontract.

### **Conclusion**

Our resolution of Alarcon's first issue is dispositive of this appeal. Accordingly, we need not consider his remaining issues which complain of whether the trial court abused its discretion in rejecting requested jury instructions, whether there was legally sufficient evidence to support an award of exemplary damages, and whether the trial court erred in granting Santoyo partial summary judgment on the affirmative defense of statute of limitations.

We reverse the trial court's judgment and render judgment that Santoyo take nothing on his tortious interference claim.

/David Evans/

DAVID EVANS

JUSTICE, ASSIGNED



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

**JUDGMENT**

AGUSTIN ALARCON, Appellant

No. 05-24-00297-CV      V.

HUGO CESAR SANTOYO, D/B/A  
H&A LANDSCAPING, Appellee

On Appeal from the County Court at  
Law No. 2, Collin County, Texas  
Trial Court Cause No. 002-00006-  
2021.

Opinion delivered by Justice Evans.  
Chief Justice Koch and Chief Justice  
Wright participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and judgment is **RENDERED** that:

Appellee Hugo Cesar Santoyo, D/B/A H&A Landscaping take  
nothing on his tortious interference claim.

It is **ORDERED** that appellant AGUSTIN ALARCON recover his costs of  
this appeal from appellee HUGO CESAR SANTOYO, D/B/A H&A  
LANDSCAPING.

Judgment entered this 4<sup>th</sup> day of August, 2025.