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FIFTEENTH COURT OF APPEALS
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ORAL ARGUMENT REQUESTED

NO. 15-26-00012-CV

IN THE FIFTEENTH COURT OF APPEALS

ROBIN BALEY d/b/a H2O SERVICES,
Appellant,

VS.

RCH WATER SUPPLY CORPORATION,
Appellee.

Appeal from 382 Judicial District Court
Rockwall County, Texas
Hon. Carolyn Wright sitting by assignment
(Transfer appeal from Fifth Court of Appeals)

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

This is an appeal from a judgment of disgorgement rendered upon findings that Appellant was a fiduciary who breached an unspecified fiduciary duty she owed to Appellee to retain receipts for expenses that she reimbursed herself for. CR.271—Appx A; CR.283—Appx. B. Appellee RCH Water Supply Corporation (RCH) filed this suit against Appellant Robin Baley d/b/a H2O Services (Baley), asserting causes of action for breach of contract, negligence, breach of fiduciary duty, conversion, violations of Texas Government Code Section 552.233(c), and an accounting. CR.12. After RCH determined that Baley—following her separation from RCH—had not retained personal copies of documentation supporting RCH's reimbursement checks to her, *see* CR.83, 87, RCH dropped all claims on which it had the full burden of proof, and tried only its breach-of-fiduciary-duty claim. *See* CR.211; 3RR17. This claim was tried to the bench before the Honorable Carolyn Wright, visiting judge. *See* CR.202; 3RR1-158; 4RR1-297.

At the conclusion of the trial, the trial court requested briefing on the question of whether an independent contractor may be a fiduciary. 4RR292-93. Following the parties' submissions of post-trial briefs, with RCH praying for a judgment of disgorgement against Baley, CR.243, 252, the trial court rendered a final judgment against Baley for the total amount of disgorgement RCH sought, $808,098.77, along with prejudgment interest and court costs. CR.271—Appx. A.

Baley made a request for findings of fact and conclusions of law. CR.274. The trial court signed RCH's Proposed Findings of Fact and Conclusions of law as filed. CR.283—Appx. B.

Baley filed this appeal. CR.298. She suspended enforcement of the judgment during the appeal by filing a supersedeas bond. CR.340.

STATEMENT REGARDING ORAL ARGUMENT

Appellant Baley requests oral argument. This appeal involves complex factual and legal questions pertaining to whether Appellant was an employee or an independent contractor and whether she was an agent and had a fiduciary relationship to Appellee. There are also questions as to what, if any, fiduciary duty Appellant would have owed. Texas law is murky and unsettled. The trial court's findings and conclusions cut a pathway through the middle of this legal and factual minefield. Appellant believes oral argument would assist the Court.

ISSUES PRESENTED

Issue 1: Whether the trial court erred in finding and concluding that Robin Baley d/b/a H2O Services breached a fiduciary duty owed to RCH Water Supply Corporation.

> **Subissue**: Whether the trial court erred in its determination that Robin Baley d/b/a H2O Services had a fiduciary relationship to RCH Water Supply Corporation.
>
> **Subissue**: Whether the trial court erred in its determination that Robin Baley d/b/a H2O Services was RCH Water Supply Corporation's employee.
>
> **Subissue**: Whether the trial court erred in its determination that Robin Baley d/b/a H2O Services owed and breached a fiduciary duty by exercising authority RCH Water Supply Corporation granted her to write checks to herself and whether the trial court correctly determined that she breached a fiduciary duty to provide documentation to support the checks.
>
> **Subissue**: Whether the trial court erred by shifting the burden of persuasion to Robin Baley to present copies of documentation that she had provided to RCH Water Supply Corporation previously and which was in the custody and control of RCH Water Supply Corporation.

Issue 2: Whether the trial court erred by rendering final judgment against Robin Baley in the total amount of $808,098.77.

> **Subissue**: Whether the trial court erred in rendering judgment in the total amount of $808,098.77 without making required predicate determinations, including whether RCH Water Supply Company suffered actual damage, and without offsetting the award by uncontroverted expenses RCH Water Supply had agreed to pay.

STATEMENT OF FACTS

This appeal involves a claim for breach of fiduciary. Central to the liability are the nature of the parties' relationship, and what, if any, fiduciary duties apply.

Baley's spotless 28-year history with RCH Water Supply Company

Appellant Robin Baley operates as "H2O Services" and provides water billing services to five different water companies. 3RR137; 4RR41-43.

Baley first began doing work for RCH Water Supply ("RCH") through her employer, J.E. Harris. At that time, Mr. Harris was a bookkeeper for RCH and other water supply companies, and he performed billing services for them. 4RR168-69. Baley initially took customer phone calls, handled work orders, and did bookkeeping. 4RR169. When Mr. Harris grew ill, Baley started H2O Services and picked up where Mr. Harris left off. 4RR195. Doing business as "H2O Services," Baley performed work for RCH for almost 28 years without a written contract. 3RR140.

The core scope of services encompassed by Baley's water billing business included mailing of bills to water customers, collecting customer payments and posting them to individual accounts, managing accounts receivable, processing credit card payments, monitoring RCH's bank balances to ensure full FDIC coverage, paying bills for RCH, and acting as records custodian for RCH's business records. 3RR140, 145; 4RR46-48, 70, 73, 101-02, 110-11, 228, 257-58.

Though Baley's services for RCH were extensive, there were many jobs or services she did not perform for RCH. All outside work, such as setting water meters, fixing meter leaks, reading meters, taking water samples, hiring outside crews, and meeting with the State, was handled by Dwight Lindop. 4RR28-29, 171, 185, 198, 223-24. Baley did not prepare corporate financial statements, such as balance sheets, income statements, or cash flow statements.[1] 4RR9; *see* 4RR103-04. She did not provide other ordinary accounting functions, such as reconciling bank statements, and she did not prepare tax forms or tax filings. 3RR145; 4RR260-61. In fact, RCH's board handled the hiring of other professionals such accountants, auditors, and attorneys. 3RR75. The board also handled decisions regarding infrastructure improvements, contracting for water supply, and insurance decisions. 3RR33, 41-42; 4RR40, 263, 270-71, 275.

Finally, there were some services or functions that Baley provided to RCH that were outside the scope of H2O's ordinary water billing services. Baley handled regulatory and compliance duties for RCH. She served as RCH's primary contact for the Texas Commission on Environmental Quality, handled responses to Public Utility Complaints, compiled RCH's annual Consumer Confidence Report, filed

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[1] The trial court's findings inexplicably treat the lack of any financial statements (that were never within the scope of Baley's services to RCH) as "mismanagement" by Baley. *See* CR.284—Appx. B (FOF No. 9). Even when RCH was claiming Baley had a written contract, RCH did not claim that preparation of financial statements was one of Baley's obligations. *See* CR.13.

RCH's annual eminent domain filing, and monitored overall compliance with regulatory laws and state inspection. 4RR13-14, 56, 76, 87, 119-20. Baley also managed a "lock list" of water customers who were past due on their accounts. 3RR143. And Baley managed a website for RCH. 4RR57, 74. In addition, Baley met with engineers and attorneys that RCH hired from time to time. 4RR64, 81-82. As discussed below, Baley billed RCH for these "extra" services as expense items.

On a day-to-day basis, Baley performed her work for RCH with no supervision from RCH. 4RR10-11, 25. She reported directly to RCH's board of directors. 3RR142; 4RR10-11, 24, 25, 106; *see* 7RR74-96 [DX 14-17]. For the board's use, she prepared a monthly Directors' Report that detailed water usage, revenue collected, past due accounts, taxes, and regulatory fees. 3RR143, 144; 4RR9, 37, 126. She also prepared the agendas for board meetings, posted the notices of board meetings, attended the meetings, drafted meeting minutes, and made monthly bank statements available for board members' review. 3RR61, 79, 142, 143, 145, 146; 4RR9-10, 37, 48, 107-08, 127, 135, 154, 172, 177, 242.

Baley served RCH with distinction during her 28 years. During her years of service, RCH never had any complaints about her performance or any of her financial transactions. 3RR61, 62, 68-69, 78, 79; 4RR36, 84, 143, 164-65, 192, 198, 242. Audits had revealed no problems. 4RR262. RCH board member Jack Pullen, who served on the board for 45 years, testified that neither he nor the board ever had any complaints about Baley's work. 4RR258, 265, 275. RCH had never suffered any financial loss as a result of Baley's work. 4RR276-77. Pullen described Baley as reliable and he did not know of any reason RCH would have to sue her. 4RR258.

Baley's compensation and expenses

RCH compensated Baley based upon the number of water meters RCH customers had, plus her expenses. 3RR149-51; 4RR59-61, 65-66, 73, 131-32, 207. This compensation was for the water billing and collections portion of the services Baley provided. 4RR73.[2] Baley received an ACH payment each month from RCH based upon the meter count for the particular month. 3RR54; PX10 [6RR39-63]; 4RR59, 106. RCH's tax accountants sent Baley a W-2 each year that encompassed the ACH portion of her compensation. 3RR115-16, 131; 4RR66, 67, 106.

There was a long list of expenses that RCH reimbursed Baley for. Expenses included cost items associated with her core water-billing services, as well as costs that she paid or "fronted" for RCH. And there were some expenses for services she provided to RCH outside of H2O's core water-billing services. Further, one item that RCH specifically agreed to pay and had paid for 10 years was the full monthly

[2] RCH's newly-elected board member David Naylor testified that it was his "assumption" that the ACH payment to Baley encompassed "all of her overhead." 3RR88; *see also* 3RR89 (reciting his experience that an agreement or transaction "normally covers everything"); 3RR94 (betting the board did not know of Baley's expense reimbursements).

rent for H2O. 3RR82-83; 4RR14, 16-17, 19, 20, 141, 142-43. Thus, RCH reimbursed Baley for the $4,600 monthly rental payment. 4RR14, 15-16, 21.

RCH reimbursed Baley for her ordinary operational costs such as utilities, telephone, mileage, insurance, and employees. 3RR151; 4RR31-32, 52-54, 55, 81, 82-83. Expenses also included RCH letterhead, envelopes, and miscellaneous office supplies such as printer toner. 4RR74-75. Other expenses included blue flags used to mark water lines and $2500 per month for website hosting and maintenance. 4RR57, 74-75, 82. There were also expenses Baley fronted for RCH related to regulatory and administrative oversight, which included an annual fee for preparing the mandatory state water quality report, and preparation of responses to customer complaints that were filed with the Public Utility Commission. 4RR56-57, 76-78. In addition, there were state-mandated inspections that Baley fronted for RCH and then sought reimbursement. Those included annual inspections for each customer to check for lead or copper connections, and backflow prevention inspections for sprinklers and swimming pools. 4RR83-84, 85, 86. Baley also fronted expenses for RCH to pay meter readers. 4RR210. And there were administrative costs associated with printing meter reading sheets and input of data for meter re-reads. 4RR80-81. There were also expenses associated with locking meters due to non-payment. 4RR205.

Baley's monthly expense invoices

Baley itemized her expenses on monthly invoices and submitted them to RCH, which approved the expense.[3] 4RR63, 64, 65, 67, 70-71, 80. Dwight Lindop testified that RCH's board never contested any of the invoices that were submitted to them for review. 4RR210-11.

There was an itemized invoice accompanying every check Baley wrote to herself. 4RR71, 80. Baley followed this protocol for all of the water company clients H2O did billing services for. 4RR90.

Copies of the invoices were put in binders and then put in a mailer's box or bank box and then taken to RCH's pump station to be stored. 3RR156; 4RR67. Baley made a copy each month for RCH but she did not retain a copy for herself. 3RR157; 4RR5, 136, 138.

RCH's experiences chronic water shortages and new board leadership

RCH contracted with the City of Rockwall for its water, and the City would not increase the amount of water RCH contracted for. 4RR243-44, 263, 265, 270-71. During the Summer months, it was not uncommon for RCH to run low on water, and there were lots of customer complaints. 4RR39-41, 244, 271-72. RCH implemented water restrictions during these times. 4RR270. During the Summer of

[3] The invoices were sometimes provided to the Board for review after they had been paid. 4RR130-31.

2022, RCH completely ran out of water. 4RR80, 244. The complaints and Baley's workload grew to such an extent that Baley talked to RCH's board members about wanting to quit and told them they needed to come up with a solution to the shortages. 3RR150-51. The board members' solution was to increase Baley's base rate of pay. 3RR151.

In March of 2023, there was an election for a seat on RCH's five-member board of directors. 3RR32-33. Due to the fact that RCH had run out of water the prior year, RCH hired a balloting company to handle the ballots that were mailed to customers for the election of the new board member. 4RR111. David Naylor's wife convinced him that he could help RCH and that he should run for the board of directors. 3RR32. Naylor had no previous involvement with RCH, but he did run for the board, and at the March meeting, he was elected to the board for a three-year term. 3RR32, 58. At the subsequent board meeting in April, the board elected Naylor president of the board. 3RR32.

Following the April board meeting, Baley learned that RCH's water usage was up and RCH would have to take action soon or it would run out of water again. 4RR99-100; 7RR520 [DX5]. Baley advised Naylor of this fact and that the drought contingency plan needed to be placed on the board of directors' May agenda. 4RR99; 7RR520 [DX5]. She also informed him that RCH had reached this threshold cap almost a month earlier than the previous year. 7RR520 [DX5].

Lindop and Baley resign

At the May 2023 meeting of the board, Dwight Lindop, RCH's long-time maintenance supervisor, presented his monthly maintenance report, and then informed the board that he was quitting. 3RR46. The board went into executive session to discuss Lindop's departure. 3RR46. At that point, Baley informed the board that she could not do the job anymore, and she also quit. 3RR46; 4RR297.

The missing audits and missing financial statements

Immediately upon Naylor's election to the board, he understandably began gathering information and asking questions. *See, e,g.,* 7RR29-33 [DX6]; 7RR38 [DX10]. One of his first questions was where was RCH's last audit because he understood the bylaws to require an annual audit. 3RR36, 75-76; 7RR35 [DX8]. The other board members initially told Naylor that the audit was in the works, but Naylor later learned that RCH had not conducted an audit in many years. 3RR36-37, 75, 148-49. Baley was not responsible for the audit and did not have that information, as it was kept by the auditor. 4RR118-19, 179; 7RR432 [DX24].

Naylor repeatedly asked Baley for balance sheets and other financial statements. 7RR29 [DX4]; 7RR32 [DX6]; 7RR39 [DX11]; 4RR103. Being from the corporate world, Naylor expected that RCH should have corporate financial statements. 3RR37-38. But Baley had never prepared those items as part of her services to RCH. 4RR9-10.

Immediately after Baley gave notice she would no longer provide services to RCH, Naylor began making arrangements to transition to a new water billing provider. At the conclusion of her services to RCH, Baley gave Naylor everything else she had that belonged to RCH. 4RR69-70, 139. Baley put all of RCH's water billing data on a jump drive, printed out the meter reading sheets, and boxed up the prior month's financial information, and she told Naylor that it was available for pickup at H2O's office. 7RR39 [DX11]. She further advised Naylor that all financial information from earlier years was at the pump station. 7RR39 [DX11]; 7RR41 [DX12]. Copies of Baley's monthly invoices to RCH had been taken to the pump station already. 3RR155. After severing her relationship with RCH, Baley continued to answer phones and attend to other matters during the transition. 4RR101, 105, 125, 128. She communicated with Naylor regularly for a month and a half thereafter. 4RR112-13.

Naylor testified that he picked up the box from H2O's offices. 7RR41. He testified that the box did not contain any accounting documents. 3RR42. Because Naylor could not find the financial information he believed RCH should have, he presented the board with a motion to retain an auditor. 3RR40. The accounting firm that RCH initially hired to perform the audit "took all the documents [RCH] had" but was unable to put them together to create an audit. 3RR42.

The board then hired the Whitley Penn Accounting Firm, which performed a "cash audit" that simply examined bank statements, verifying the money that went out and the money that came in, and reconciling the bank statements.[4] 3RR37, 39-43, 75, 86, 100. After using bank records to build a profit and loss balance sheet, Whitley Penn ascertained that the accounts balanced. 3RR86, 108.

During its review of RCH's bank statements, Whitley Penn noted that there were a fair number of checks on RCH's bank account made out to Baley and signed by Baley. Criticizing RCH's Board, Whitley Penn's accountant testified that normally, if an entity is following good accounting practices, it would have internal controls in place that prohibit a person writing checks to herself. 3RR110, 116-17. 120-21, 128. The total of these checks from 2020 to 2022 was $808,098.77. The memo line on the checks had no description or invoice reference to indicate what the check was for. 3RR109-10, 111; 6RR64 [PX11]; 6RR65-74 [PX12].

RCH sues Baley

Six months after Baley terminated her services to RCH, RCH sued her. CR.12. RCH's Original Petition focused on the assertion that Baley breached a written agreement with RCH and on the assertion that Baley failed to return various records belonging to RCH. CR.13-14. RCH asserted causes of action for breach of contract,

[4] This was *not* a forensic audit. 3RR104; *see also* 3RR106-07; *but see* CR284—Appx. B (FOF "D" describing investigation as "forensic").

negligence, breach of fiduciary duty, conversion, and violation of the Texas Public Information Act. CR.15-18. RCH also sought an accounting and its attorney's fees. CR.18.

During discovery, RCH sought documents from Baley relating to her compensation. CR.32. Baley advised RCH that she had no responsive documents and that all responsive documents were in RCH's possession and stored at the pump station. CR.35. Upon RCH's motion to compel, the trial court ordered Baley to amend her responses to clarify whether responsive documents exist or whether, after diligent search, no responsive document could be found. CR.87.

After Whitley Penn's cash audit called attention to the checks Baley wrote, RCH amended its petition to add allegations that Baley had written and signed checks to herself from RCH's bank accounts. RCH further alleged that Baley had misappropriated hundreds of thousands of dollars of public funds from RCH. CR.135. RCH continued to assert the same five causes of action for RCH for breach of contract, negligence, breach of fiduciary duty, conversion, and violation of the Texas Public Information Act. *Id.*

The trial and final judgment of disgorgement

Having confirmed in discovery that Baley did not retain any copies of her invoices to RCH or supporting documentation, RCH chose to try only its claim for breach of fiduciary duty. *See* CR.211; 3RR1-158; 4RR1-297. The claim was tried to the bench before visiting Judge Carolyn Wright. CR.201, 202. At the conclusion of the trial, the trial court requested the parties to brief the question of whether an independent contractor may be a fiduciary. 4RR292-93. RCH tendered its post-trial brief asserting that Baley was a fiduciary even if she was an independent contractor and further arguing that as a fiduciary, Baley bore the burden to show the fairness of the checks she wrote to herself. CR.243. RCH sought the equitable remedy of disgorgement, asking the trial court to disgorge $808,098.077, the total amount of the checks Baley had written to herself. CR.238-49.

The trial court rendered its final judgment against Baley for the $808,098.77 funds that RCH prayed for. CR.271—Appx. A. Baley sought findings of fact and conclusions of law, CR.274, 280, and the trial court signed RCH's proposed findings of fact and conclusions of law unchanged. CR.283—Appx. B.

SUMMARY OF THE ARGUMENT

The sage advice to attorneys when a client calls wanting the client file is: give the file to the client because it belongs to the client, *but make a copy for yourself*. The advice is sound. Though Baley is not an attorney, had she heeded the underlying rationale behind it, she likely would not be an appellant.

Because Baley did not retain personal copies of invoices and other documentation supporting reimbursement for money she fronted for RCH and for her expenses that RCH agreed to pay, the trial court ordered Baley to forfeit $808,098.17. RCH did not present any evidence that Baley converted any of RCH's funds.

It was not disputed that RCH agreed to pay for Baley's expenses, including monthly rent and money Baley fronted for RCH. Despite the uncontroverted evidence of expenses, the trial court awarded disgorgement of the total amount of $808,098.77. Disgorgement is an equitable remedy that encompasses *net* profits and is not intended as a windfall to the plaintiff. At law, RCH would not be entitled to recover undisputed expenses it owed to Baley. The trial court abused its discretion by ordering total disgorgement without making predicate findings, including whether RCH has an adequate remedy at law and whether Baley's alleged breach was a "clear and serious" breach of a fiduciary duty.

The liability portion of this case is complicated. In the employment context, Texas breach-of-fiduciary duty law requires that a court take into consideration all aspects of the relationship to ascertain what, *if any*, fiduciary duties flow between an employer and employee. And even when a fiduciary relationship exists, the duties owed are not broad and all-encompassing. The trial court's findings and conclusions reflect that the trial court was ham-fisted in evaluating the parties' relationship and duties. After incorrectly concluding that Baley was an employee, it went on to conclude that Baley was therefore RCH's agent for "every aspect of its day-to-day operations," it imported 6 or 7 fiduciary duties, and then it concluded that Baley breached an unspecified fiduciary duty owed to RCH.

Texas breach-of-fiduciary duty law is not so sweeping. It is nuanced.

Baley was an independent contractor, not RCH's employee. Further, she did not have a fiduciary relationship to RCH or a fiduciary duty to keep personal copies of receipts and invoices after she reimbursed herself. She provided invoices and receipts to RCH and after its review of them, she left them in RCH's custody. The trial court erred by concluding that Baley breached a (unspecified) fiduciary duty on these undisputed facts.

Even if Baley had a fiduciary relationship with RCH, RCH agreed and consented to Baley's check-writing, including check-writing to herself. She was authorized to write checks and was the only one who had done so for almost 28 years. RCH knew she paid expenses to herself. Its board reviewed the invoices and the bank statements showing the payments each month and RCH issued 1099s to Baley representing the sums she reimbursed herself for. RCH cannot claim breach of a fiduciary duty with respect to the very activity it authorized and had knowledge of. Former Board President Jack Pullen, who oversaw Baley's work, testified that no money went missing while Baley provided services to RCH, he did not know of anything Baley had done wrong, and he could think of no reason RCH would have to sue her. 4RR258-59.

ARGUMENT

The trial court's errors are pervasive and systemic. The threshold questions presented in this appeal are whether Robin Baley was a fiduciary with respect to RCH, and if so, what was the scope of any fiduciary duty she owed to RCH. And, assuming she owed RCH a fiduciary duty, what evidence did RCH present to show that she breached the duty, where no witness testified that Baley failed to provide RCH itemized invoices supporting checks she wrote herself, and there is affirmative evidence that Baley *did* provide RCH with her itemized invoices supporting checks she wrote herself. And RCH authorized the very thing it now says is a breach of fiduciary duty.

Generally, the elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary duty, (2) breach of the applicable duty, (3) causation, and (4) damages. *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017). To establish the existence of a fiduciary duty, the plaintiff must first establish that the defendant was the plaintiff's fiduciary. *Fischer v. Fischer*, No. 05-23-00679-CV, 2025 Tex. App. LEXIS 8455, at *16-17, 2025 WL 3055619 (Tex. App.—Dallas Oct. 31, 2025, no pet.).

I. The trial court erred in determining that Baley had a fiduciary relationship with RCH

At present, Texas law recognizes two types of fiduciary relationships: (1) formal fiduciary relationships that arise as a matter of law, and (2) informal fiduciary relationships arising from moral, social, domestic, or merely personal relationships. *Fischer*, 2025 Tex. App. LEXIS 8455, at *17, 2025 WL 3055619. The trial court erred in its determination that Baley was RCH's fiduciary. CR.287—Appx. B [FOF No. 6].

Texas courts have held that certain *formal* relationships impose fiduciary duties as a matter of law. For example, relationships that carry the formal fiduciary label include the attorney-client relationship,[5] partners,[6] joint venturers,[7] spouses,[8] officers and directors of corporations,[9] and trustees and personal representatives.[10] The position of water billing service provider has never been held to create a formal fiduciary relationship. Indeed, the position is not one like doctor or attorney that involves the handling of sensitive information.

Even the fact that Baley processed payments for RCH's customers, deposited money, and had check-writing authority is not the sort of activity that has resulted in recognition of a formal fiduciary duty. Though banks occupy many different roles

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[5] *Boozer v. Fischer,* 674 S.W.3d 314, 326 (Tex. 2023).

[6] *Bertucci v. Watkins*, 709 S.W.3d 534, 543 (Tex. 2025).

[7] *Rankin v. Naftalis*, 557 S.W.2d 940, 944 (Tex. 1977).

[8] *Boaz v. Boaz*, 221 S.W.3d 126, 133 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

[9] *International Bankers Life Ins. v. Holloway*, 368 S.W.2d 567, 576 (Tex. 1963).

[10] *Austin Trust Co. v. Houren*, 664 S.W.3d 35, 45 (Tex. 2023).

in the financial world, banks are not fiduciaries to their customers. *Johnson v. Bank of America*, No. 09-12-00477-CV, 2014 Tex. App. LEXIS 11900, at *42, 2014 WL 5490935 (Tex. App.—Beaumont Oct. 30, 2014, no pet.). Similarly, hedge fund investment managers do not have a fiduciary relationship to their investors. *Mary E. Bivins Found. v. Highland Capital Mgmt.*, 451 S.W.3d 104, 113 (Tex. App.—Dallas 2014, no pet.). An oil-and-gas lessee does not owe a fiduciary duty to the overriding royalty-interest holder. *Stroud Prod. v. Hosford*, 405 S.W.3d 794, 809 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). And even accountant-client relationships do not give rise to a formal fiduciary duty. *Pitts v. Rivas*, 709 S.W.3d 517, 528 (Tex. 2025). While these professionals may owe *other* legal duties, they do not owe fiduciary duties. In short, as these authorities establish, just because an individual is authorized to handle money for someone, a fiduciary relationship does not spring from that authority.

Here, the trial court's findings of fact and conclusions of law reveal a flawed pathway to the court's conclusion that Baley was RCH's fiduciary.[11] Evaluating the pathway and its factual underpinnings is necessary to assessing whether a fiduciary relationship existed. First, the trial court concluded that Baley was RCH's

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[11] Findings of fact are not conclusive on appeal when a reporter's record is available. *See Zac Smith & Co. v. Otis Elevator Co.*, 734 S.W.2d 662, 666 (Tex. 1987).

employee. CR.283, 287—Appx. B [FOF "B", FOF No. 3 & 10, COL No.5]. As one legal scholar observed, "[w]hether all employees owe fiduciary duties to their employer has not been answered consistently, whether by the court or the Restatements." Deborah A. DeMott, *Symposium: Assessing the Restatement of Employment Law: Essay: Relationships of Trust and Confidence in the Workplace*, 100 CORNELL L. REV. 1255, 1269 (2015) [Hereinafter "DeMott"]. The trial court's determination that Baley was RCH's employee is erroneous.

A. Baley was not RCH's employee

Baley was an independent contractor. The record reflects that the trial court was all too aware that Baley was likely not RCH's employee. At the conclusion of the trial, unprompted, the court asked counsel for the parties to submit post-trial briefing on fiduciary duties and independent contractors. 4RR292-93. Despite this call for briefing, the trial court nevertheless found and concluded that Baley was RCH's employee. CR.284 (FOF No. 3), 285 (FOF No. 10), 287 (COL No. 5)—Appx. B.

The trial court erred in its findings and conclusion that Baley was RCH's employee. CR.285 (FOF Nos. 3 & 10); CR.287 (COL No. 5). The distinction between an employee and an independent contractor is governed by the right to control the means and details of the work performed, rather than just the ultimate result. *Limestone Prods. Distribution v. McNamara*, 71 S.W.3d 308, 312 (Tex.

2002). If the worker is an employee, the employer controls both the end sought to be accomplished and the means and details of its accomplishment. *Id.* The material underlying facts are not in dispute and lead only to the reasonable conclusion that Baley was an independent contractor, making this determination a question of law. *Texas A&M Univ. v. Bishop*, 156 S.W.3d 580, 585 (Tex. 2005).

In *Limestone Products,* the court identified five factors by which to evaluate the right to control: (1) the independent nature of the worker's business; (2) the worker's obligation to furnish necessary tools, supplies, and materials to perform the job; (3) the worker's right to control the progress of the work except about final results; (4) the time for which the worker is employed; and (5) the method of payment, whether by unit of time or by the job. *Id*. Application of these factors establishes that Baley was *not* RCH's employee.

<u>Independent nature of the worker's business</u>. Uncontroverted testimony establishes that Baley rendered her service through an independent occupation. Through her d/b/a, H2O Services, Baley contracted to provide billing services for five different water companies. 4RR41. In addition to the billing and administrative services provided to RCH, Baley provided billing services to Forney Lake Water Supply, Mt. Zion Water Supply, Kaufman County Municipal Utility District No. 5, No. 6, and No. 7. 4RR41-43.

The independent nature of Baley's sole proprietorship is further evidenced by the fact that she had three employees, all of whom were employees of H2O Services, not RCH. Ken Lowe is a salaried employee of H2O. 4RR14. He picks up the mail, sorts the mail, makes runs to the banks, and answers phones. 4RR14, 28. Cindy Roberts works for H2O full-time doing data input, balancing accounts, answering phones, and talking with water customers. 4RR29-30, 151, 156. Renee Robertson's day-to-day duties include taking payments, processing payments, depositing payments, keeping up with customer accounts, and answering phones. 4RR11, 228. Baley pays Robertson by the hour. 4RR247-48. This factor strongly supports the conclusion that Baley was an independent contractor. *See* Texas Labor Code § 406.121(2)(A).

In addition, Baley hired meter readers to read water meters and then paid them so much per meter, all without having to seek RCH's approval. 4RR191-92. Per her agreement with RCH, Baley fronted this cost for RCH and then "expensed" the cost of the meter readers and a portion of the cost of her employees to RCH. 4RR11-12, 62.

<u>Lack of Right to Control Details</u>. Baley took her direction from RCH's board, but nobody told her what tasks to perform on a day-to-day basis. 4RR10-11, 24-25. RCH never gave Baley written rules or procedures on how to handle financial matters or how to handle the customer accounts. 4RR25. Nobody directed her work.

4RR58. Former Board President Jack Pullen corroborated this, stating that he did not work with Baley every day and that her reporting was limited to keeping the Board updated on the "running of RCH." 4RR257. Baley used her own methods for billing (Master Meter software). 4RR122. She developed her own method of researching and responding to PUC complaints. 4RR78. RCH's board left Baley to establish a course of dealing insofar as her writing and signing of all checks for RCH for 28 years. 3RR65. These facts demonstrate a lack of control exercised by RCH which is consistent with an independent contractor relationship. *See Karlseng v. Wells Fargo, N.A.,* No. 05-13-01734-CV, 2014 Tex. App. LEXIS 13669, at *6, 2014 WL 7232734 (Tex. App.—Dallas Dec. 19, 2014, pet. denied); *see also Limestone Prods.*, 71 S.W.3d at 312 (requiring control over both the end sought to be accomplished, and the means and details of its accomplishment).

Provision of Tools, Equipment, and Office Space. Control over the choice of tools and appliances used to perform work is a hallmark of an employer-employee relationship. RCH left the decision up to Baley as to what was required to do the job, but RCH did agree to reimburse Baley for the expenses she incurred. 4RR62.

H2O Services purchased the computers used to house RCH's data. 4RR80, 239. H2O also chose the billing software used to bill RCH's customers. 4RR122. The phone systems were owned and operated by Baley, with each of her water company clients having its own phone line. 4RR41. Further, Baley handled the office utilities and the purchase of office supplies. 3RR151; 4RR75. Baley held the lease in her name for the office building on Highway 205. 4RR24. H2O paid the rent on the space that it used to provide services to its five water company clients. 3RR82-83, 141; 4 RR14. Under an agreement Baley had with RCH, the full cost of H2O's rent was underwritten by RCH, but once Baley ended her relationship with RCH, H2O resumed responsibility for the cost of the lease and RCH moved to a new office. 4RR14-17, 26-27, 141, 142, 193. Baley also did the upkeep on RCH's website. 4RR57, 74.

<u>Method of compensation and results-based compensation</u>. Payment by the job or the results rather than by a unit of time is consistent with independent contractor status. The record reflects that Baley was paid on a per-meter basis, which is a "piece-rate" method of compensation.[12] 3RR52-53, 97, 149-50; 4RR60, 132. This variable measure by which her compensation was determined is consistent with independent contractor status.

<u>Tax treatment and benefits</u>. Although RCH did not introduce copies of any W-2's or 1099's, there was testimony that RCH sent Baley both a W-2 for her piece-rate compensation, and a 1099 that encompassed the reimbursement checks.

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[12] In employment law, "piece-rate" refers to compensation that is tied to output rather than time. *See* BLACK'S LAW DICTIONARY 1387 (11th Ed. 2019) (defining "piecework"); *see, e.g., United States v. Rosenwasser,* 323 U.S. 360 (1945) (garment workers who paid per item were compensated at piece rates).

3RR115-16; 4RR66-67. There is no evidence that RCH provided Baley with standard employee benefits such as health insurance, vacation time, sick leave, or other paid time off.

Whether Baley received a W-2 or a 1099 is not outcome-determinative. *See, e.g., Limestone Prods. Distribution v. McNamara,* 71 S.W.3d 308, 309-10 (Tex. 2002) (worker was independent contractor even though employer reported income on W-2); *Diaz v. D.R. Wright Enters.*, No. 05-17-00172-CV, 2018 Tex. App. LEXIS 5542, at *10, 2018 WL 3484227 (Tex. App.—Dallas July 19, 2018, no pet.) (noting that receipt of 1099 is indicative of independent contractor status); *Karlseng v. Wells Fargo, N.A.*, No. 05-13-01734-CV, 2014 Tex. App. LEXIS 13669, at *7-8, 2014 WL 7232734 (Tex. App.—Dallas Dec. 19, 2014, pet. denied) (affirming trial court determination that worker failed to establish as a matter of law his wage-exempt status). In fact, she received both a W-2 and a 1099. 4 RR66-67.

<u>The time for which the worker is employed</u>. Baley did work for RCH for 28 years. 4RR17. When she started, she worked for J.E. Harris. 4RR168-69. But after Mr. Harris could no longer work, Baley started H2O Services and picked up Mr. Harris's book of business, which included RCH. *See* 4RR195.

In summary, the evidence shows that RCH did not control the details of Baley's work. Facts showing that Baley initially worked for J.E. Harris and then started her own independent water-billing company, that Baley selected the tools and methods to do the work, including hiring and paying her own employees, and that she was paid on a piece-rate basis establish that she was an independent contractor, not an employee. *See GE v. Moritz*, 257 S.W.3d 211, 215 (Tex. 2008). Accordingly, the trial court's conclusion that Baley was an employee of RCH is erroneous and an abuse of discretion. *See Huie v. DeShazo*, 922 S.W.2d 920, 927-28 (Tex. 1996). Further, the trial court's predicate conclusions that Baley, *as an employee*, was a fiduciary, and that, as an employee, she owed specified fiduciary duties, were also erroneous.

Finally, though a determination that Baley was an independent contractor is not dispositive of whether Baley held a fiduciary relationship to RCH, the determination necessarily requires different findings. *Integ Corp. v. Hidalgo Cty. Drainage Dist. No. 1*, No. 13-18-00123-CV, 2019 Tex. App. LEXIS 10070, at *14, 2019 WL 6205474 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet.); *see* RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006) ("some termed independent contractors are agents while others are nonagent service providers."). In this circumstance, there must be a finding of agency as to the particular transaction at issue. *Weidner v. Sanchez*, 14 S.W.3d 353, 374 (Tex. App.—Houston [14th Dist.] 2000, no pet.); *Jim Stephenson Motor Co. v. Amundson*, 711 S.W.2d 665, 670 (Tex. App.—Dallas 1986, writ ref'd n.r.e.); *Clark v. Texaco, Inc.*, 382 S.W.2d 953, 958 (Tex. Civ. App. 1964, writ ref'd n.r.e.). Here, no such finding was made. Rather, the trial court—after concluding that Baley was RCH's employee, further concluded that she was an agent for RCH, authorized to act on its behalf "in virtually every aspect of its day-to-day operation." CR.287 (FOF No. 5). This is not a finding that Baley was RCH's agent for the particular transaction at issue.[13]

Because the trial court erroneously determined that Baley was RCH's employee, it erred in rendering judgment against Baley. Accordingly, the court's judgment must be reversed and judgment rendered in favor of Baley.

B. The trial court erred in determining that Baley had an informal fiduciary relationship with RCH[14]

An informal fiduciary duty may arise from a moral, social, domestic or purely personal relationship of trust and confidence, generally called a confidential relationship. *Associated Indem. Corp. v. CAT Contracting*, 964 S.W.2d 276, 288 (Tex. 1998). However, to impose an informal fiduciary duty in a business

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[13] The finding is flawed in that it assumes Baley was RCH's employee, but it also does not accurately reflect the evidence. Indeed, the finding treats Dwight Lindop, who handled all of the outside work for RCH, as if he did not exist.

[14] Baley understands that this Court is obligated to follow the Texas Supreme Court's existing precedent that recognizes that informal fiduciary relationships may be formed. *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554, 565 (Tex. App.—Austin 2004, no pet.). Baley specifically challenges the body of law that recognizes informal fiduciary relationships. *See Pitts v. Rivas*, 709 S.W.3d 517, 530 (Tex. 2025) (Huddle, J., concurring) (observing that informal fiduciary relationship construct is flawed and advocating for elimination of the construct). In good faith, in order to preserve this challenge for further review with the Texas Supreme Court, Baley assert the challenge here. *See., e.g., Stanley Works d/b/a Stanley Mechanics Tools v. Wichita Falls ISD*, 366 S.W.3d 816, 830 (Tex. App.—El Paso 2012, pet. denied) (raising issue contrary to controlling precedent in good faith to preserve it upon further review).

transaction, the special relationship of trust and confidence <u>must exist prior to, and apart from, the agreement made the basis of the suit</u>. *Id.*; *Rainier Income Fund I, Ltd. v. Gans*, 501 S.W.3d 617, 624 (Tex. App.—Dallas 2016, pet. denied). In the absence of evidence that a prior relationship existed between the parties, the law will not impose an informal fiduciary relationship. *Associated Indem.*, 964 S.W.2d at 288; *Rainier Income Fund I*, 501 S.W.3d at 624.

Here, the trial court did not expressly make a determination that Baley was an "informal" fiduciary, but the court's underlying findings suggest the court impliedly imposed an informal fiduciary relationship upon Baley based upon findings that Baley worked for RCH for a long time, and RCH relied on and trusted Baley to handle its bank accounts and bookkeeping. CR.283(FOF B); CR.284 (FOF No. 5); CR.287 (COL No. 5)—Appx. B. These findings will not support an informal fiduciary relationship.

The existence of a fiduciary relationship cannot rest upon RCH's subjective, one-sided feelings of trust. *Pitts v. Rivas*, 709 S.W.3d 517, 528 (Tex. 2025). Indeed, it is assumed that in any business dealings there is some level of trust, and thus, such subjective trust "is not enough to transform arms-length dealing into a fiduciary relationship." *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962). Furthermore, the long duration of RCH's relationship with Baley is not sufficient to create a fiduciary relationship. *Pitts*, 709 S.W.3d at 528; *Crim Truck & Tractor Co. v. Navistar Int'l*

Transp. Corp., 823 S.W.2d 591, 595 (Tex. 1992). There is no evidence that Baley held a position of confidence prior to her business relationship with RCH, which is required in order to establish an informal fiduciary duty. *See Ritchie v. Rupe*, 443 S.W.3d 856, 874 n.27 (Tex. 2014). Consequently, though the trial court's fact findings may be accurate, the findings cannot support a conclusion that Baley had an informal fiduciary relationship with RCH. CR.287 (COL Nos. 4 & 6)—Appx. B. To the extent that the trial court rested its determination of a fiduciary relationship on an informal fiduciary duty, the court abused its discretion by applying an erroneous standard. *Huie v. DeShazo*, 922 S.W.2d 920, 927-28 (Tex. 1996).

II. If Baley was RCH's agent or employee, she did not breach a fiduciary duty owed to RCH

This argument section addresses both the fiduciary duties applied, and the breach element. They are discussed in reverse order: breach, then the duties applied.

A. The trial court erred in determining that Baley breached a fiduciary duty (COL No. 7)

The trial court erred in its determination that Baley breached a fiduciary duty. In particular, the court concluded:

> "Baley breached her fiduciary duty by writing forty (40) checks to herself totaling $808,098.77 without any documentation to back up, explain, or support the checks."

CR.287—Appx. B [FOF No. 7].

Several observations must be made about this core liability conclusion. First, the court does not identify *which* of the many (overly broad) fiduciary duties it found applicable as being the duty that was breached. *See* discussion *infra* 47-51. None of the duties the trial court found applicable would impose a fiduciary duty not to write checks. Moreover, RCH authorized Baley's check-writing and did not contest Baley's authority to write checks to third parties. 3RR93; 4RR36. RCH's authorization forecloses any breach of fiduciary duty. *Gaines v. Kelly*, 235 S.W.3d 179, 185 (Tex. 2007) (agent's authority is presumed to be coextensive with business entrusted to agent); *see also* RESTATEMENT (THIRD) OF AGENCY § 8.06; RESTATEMENT (SECOND) OF AGENCY § 390 (1958); *cf. Anderson v. Griffith,* 501 S.W.2d 695, 701 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.).

Second, none of the duties the trial court found applicable would impose a fiduciary duty on Baley not to write checks to herself. Moreover, no liability attaches because of RCH's authorization and consent (with notice). 3RR146-47; 4RR9-10, 32, 36, 52-54, 96-97, 130-31; *Gaines,* 235 S.W.3d at 185; *see also* RESTATEMENT (THIRD) OF AGENCY §§ 1.04 cmt. d, 8.06; RESTATEMENT (SECOND) OF AGENCY § 390 (1958). RCH authorized Baley to write checks and it regularly consented to the payment of her expenses. 4RR19, 31, 34, 36, 52-54, 67, 96-97, 130-31, 181. In short, RCH cannot complain of that the very thing it consented to and approved was unlawful.

RCH's auditor was critical of RCH for allowing the practice, but it was not disputed that it was RCH that made that happen. Accordingly, Baley cannot be held to have breach an unspecified fiduciary duty for writing checks to herself.

The last piece of the trial court's determination—that Baley wrote the checks without back-up documentation—suffers from two fatal flaws. First, there is no fiduciary duty obligating an agent or employee to provide documentation for a reimbursement check. *See* discussion *infra* at 47-51. Second, there is legally insufficient evidence to support the finding that Baley had no documentation to back up, explain, or support the checks. In fact, the evidence at trial conclusively establishes that Baley *did* have documentation supporting the checks.

It is not disputed that Baley *did submit* supporting invoices for every check she wrote to herself. RCH presented no evidence that Baley *failed* to support each check with documentation. Baley testified that each month she prepared an invoice listing all supplies and services covered by the invoice. 3RR154-55; 4RR63-64, 65, 71, 80, 84, 138. Her invoices were provided to RCH's board at its monthly meeting.[15] 4RR70, 71. She provided the same type of invoice to her other water companies that she worked for. 4RR90. Baley also prepared invoices for Lindop's reimbursements, and the board never questioned his invoices. 4RR210-11. Further,

[15] Invoices were generally presented to the board after she had written the checks. 4RR130-31.

RCH issued Baley 1099's reflecting the expenses she reimbursed herself for. 4RR66-67. Accordingly, because the evidence is legally insufficient to support the trial court's breach determination, the judgment must be reversed and judgment rendered in favor of Baley.

In the alternative, there is factually insufficient evidence to support the trial court's determination that Baley wrote checks to herself without documentation.

In effect, the trial court imposed a fiduciary duty and breach of that duty on Baley *for failing to retain a personal copy* of the documentation after she had been reimbursed for the expenses. There is no such fiduciary duty to retain a copy. RCH cleverly used the knowledge it gained in discovery that Baley had turned over all copies the records to RCH. CR.83, 87. After learning this fact, RCH proceeded to trial only on its breach of fiduciary duty claim. RCH used Baley's failure to retain personal copies of the documentation both to assert that she had a fiduciary duty retain documentation, and to shift the burden of proof to her to produce it. *See* CR.215, 247, 287 (COL No. 8)—Appx. B. Thusly, RCH avoided having to affirmatively present the invoices and documentation in its possession or control supporting her reimbursement checks. RCH also avoided calling a board member to testify as to whether the board did or did not see and approve Baley's invoices and the reimbursement checks that were part of the monthly bank statements.

To the extent the evidence is factually insufficient to support the trial court's determination that Baley had no documentation to support the reimbursement checks, the judgment must be reversed and the case remanded for a new trial.

B. The trial court erred by imposing broad fiduciary duties on Baley

Contrary to the trial court's approach, not all employees are agents and subject to fiduciary duties. RESTATEMENT OF THE LAW, EMPLOYMENT LAW §§ 4.0 & 4.01 (2015). And even when a fiduciary duty applies, it "is generally limited by law." *Critical Path Res., Inc. v. Huntsman Int'l, LLC*, No. 09-17-00497-CV, 2020 Tex. App. LEXIS 2310, at *17, 2020 WL 1291327 (Tex. App.—Beaumont Mar. 19, 2020, no pet.); *see also* RESTATEMENT (THIRD) OF AGENCY § 8.01 cmt. c (2006) (employee's obligation is not monolithic in operation); *Seibold v. Camulos Partners LP*, No. 5176-CS, 2012 Del. Ch. LEXIS 216, at *84-85 n.207 (Ch. 2012) (holding that Restatement of Agency "should not be read in a nonsensical, Stalinist way that allows employers an easy excuse to sue or penalize faithful employees for human behavior that does not diminish the effectiveness of the employer in any way."); William A. Gregory, *The Fiduciary Duty of Care: A Perversion of Words,* 38 AKRON L. REV. 181, 186 (2005) ("not every breach of duty by a fiduciary is a breach of fiduciary duty.").

In the present case, the trial court made the mistake of importing a list of fiduciary duties stemming from the court's conclusion that Baley had a fiduciary relationship to RCH. Specifically, the Court concluded:

> [Baley] owed RCH the fiduciary duty not to put her interests over the interests of RCH with respect to loyalty, fair dealing, and financial accountability.
>
> Baley had a duty of loyalty and utmost good faith, a duty to act with integrity of the strictest kind, a duty of fair, honest dealing, and a duty of full disclosure.

CR.287 (COL No. 6 & COL No. 7)—Appx. B. The trial court's broad, sweeping conclusions are like those set out in the opinion in *Bray v. Squires*, 702 S.W.2d 266 (Tex. App.—Houston [1st Dist.] 1985, no writ), which the Supreme Court pointed to as an example of careless application of fiduciary duties. *See Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 201 (Tex. 2002).

Courts take all aspects of the employer-employee relationship into consideration when determining what, if any, fiduciary duties flow between an employer and employee. *National Plan Admin., Inc. v. National Health Ins. Co.,* 235 S.W.3d 695, 700 (Tex. 2007); *see also* RESTATEMENT OF THE LAW, EMPLOYMENT § 8.01 cmt. b (2015) (requiring fact-sensitive analysis). For example, in *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 203 (Tex. 2002), the court considered whether an associate (employee/agent) of a law firm owed his employer a fiduciary duty to refrain from referring prospective clients to other law firms. The

Supreme Court observed that "courts have been and should be careful in defining the scope of the fiduciary obligations an employee owes when acting as the employer's agent…" *Id.* at 201. The *Johnson* Court pointed to the opinion in *Bray v. Squires*, 702 S.W.2d 266 (Tex. App.—Houston [1st Dist.] 1985, no writ), as containing overly broad statements to the effect that an employee owes a fiduciary duty to his or her employer based merely on the employment relationship. 73 S.W.3d at 201. The trial court erred and abused its discretion by doing precisely that here.

In the *Johnson* case, the Court held that it was unwise to impose an absolute fiduciary duty on associates of a law firm to abstain from directing those with legal needs to a law firm other than the associate's employer. *Id.* at 202. Thus, assuming Baley was an employee or agent of RCH, it does not follow that she owed a fiduciary duty to RCH. And if she was a fiduciary for some purpose, the fiduciary label did not import a multitude of broad, all-encompassing fiduciary duties.

Mere existence of an agency relationship in the independent contractor context likewise does not mean broad, across-the-board fiduciary duties apply. In *Pitts v. Rivas*, 709 S.W.3d 517 (Tex. 2024), Brandon and Linda Pitts were accountants (agents) who provided accounting services to Rivas for several years. *Id.* at 521. Rivas subsequently sued the Pitts for breach of fiduciary duty and other causes of action. *Id.* at 523. The question taken up by the Supreme Court was whether the "anti-fracturing" rule operated to bar Rivas' claim for breach of fiduciary duty. *Id.* at 523-24. But the Supreme Court concluded that it did not need to address the applicability of the anti-fracturing rule because it held, on the undisputed facts, that no fiduciary duty existed as a matter of law. *Id.* at 527. Texas courts have never held that an accounting relationship is a formal fiduciary relationship, despite the fact that it is an agency relationship. *Id.* at 528. The court further held that the relationship between Rivas and the Pitts could not be categorized as an informal fiduciary relationship, despite evidence that Rivas had a special relationship of confidence and trust with the Pitts. *Id.* at 528-29. Thus, even though the Pitts acted as agents for Rivas insofar as providing accounting services to Rivas (and could be sued for professional negligence), the Pitts were not fiduciaries.

To the extent the law would impose a fiduciary duty on Baley based upon a determination that she was RCH's agent for the purpose her check-writing authority, her fiduciary duty is one of loyalty to RCH. RESTATEMENT (THIRD) OF AGENCY § 8.01 (2006). The duty of loyalty encompasses three principle obligations: (1) not to disclose the employer's trade secrets, (2) not to compete with the employer while employed, and (3) not to misappropriate the employer's property or otherwise engage in self-dealing through the use of the position. *See* RESTATEMENT OF THE LAW, EMPLOYMENT LAW § 8.01(b). This is not a case involving evidence of unlawful self-dealing and it does not involve the taking of secret profits, as was the circumstance in *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509 (Tex. 1942).

The trial court erred and abused its discretion by its scattershot application of what appear to be six or seven different listed duties and then, without specifying which duty applied to Baley, simply concluded that Baley "breached her fiduciary duty." CR.287—Appx. B (COL Nos. 6 & 7). The trial court abused its discretion by its application of a fiduciary duty at all, and it abused its discretion by its apparent application of multiple different duties. *See Huie v. DeShazo*, 922 S.W.2d 920, 927-28 (Tex. 1996).

III. The trial court erred by shifting the burden of persuasion to Baley to show the transactions were fair and equitable (COL No. 8)

Because burden-shifting is done as a result of a fiduciary relationship, if no fiduciary relationship existed, the trial court also erred by shifting the burden. *See Miller v. Miller*, 700 S.W.2d 941, 946 (Tex. App.—Dallas 1985, writ ref'd n.r.e.). Even if a fiduciary relationship was applicable, the trial court erred by shifting the burden for two independent reasons. First, it was uncontroverted that Baley had already presented her invoices and back up documentation to RCH, along with the bank statements showing the reimbursement checks paid to her. *See* discussion *supra* at 21. RCH presented no testimony that it had not already received and reviewed the documentation. Second, the uncontroverted evidence established that the relevant documentation was in RCH's custody or control. *See* 3RR156, 157;

4RR5, 67, 136, 138; 7RR39 [DX11]; 7RR41 [DX12]. The trial court erred by shifting the burden of persuasion to Baley because there was never any proof that Baley failed to provide the documentation to RCH in the first place. Burden-shifting is done because the evidence of the dealings and of assets are accessible to the agent not to the principal. RESTATEMENT (THIRD) OF AGENCY § 8.01. Here, the evidence established just the opposite. Accordingly, the trial court erred by requiring Baley putting the burden on Baley to present what was in RCH's hands.

IV. The trial court erred by rendering judgment against Baley for $808,098.77

A. The abuse-of-discretion standard applies

A trial court's decision to impose disgorgement is reviewed under an abuse-of-discretion standard. *Papanicolaou v. Dennis*, No. 01-23-00932-CV, 2024 Tex. App. LEXIS 8035, at *9, 2024 WL 4820622 (Tex. App.—Houston [1st Dist.] Nov. 19, 2024, no pet.). An abuse of discretion occurs when (1) the court's decision is arbitrary and unreasonable, (2) the court fails to exercise discretion committed to it by law, (3) the court fails to follow guiding rules and principles, or (4) the court's decision rests upon legally or factually insufficient evidence. *In re Marriage of Williams*, 646 S.W.3d 542, 545 (Tex. 2022); *Gunn v. McCoy*, 554 S.W.3d 645, 666 (Tex. 2018); *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex. 1996); *Landon v. Jean-Paul Budinger, Inc.*, 724 S.W.2d 931, 938 (Tex. App.—Austin 1987, no writ). The trial court abused its discretion by ordering total forfeiture without making required predicate determinations, including ascertaining (1) whether RCH's remedy at law was inadequate; (2) whether Baley's violation of fiduciary duty is clear and serious; (3) whether forfeiture of any fee should be required; and (4) if so, what amount should be forfeited. *See Cooper v. Sanders H. Campbell/Richard T. Mullen, Inc.,* No. 05-15-00340-CV, 2016 Tex. App. LEXIS 9253, at *31 (Tex. App.—Dallas Aug. 24, 2016, no pet.).

B. The trial court abused its discretion by failing to make predicate findings required for equitable forfeiture

The trial court erred by rendering judgment for equitable forfeiture without making a finding that an award of actual damages—the remedy at law—would be inadequate. Forfeiture is an equitable remedy. *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999). Relief in equity is generally not available unless the court determines that a legal remedy would not be adequate. *BMG Direct Mktg. v. Peake*, 178 S.W.3d 763, 770 (Tex. 2005); *American Nat'l Ins. Co. v. Warnock*, 114 S.W.2d 1161, 1165 (Tex. 1938); *cf. Longview Energy Co. v. Huff Energy Fund LP,* 533 S.W.3d 866, 873 (Tex. 2017) (noting that equitable remedy of constructive trust applied where legal remedy is inadequate). The trial court erred by awarding equitable relief without evidence from RCH that it has no legal remedy.

Alternatively, the evidence is legally insufficient, or in the further alternative, factually insufficient, to support any finding that an award of actual damages to RCH would be an inadequate remedy at law.

Additionally, the trial court abused its discretion by ordering forfeiture of the entire $808,098.77 without making predicate determinations of whether the violation of fiduciary duty was clear and serious, whether forfeiture of any fee should be required, and if so, what amount should be forfeited. Forfeiture is an equitable remedy. Equity restricts the remedy to a wrongdoer's net profit. *Liu v. SEC*, 591 U.S. 71, 79 (2020). The trial court erred because it denied Baley any offset to the total amount of checks written despite uncontroverted evidence that Baley was entitled to reimbursement for her expense and uncontroverted evidence of such expenses. CR.288—Appx. B (COL 10), *see, e.g.,* 3RR85; 4RR57, 74. Even the legal remedy of actual damages would not refuse Baley a credit or offset for expenses that nobody disputed that RCH agreed to pay. *See TWC Aviation, Inc. v. World Tech. Aviation, LLC,* 714 S.W.3d 688, 700-01 (Tex. App.—Houston [1st Dist.] 2024, no pet.).

In *Burrow,* the Texas Supreme Court agreed that equity did not require complete forfeiture. "[T]o require an agent to forfeit all compensation for every breach of fiduciary duty, or even every serious breach, would deprive the remedy of its equitable nature and would disserve its purpose of protecting relationships of trust." *Burrow,* 997 S.W.2d at 241. "[T]he remedy of forfeiture must fit the circumstances presented. It would be inequitable for an agent who had performed extensive services faithfully to be denied all compensation for some slight, inadvertent misconduct that left the principal unharmed…" *Id.* The Court concluded that the question of whether to award forfeiture as a remedy and the amount to be forfeited are both questions for the court to be made after the underlying liability is determined by the fact-finder. *See Burrow*, 997 S.W.2d at 245. The trial court erred by rendering judgment without requiring proof of these predicate elements.

A party's request for forfeiture requires the trial court to determine three elements: (1) whether a violation is clear and serious; (2) whether forfeiture of any fee should be required, and (3) if so, what amount. *Heatley v. Red Oak 86, L.P.,* 629 S.W.3d 377, 389 (Tex. App.—Dallas 2020, no pet.); *Webb v. Crawley*, 590 S.W.3d 570, 587 (Tex. App.—Beaumont 2019, no pet.). As to the initial inquiry, the trial court was required to make a finding that Baley's violation of duty was a "clear and serious" violation of duty. *Burrow v. Arce,* 997 S.W.2d 229, 241 (Tex. 1999); *see also id.* at 242-43; *Papanicolaou v. Dennis*, No. 01-23-00932-CV, 2024 LX 27950, at *9 (Tex. App.—Houston [1st Dist.] Nov. 19, 2024, no pet.). In determining whether there was a "clear and serious" breach of fiduciary duty, the trial court was required to consider factors such as (1) the gravity and timing of the breach; (2) the level of intent or fault; (3) whether the principal received any benefit from the fiduciary despite the breach; (4) the centrality of the breach to the scope of the fiduciary relationship; (5) any other threatened or actual harm to the principal; (6) the adequacy of other remedies; and (7) whether forfeiture fits the circumstances and will work to serve the ultimate goal of protecting relationships of trust. *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 875 (Tex. 2010); *Cooper,* No. 05-15-00340-CV, 2016 Tex. App. LEXIS 9253, at *31-32. In addition, the adequacy of other remedies is also relevant. *ERI Consulting*, 318 S.W.3d at 875. RCH had the burden of proof on these elements. *Diakiw v. Stites Mgmt., L.L.C.*, 693 S.W.3d 582, 596 (Tex. App.—Houston [14th Dist.] 2023, pet. denied). The trial court abused its discretion by rendering judgment of forfeiture of the entire $808,098.77 without making these predicate determinations.

C. Remand is the remedy for the trial court's error

The result under this procedural scenario is dictated by the Texas Supreme Court's opinion in *ERI Consulting* and by the Dallas Court of Appeals' opinion in *Cooper*. In *ERI Consulting*, after expounding up on the predicate determination and relevant factors that a trial court must engage in, the Supreme Court observed that "[t]here is no indication the trial court followed these principles in fashioning its award." *ERI Consulting Engineers,* 318 S.W.3d at 875. Because the trial court failed to utilize the applicable principles, the Court remanded the case to the trial court for consideration of the appliable factors. *Id.* ("Accordingly, we direct the court of appeals to remand the case to the trial court for consideration of these factors upon resolution of the issues remaining for the court of appeals."). Thus, because there is no indication here that the trial court followed these principles in ordering forfeiture of the $808,098.77 in reimbursement, this Court should remand to the trial court for consideration of the applicable factors and to make the required findings.

Following the precedent established by the *ERI Consulting Engineers* Court, the Dallas Court of Appeals remanded the case in *Cooper* to the trial court for consideration of the factors enumerated in *ERI Consulting Engineers*. *Cooper*, 2016 Tex. App. LEXIS 9253, at *39. The court of appeals noted that the claimant had not identified or briefed to the trial court the predicate requirement of a "clear and serious" breach of duty and also did not cite anything in the record showing that the trial court had considered the *ERI Consulting* factors, the court of appeals remanded to the trial court for consideration of the factors described in *ERI Consulting. Cooper*, 2016 Tex. App. LEXIS 9253, at *39. The same result should pertain here, where the record shows the trial court rendered judgment for equitable forfeiture without any briefing or argument by RCH identifying the predicate determinations required. The subsequent proposed findings of fact and conclusion of law that RCH presented, and which the trial court signed, further underscores the lack of the predicate determinations that *ERI Consulting* requires. *See* CR.283—Appx. B.

In the alternative, the trial court erred in rendering judgment forfeiting the entire $808,098.77 because legally insufficient and factually insufficient evidence supports a finding that a clear and serious breach of fiduciary duty occurred.

D. The trial court's award of complete forfeiture was an abuse of discretion

The remedy of complete forfeiture is restricted to clear and serious violation of duty. *Burrow,* 997 S.W.2d at 241. A violation is clear only if Baley knew the relevant facts and law and would have known that her conduct was wrongful. *Id.* There is no evidence Baley knew that any conduct on her part was wrongful.[16] Thus, the trial court's order of complete forfeiture is not supported.

Automatic and complete forfeiture is not required for the equitable remedy of forfeiture to serve its purpose. *Burrow v. Arce,* 997 S.W.2d 229, 241 (Tex. 1999).

> "[T]o require an agent to forfeit all compensation for every breach of fiduciary duty, or even every serious breach, would deprive the remedy of its equitable nature and would disserve its purpose of protecting relationships of trust."

Burrow, 997 S.W.2d at 241. "[T]he remedy of forfeiture must fit the circumstances presented." *Id.*; *see also ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 874 (Tex. 2010). The main purpose of forfeiture is not to compensate the injured principal, but to protect relationships of trust by discouraging disloyalty. *Swinnea,* 318 S.W.3d at 872-73 (quoting *Burrow,* 997 S.W.2d 238). It is inequitable to deny an agent who performs extensive services faithfully all compensation for some

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[16] Notably, Justice Hecht, who authored *Burrow,* previously wrote, "I have learned in more than a decade of judging that what is claimed to be clear seldom is." Nathan L. Hecht, *Revisiting Standards of Review in Civil Appeals: Forward*, 24 ST. MARY'S L. J. 1041, 1043 (1993)

slight, inadvertent misconduct that leaves the principal unharmed. *Burrow*, 997 S.W.2d at 241.

> In determining whether and to what extent forfeiture is appropriate, relevant considerations include the gravity and timing of the violation, its wilfulness, its effect on the value of the [fiduciary's] work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies.

Burrow, 997 S.W.2d at 241; *see also id.* ("Forfeiture of fees, however, is not justified in each instance in which a lawyer violates a legal duty, nor is total forfeiture always appropriate.").

The trial court must also determine whether any monetary sum should be forfeited, and if so, in what amount. *Cooper,* No. 05-15-00340-CV, 2016 Tex. App. LEXIS 9253, at *32, 33. It would be inequitable for an agent who performed extensive services faithfully to be denied all compensation if the misconduct was slight or inadvertent. *Id.* The trial court abused its discretion by awarding total forfeiture without requiring RCH to present evidence to support predicate determinations for forfeiture, and without making the required predicate determinations for total forfeiture.

In the alternative, the evidence is legally and factually insufficient to support a determination that RCH suffered actual damages in the amount of $808,098.77. As discussed herein, there is undisputed evidence in the record that at least some of the amount in question constituted expenses to RCH. *See*, *e.g.,* 4RR14, 15-16, 21, 57, 74-75, 84-86. Accordingly, the trial court erred in rendering judgment in the amount of $808,098.77.

CONCLUSION AND PRAYER

Forfeiture is an equitable remedy not intended to reward the plaintiff and not intended to punish the defendant whose misconduct was inadvertent or slight. Here, there is no dispute that Baley fronted expenses for RCH and otherwise incurred expenses for which RCH had said it would reimburse her. Equitable forfeiture does not extend to a fiduciary's expenses. Even assuming Bailey had a *fiduciary* duty to RCH to keep her own separate copies of the invoices she submitted for reimbursement, the omission was not a clear and serious breach of fiduciary duty that would support total forfeiture.

Appellant prays that the Court reverse the trial court's November 21, 2025 Final Judgment and render a take nothing judgment. Alternatively, Appellant prays that the Court reverse the trial court's final judgment and remand to that court to make a determination as to the proper amount of disgorgement. In the further alternative, Appellant prays that the Court reverse the trial court's final judgment and remand to the trial court for a new trial. Appellant further prays for a judgment releasing the surety U.S. Specialty Insurance Company from its obligation on **Bond No. 1001233981.** *See* CR.340. Baley requests such further and additional relief to which she is entitled at law and in equity.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that, in accordance with Rule 9.4 of the Texas Rules of Appellate Procedure, this document contains 10,689 words as determined by Microsoft® Word for Microsoft 365, which is the software used to generate the document. This word count does not include words contained in the sections of the Brief excluded from the word limit by Rule 9.4(i)(1).

/s/ *R. Michael Northrup*
R. Michael Northrup

CERTIFICATE OF SERVICE

The undersigned certifies that on the 22nd day of June 2026, a true and correct copy of this Appellant's Brief was delivered via Electronic Service to the counsel of record listed below.

/s/ *R. Michael Northrup*

R. Michael Northrup

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INDEX TO APPENDIX

CAUSE NO. 1-23-1750

RCH WATER SUPPLY CORPORATION, Plaintiff, v. ROBIN BALEY D/B/A H2O SERVICES, Defendant.	§ § § § § § § § §	IN THE DISTRICT COURT 382nd JUDICIAL DISTRICT OF ROCKWALL COUNTY, TEXAS

FINAL JUDGMENT

On October 27, 2025, this case was called for trial. Plaintiff RCH Water Supply Corporation ("Plaintiff") appeared through its attorneys and announced ready for trial. Defendant Robin Baley d/b/a H2O Services ("Defendant") appeared through her attorneys and announced ready for trial.

All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court heard evidence and arguments of counsel and announced its decision for Plaintiff. The Court hereby RENDERS judgment for Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff have and recover of and from Defendant the sum of $808,098.77, with pre-judgment interest thereon at a rate of 7.50% per annum, from November 14, 2023 until the date of this judgment, and post judgment interest thereon at the rate of 7.50% per annum, from the date of this judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff be awarded all taxable Costs of Court against Defendant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED all writs and processes needed to effectuate this Judgment shall be issued by the Clerk of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this is the final, appealable judgment of this Court and that it disposes of all parties and issues in this case.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted or referenced herein is denied.

cw/my

Signed this ~~22nd~~ 21 day of November, 2025.

JUDGE PRESIDING

Ret C55COA

Senior Justice Sitting by Assignment

Filed: 12/5/2025 12:56 PM
Lea Carlson,
District Clerk
Rockwall County, Texas
Karen Petty

CAUSE NO. 1-23-1750

RCH WATER SUPPLY CORPORATION,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	**382nd JUDICIAL DISTRICT**
	§	
ROBIN BALEY D/B/A H2O SERVICES,	§	
	§	
Defendant.	§	**OF ROCKWALL COUNTY, TEXAS**

RCH WATER SUPPLY CORPORATION'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with the Texas Rules of Civil Procedure, Plaintiff RCH Water Supply Corporation ("RCH") hereby submits the following proposed findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. The Parties.

1. The Plaintiff in this matter is RCH.

2. The Defendant is Robin Baley d/b/a H2O Services ("Defendant" or "Baley").

B. Baley was employed by RCH as its Administrative Officer for over a quarter of a century.

3. From April 1995 until she quit on May 3, 2023, Baley was employed by RCH and served as its administrative officer. She regularly attended board meetings and reported to the Board of RCH.

4. Baley's role for RCH was substantial. She did everything related to managerial duties with respect to RCH, including: soliciting water customers; acting on behalf of the RCH Board in water supply matters regulated by governmental agencies; retaining subcontractors to service and repair customers' water supply lines; exercising her check-signing authority to write

RCH checks for payment of bills and vendors, etc. If she could not satisfactorily resolve customer disputes, she turned those matters over to the RCH Board. Otherwise, she handled the affairs of RCH.

5. In this role, Baley handled all of RCH's bank accounts and bookkeeping, including billing and collections for RCH's customers in addition to other duties. RCH relied on and trusted Baley to handle these critical functions of the company.

C. Baley's Abrupt Resignation Following Inquiry into RCH's Financials.

6. In the spring of 2023, David Naylor was elected to RCH's Board of Directors and was selected as the President of the Board. In this role, Naylor promptly requested basic financial information from Baley, including a balance sheet and an income statement for RCH. Prior to this request, such information was not regularly, if ever, provided to the Board by Baley. In addition, RCH's Board, at Naylor's request, voted to engage a third-party accounting firm to perform an audit of RCH's financials.

7. At the very next board meeting, on May 3, 2023, Baley abruptly notified RCH's Board that she was quitting effective immediately and gave no reason.

D. A Forensic Investigation Reveals that Between 2020 and 2023, Baley Wrote Checks to Herself Totaling over $800,000.

8. Baley's sudden resignation and the lack of information and records that were requested by Naylor but never turned over to RCH raised significant questions regarding her handling of RCH's business and accounts.

9. Shortly thereafter, RCH engaged a nationally recognized accounting firm, to assist with generating financial statements for RCH. Due to Baley's mismanagement, RCH in essence had no financial records. In performing these services, the accounting firm conducted an extensive review of bank records and other financial transactions over many years. The accounting firm,

Whitley Penn LLP, identified significant irregularities in the payments that were made to Baley by Baley herself. Specifically, it was discovered that between January 2018 and May 2023, Baley paid herself, with RCH's funds, over $1.65 million (over $1.1 million was paid via checks that Baley wrote out to herself). These amounts were paid via (1) monthly ACH "payroll" payments, and (2) monthly "reimbursement" checks.

1. Payroll Salary

10. Baley was paid as a W-2 employee at the rate of $7.50 per water meter per month. Up until April 2022, Baley was paid $5.00 per meter, at which time it was increased to $7.50 per meter.

11. For example, in December 2022, Baley received a monthly "salary" ACH transfer in the amount of $20,490.00, which purportedly reflected that RCH had 2,732 customers (meters) at that time. As the administrative officer for RCH, Baley was paid an annual salary of $145,465 in 2021 and $197,402.50 in 2022. These payments are undisputed by RCH.

2. "Reimbursement" Checks

12. In addition to her annual salary, Baley wrote many substantial checks to herself. From January 2020 to December 2022, Baley wrote forty (40) checks to herself totaling $808,098.77. Baley would make the check out to herself, sign the check, and then frequently negotiate and cash the check in her account on the very same day. Baley has testified that there was no approval or oversight by RCH's Board regarding these "reimbursement" checks.

13. Despite continuing to perform services and work for RCH in 2023, these "expense" reimbursement checks ceased in January 2023, just months before Baley quit.

E. Baley Has No Evidence to Support the Reimbursement Checks.

14. Although Bayley testified she submitted vouchers to support the checks signed by her for reimbursements, Baley did not provide any supporting documentation, vouchers, receipts,

or tax returns to RCH, to support checks written and signed by her for reimbursements to herself totaling $808,098.77. The Court finds Bayley's testimony that she submitted vouchers not to be credible.

15. Baley required receipts from subcontractors and vendors who sought reimbursement from her, so she certainly knew the importance of maintaining her own records. Despite this fact, no information was provided in the memo line regarding what the reimbursement was for, and Baley has no records, invoices, or other supporting documentation to back up, explain, or support these amounts. Even at trial, Baley emphatically stated she had no receipts or other supporting documentation.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Venue.

1. This Court has jurisdiction over this action by virtue of relief sought herein and because the amount in controversy exceeds the minimum jurisdictional requirements of this Court.

2. The Court has personal jurisdiction over the Defendant and venue is proper in Rockwall County because the Defendant is domiciled in Rockwall County, Texas and the cause of action occurred in Rockwall County, Texas.

B. RCH is entitled to judgment against Baley on its breach of fiduciary claims.

3. The elements to prevail on a breach of fiduciary claim are: (1) the existence of a fiduciary relationship; (2) a breach of that fiduciary duty; and (3) the breach resulted in injury or benefit.[1]

[1] *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App.—Dallas 2006, pet. denied).

1. Baley owed a fiduciary duty to RCH.

4. RCH met its burden of proof in establishing that Baley did, in fact, owe a fiduciary duty to RCH.

5. Baley was hired as an employee and worked for RCH for almost 30 years. Baley occupied a position of peculiar confidence and trust by RCH by having total access and unfettered control over RCH's bank accounts and financials. For more than 25 years, RCH Board Members became accustomed to being guided by the judgment, advice, and expertise of Baley. Baley acted as an agent for RCH, and RCH consented and authorized Baley to act on its behalf in virtually every aspect of its day-to-day operations.

6. This Court finds that Baley had a fiduciary relationship with RCH and owed RCH the fiduciary duty not to put her interests over the interests of RCH with respect to loyalty, fair dealing, and financial accountability. This "special relationship of trust and confidence" existed between the parties for almost thirty years.

2. Baley breached her fiduciary duty to RCH.

7. As a fiduciary of RCH, Baley had a duty of loyalty and utmost good faith, a duty to act with integrity of the strictest kind, a duty of fair, honest dealing, and a duty of full disclosure. Baley breached her fiduciary duty by writing forty (40) checks to herself totaling $808,098.77 without any documentation to back up, explain, or support the checks.

8. The transactions (forty (40) checks totaling $808,098.77) between Baley (the fiduciary) and RCH (the beneficiary), written by Baley to benefit herself and with no oversight from RCH's Board, create a presumption of unfairness that shifts the burden of persuasion to Baley to show that these transactions were fair and equitable to RCH.

9. Although Bayley testified she submitted vouchers to support the checks signed by her for reimbursements, that testimony lacked credibility as Baley has no supporting

documentation, vouchers, receipts, or tax returns to RCH's auditor or to opposing counsel prior to trial, to support checks written and signed by her for reimbursements to herself totaling $808,098.77. Even at trial, Baley emphatically stated she had no receipts.

10. This failure on Baley's behalf has not only triggered an IRS inquiry but has resulted in an incomplete RCH independent audit. Baley invites this Court to use its judicial imagination to apply undocumented credits sufficient to zero out $808,098.77 in economic loss to RCH. This Court respectfully declines to do so and further finds that Baley has breached her fiduciary duty to RCH.

3. Baley's breach caused injury to RCH and benefit to Baley.

11. Baley has clearly benefited from, and RCH (and its customers) have been harmed by Baley's breach of her fiduciary duty, specifically in the amount of $808,098.77, the compensation she paid to herself via the checks from January 2020 to December 2022.

III. RESERVATION

Some of the foregoing may be mixed findings of fact and conclusions of law and are intended to contain both to the extent required in the context as inseparable. The Court reserves the right to enter additional findings and conclusions as may be necessary.

Signed December 5, 2025.

[signature], Ret.

Judge Presiding

Senior Justice SCOA Sitting by Assignment

Dated: December 5, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel of record on December 5, 2025 in accordance with the Texas Rules of Civil Procedure.

/s/ Kyle K. Weldon
Kyle K. Weldon

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