

NO. 15-26-00012-CV

**IN THE COURT OF APPEALS
FOR THE FIFTEENTH APPELLATE DISTRICT OF TEXAS
AUSTIN, TEXAS**

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

v.

**RCH WATER SUPPLY CORPORATION,
*Appellee.***

**On Appeal from the 382nd Judicial District Court, Rockwall County, Texas
Trial Court Case Number 1-23-1750
Honorable Senior Justice Carolyn Wright, Judge Sitting by Assignment**

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STATEMENT OF THE CASE

- Trial court:*** 382nd District Court of Rockwall County, Texas, Honorable Senior Justice Carolyn Wright, sitting by assignment. CR 202.
- Nature of the case:*** RCH brought various claims, including for breach of fiduciary duty, against Baley, its former administrative officer, after RCH discovered Baley had written “reimbursement checks” to herself totaling \$808,098.77 from January 2020 through December 2022, without any supporting documentation. CR 12-19.
- Trial court’s disposition:*** After a two-day bench trial, the trial court signed a final judgment in favor of RCH. The final judgment awarded RCH \$808,098.77, along with pre- and post-judgment interest, as well as costs of court. CR 271-72.
- On December 5, 2025, the trial court signed findings of fact and conclusions of law in support of the final judgment. CR 283-88. Among other things, the trial court found Baley had a fiduciary duty to RCH that she breached, thereby causing economic loss to RCH in the amount of \$808,098.77. CR 288. The trial court also found Baley’s testimony that she submitted vouchers in support of the reimbursements lacked credibility. CR 286.
- Relief sought:*** RCH requests that the Court affirm the trial court’s final judgment in all respects.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 39, RCH does not believe oral argument is necessary because it would not advance consideration and determination of the issues raised by this appeal, as it is apparent from the record that the trial court did not commit reversible error. To the extent the Court believes oral argument would be beneficial, RCH respectfully requests an opportunity to participate.

ISSUES RESTATED

RESTATED ISSUE NO. 1: Whether the trial court's findings and conclusions that Baley owed and breached her fiduciary duties to RCH are supported by sufficient evidence.

RESTATED ISSUE NO. 2: Whether the trial court properly rendered judgment against Baley in the amount of \$808,098.77 in economic losses to RCH that were caused by Baley.

STATEMENT OF FACTS

- A. Baley is employed by RCH for 28 years, providing numerous services for RCH, and in that role, Baley has full access to RCH's bank accounts and business records.**

RCH is a non-profit water supply corporation, providing water services to customers located in Rockwall County, Texas. 3RR 31:21-22. Initially formed in the 1960s to provide services to farmers and rural properties, RCH now serves approximately 3,000 customers and provides over two million gallons of water to those customers daily. 3RR 13:13-14; 33:6-12; CR 211.

In April 1995, Robin Baley was hired by RCH pursuant to an oral agreement to be an administrative officer and provide the company with bookkeeping, billing, and collections services. 3RR 138:2 - 139:15; 140:8-18; 141:8-12. Among the services Baley provided RCH included answering phone calls; mailing bills to customers; collecting, processing, and posting payments from customers; handing accounts receivable; monitoring RCH's bank accounts and balances; paying bills for RCH; and acting as a custodian of RCH's business records. 3RR 140:19-23; 145:17-19; 146:1-5; 147:15-18 As RCH grew over time, Baley's role and services she provided RCH did not change—she simply provided the same services for more customers. 3RR 141:16 - 142:2.

During her tenure with RCH, Baley also regularly attended monthly board meetings, and she reported directly to RCH's Board of Directors. 3RR 142:3-13. She

was generally responsible for keeping minutes of board meetings. 3RR 79:8-13; 61:7-11. In her position as administrative officer, Baley was in possession of all of RCH's business records, she had unfettered access to RCH's bank accounts, and she could, and did, write checks drawn from those accounts. 3RR 92:19 - 93:16; 145:14-25; 147:15-18. In fact, Baley was responsible for reporting bank account balances to apprise the board at monthly meetings. 3RR 94:25 – 95:9.

B. Baley's compensation from RCH was per meter, which included expenses for her services.

Baley was compensated by RCH as a W-2 employee on a per water meter basis. 3RR 151:7-25. This meant she was paid \$7.50 per meter,¹ which included the expenses for her services and the work she performed for RCH. 3RR 151:9-17.² While there was some discussion regarding what precipitated the increase of her \$7.50 per meter rate from \$5.00 per meter,³ RCH's Board President David Naylor testified that "at the end of the day, it's \$7.50 a meter. And that would cover all the – all the cost that would be associated with the services [Baley] provides to RCH." 3RR 100:3-12.

¹ The \$7.50 per-meter rate was the amount following Baley's request for a raise. 3RR 151:2-6.

² In 2021, Baley was paid a salary of \$145,465, and in 2022, Baley was paid a salary of \$197,402.50. CR 285; 4RR 281:2-9; 6RR, Pl's Ex. 14.

³ *But see* 3RR 149:15-22 ("Q. (BY MR. WELDON) The price per meter was how much? A. In the end, it was seven fifty -- \$7.50 per meter to bill. Q. How was that number agreed upon? A. I - I don't think there was any agreement on that number. I told them I would not continue unless I got a raise.").

In addition to her six-figure annual salary, Baley also paid herself substantial amounts each month for what she described as expense reimbursements. 6RR, Pl's Exs. 10, 11, and 12. To support these reimbursements, Baley claimed that each month she would "do an invoice[,]" which would list supplies, materials, extra labor, lock fees, etc. for which she would be reimbursed. 3RR 154:21 – 155:2. However, Baley testified that she did not have copies of any of the invoices supposedly submitted to RCH:

Q. . . . Let's go back to the invoice. ***Do you have any copies of those invoices?***

A. ***I know I do not.***

Q. What happened to those copies of invoices?

A. All those invoices were taken to the pump station or picked up by Blackland Water Supply or Mr. Naylor.

Q. So ***H2O Services did not retain copies of its invoices that it sent to its customers or vendors?***

A. ***No.*** We retained billing registers – billing registry for each customer each month.

Q. ***But you don't have copies of those, as you sit here today?***

A. ***No, I do not.***

Q. Were those destroyed?

A. No.

Q. You're saying one copy was made and was given to RCH?

A. No. I'm saying that we made copies each month of all the reports. Those reports were then put on a mailer's box or a bank box. And it was stored in our storeroom until the storeroom got full, and then we took it to the pump station.

Q. Who took it to the pump station?

A. Normally Dwight Lindop.^[4]

. . . .

THE COURT: But if you'll answer that question or -- and then we will pick up in the morning. All right. Go ahead and answer his question.

THE WITNESS: *What was the question? Did I retain copies?*

Q. (BY MR. WELDON) Yes.

A. Yes. I mean, I made a copy each month for RCH. *Did H2O retain a copy? No.*

3RR 155:18 - 156:23; 157:8-16 (emphasis added).

Remarkably, Baley did not keep copies of any of the invoices she supposedly presented:

Q. All right. Okay. Now, you presented an invoice every month for expenses. You've already told the justice that, correct?

A. Yes.

Q. All right. *Did you keep any copies?*

A. All the invoices that were presented for payment were put in a binder like this. And then at the end -- *I did not keep a copy for myself.* They

⁴ Lindop was RCH's maintenance supervisor who also submitted reimbursement requests. However, unlike Baley, Lindop was able to provide documentation to support his reimbursement requests. 4RR 11:11-12; 13:2-4; 192:6-7; 204:20 – 205:1.

were all printed. They were put in a binder, and then they were put -- the binders for each year were put into bank boxes and taken to the pump station.

4RR 67:8-18 (emphasis added).

C. Baley performs similar services for other water supply corporations, often charging fees to RCH for her other work.

Baley operates under H2O Services as a d/b/a and performs similar services for five other water supply corporations located east of Dallas. 3RR 91:22 - 92:1; 137; 139:11-13; 4RR 41:20 - 43:8. While Baley operated under the d/b/a, it is undisputed she was compensated individually by RCH and not through an entity. 3RR 92:2-15. Baley charged RCH for additional (*i.e.*, “plus”) expenses; however, Baley may have been charging RCH for services and seeking reimbursements for expenses provided to other water supply corporations because she conceded that she did not keep track of how much time each of her employees spends for each water supply company client and that she charged RCH the full amount of rent for her office. 3RR 152:1-5; 4RR 17:9-15.

D. Baley abruptly resigns on May 3, 2023, after inquiries are made about RCH’s financial records.

In the spring of 2023, David Naylor was elected to RCH’s Board of Directors to serve as the President of the Board.⁵ 3RR 32:8-17. In this role, Mr. Naylor

⁵ While Mr. Naylor is an unpaid volunteer for his service as RCH’s Board President, he earns a living as the President and CEO of Rayburn Electric Cooperative. 3RR 29:1-22; 32:5-7. Given his experience, position, and track record of success with Rayburn, Mr. Naylor came into his position

requested basic financial information from Baley, including a balance sheet and an income statement for RCH. 3RR 37:3 – 38:10. Prior to this request, such information had not been regularly, if ever, provided to the Board by Baley. 3RR 38:24 – 39:11.

On May 3, 2023, RCH's Board, at Mr. Naylor's request, voted to engage a third-party accounting firm, RUTHERFORD TAYLOR & Co. P.C., to perform an audit of RCH's financials. 3RR 39:8 - 40:21. At the same board meeting, Baley then abruptly notified RCH's Board that she was quitting effective immediately and provided no reason.⁶ 3RR 46:5-18; 51:9-14; 4RR 17:16-18. Despite numerous follow up requests following her quitting, Baley refused to provide RCH the basic financial information for which she was responsible. 3RR 41:20 – 42:14.

E. An investigation reveals between 2020 and 2022, Baley wrote checks to herself totaling \$808,098.77.

Baley's sudden resignation coupled with the dearth of information and records that were turned over to RCH naturally raised serious questions regarding Baley's handling of RCH's business and accounts. 3RR 40:22-25. However, due to a lack of financial records, RUTHERFORD TAYLOR was unable to complete the audit. *Id.* Again, Baley was responsible for maintaining RCH's records. *Id.* Unable to proceed with the audit, RUTHERFORD TAYLOR performed a cash audit, and RCH eventually

as RCH's board president with a sophisticated understanding of financial controls within an organization. 3RR 30:8 - 31:5.

⁶ From a timing perspective, it is noteworthy that Baley resigned *after* the Board approved RUTHERFORD TAYLOR to perform an audit. *See* 6RR, Pl's Ex. 13 (RCH 00162).

retained WHITLEY PENN to conduct a forensic accounting, which included re-creating missing financial records from prior periods. 3RR 41:11 – 42:25; 3RR 105:17 – 106:2.

In performing these services, WHITLEY PENN LLP’s team, led by Ashley Kimery, identified significant irregularities in the payments that were made to Baley. 3RR 44:14-24. More specifically, it was discovered that between January 2020 through December 2022, Baley wrote forty (40) checks to herself totaling \$808,098.77 with no description on the memo line. 3RR 47:23 – 49:2; 3RR 109:21 – 110:12; 112:10-18; 6RR Pl’s Exs. 11 and 12. As Ms. Kimery explained, “there were a lot of checks with no explanation, description. And that normally . . . with good accounting procedures, you wouldn’t be writing yourself checks. You would have someone else sign the check.” 3RR 110:8-12. Given numerous financial and accounting discrepancies and Baley being unable to provide an explanation and documentation to support her reimbursement requests, RCH was forced to file suit against Baley. *See* CR 12-20.

F. Baley has no evidence to support the \$808,098.77 in checks she wrote herself were for reimbursements.

The parties proceeded to a two-day bench trial, which lasted from October 27-28, 2025. *See* RR3-RR4, RR6-RR7. Senior Justice Carolyn Wright presided over trial at which seven witnesses presented live testimony and 52 exhibits were admitted into evidence. *See id.*

Mr. Naylor testified on behalf of RCH as President of the RCH's Board of Directors. 3RR 31:16-24; 32:18-24. Mr. Naylor explained that RCH requested Baley provide some justification for the \$808,098.77 in reimbursements and that Baley was unable to provide any:

Q. Yeah. Did you ask Ms. Baley at some point for justification for the \$800,000?

A. I don't recall if I did. I know RCH did ask for justification.

Q. Did it receive any justification?

A. No.

3RR 55:22 – 56:2. After reviewing the 40 checks drafted by, made out to, and signed by Baley, Mr. Naylor testified that “the RCH members are owed . . . \$808,098.77.” 3RR 58:2-3; 6RR Pl's Exs. 11, 12, 14; *see also* 3RR 71:18-20 (“What has led to the lawsuit is the specific \$808,000.98 -- sorry -- \$808,098.77 that Robin Baley wrote to herself.”).

Counsel for Baley challenged whether Mr. Naylor could identify financial or economic loss caused by Baley, and Mr. Naylor specifically identified \$808,098.77 as the amount of losses caused by Baley:

Q. Okay. Fair enough. Now, let's talk about RCH financial loss.
Isn't it true, in front of this justice, that you cannot say a specific amount of money that you think RCH sustained as a financial or economic loss due to Ms. Baley H2O Services?

A. No. ***It's \$808,098.77.***

3RR 88:13-17 (emphasis added).

Under oath, Baley could not dispute that she wrote checks to herself from 2020 through 2022, which totaled \$808,098.77. 4RR5:25 - 6:3; 6RR, Pl's Ex. 11. She tried to claim that these checks were "reimbursements" to pay rent for her company's building, paying salaries of her employees, and other miscellaneous charges such as "locks, letters, supplies, or mailings." But she ultimately conceded there was no evidence to support her theory that the checks she wrote herself were for reimbursements:

Q. . . . If you don't mind, please turn in the binder in front of you to Tab 11, Plaintiff's Tab 11. This was the last exhibit we were looking at yesterday afternoon. This is what has been marked RCH 00119. These were checks -- summary of checks from 2020 to May of 2023; do you see that?

A. Yes.

Q. *Do you have any evidence to support these reimbursements, any documents or other written forms of evidence to support these reimbursements?*

A. *No.*

4RR 5:14-24 (emphasis added).

Indeed, while Baley testified she supposedly submitted invoices for monthly expenses, she acknowledged under questioning by the trial court that no such invoices were in the record *and that the board had not signed off on the invoices*:

THE COURT: Okay. You presented an invoice to them each month?

THE WITNESS: Yes, ma'am.

THE COURT: *Okay. Do I have in the record any of those invoices?*

THE WITNESS: *No, ma'am.*

. . . .

THE COURT: So if you paid the -- if you spent extra time with the lawyers or engineers, all of that was detailed on this invoice?

THE WITNESS: Yes, ma'am.

THE COURT: *But none of that do we have here today?*

THE WITNESS: *No, ma'am.*

THE COURT: Okay. So whatever -- and during that time, during the early years, did you write checks to yourself?

THE WITNESS: Yes, ma'am.

THE COURT: You did your own reimbursements?

THE WITNESS: Yes, ma'am.

THE COURT: But you provided invoices?

THE WITNESS: Yes, ma'am.

THE COURT: At some point you stopped providing invoices?

THE WITNESS: No, ma'am. I always provided invoices to the board.

THE COURT: *In the last four years, you provided invoices?*

THE WITNESS: *Yes, ma'am.*

THE COURT: *But we don't have them?*

THE WITNESS: *That's correct.*

THE COURT: *Okay. Did anyone from the board sign off on the invoices?*

THE WITNESS: *No.*

4RR 63:13-18; 64:14 - 65:16 (emphasis added).

G. The trial court enters final judgment in favor of RCH and then filed findings of fact and conclusions of law, which included a finding that Baley's testimony lacked credibility.

Pursuant to Baley's request (4RR 292:24 – 293:2), the trial court allowed the parties to submit post-trial briefs on whether an independent contractor may owe a fiduciary duty. *See* CR 243-251 (RCH's Brief); 252-264 (Baley's Brief). On November 21, 2025, the trial court entered a final judgment in favor of RCH, which among other things, ordered that RCH recover from Baley \$808,098.77, as well as pre- and post-judgment interest. CR 271-72.

Following Baley's request, the trial court signed detailed findings of fact and conclusions of law ("Findings and Conclusions") in support of its judgment. CR 283-90. Among other things, the trial court made findings that Baley was employed by RCH from April 1995 through May 3, 2023, and that her role with RCH was "substantial," as she did everything related to managerial duties, handling the affairs of RCH, and managing all of RCH's bank accounts and bookkeeping. CR 283-84. The trial court made a finding that despite writing forty (40) checks to herself totaling \$808,098.77, Baley had no evidence to support the checks she wrote and

signed were for reimbursements. CR 285. The trial court also made a finding that Baley's testimony that she submitted invoices or vouchers that supported the reimbursements she made was not credible. CR 286.

The trial court concluded Baley owed RCH a fiduciary duty given her employment and position with RCH of peculiar confidence and trust—*i.e.*, having total access and unfettered control over RCH's bank accounts and financials. CR 287. More specifically, the trial court concluded Baley owed RCH fiduciary duties to not put her interests over the interests of RCH with respect to loyalty, fair dealing, and financial accountability. *Id.* The trial court concluded Baley breached the duty of loyalty and utmost good faith, duty to act with integrity of the strictest kind, duty of fair and honest dealing, and duty of full disclosure by writing forty (40) checks to herself totaling \$808,098.77 without any documentation to back up, explain, or support the checks. *Id.* Finally, the trial court concluded Baley's breach of her fiduciary duties caused economic loss to RCH in the amount of \$808,098.77. CR 288.

SUMMARY OF THE ARGUMENT

This case is a straightforward breach of fiduciary duty case. Over the course of a two-day bench trial, the undisputed evidence showed that Baley exercised practically exclusive, unfettered authority over RCH's finances (*e.g.*, billing, bookkeeping, collections, bank accounts, etc.) for nearly 30 years. And despite her

six-figure salary between January 2020 and December 2022, Baley also wrote herself 40 checks totaling \$808,098.77. While Baley contended those checks were for reimbursement of business expenses, she conceded RCH's board never signed off on the invoices. Baley was also unable to proffer a single receipt, document, or other shred of evidence to support her contention that those checks were for reimbursement of legitimate expenses. The trial court even made an express (unchallenged) finding that Baley's testimony she had submitted reimbursement vouchers was not credible, and as such, the trial court would decline Baley's invitation for the trial court to "use its judicial imagination" to credit Baley for those payments.

While she was the only person able to confirm whether the checks were for legitimate reimbursements, Baley's trial strategy was to attempt to improperly shift the burden to RCH and have RCH prove the \$808,098.77 in self-dealing transactions were damages. But as a fiduciary, this approach was misguided as it was Baley's burden to establish the appropriateness of such self-dealing. And as a matter of fact, Baley's testimony supported that she did not have any documentation or support for the supposed expenses because she did not keep any copies of invoices she had supposedly submitted to RCH. Because Baley ultimately had no receipts or documentation to support her explanation for these self-dealing transactions, the trial

court properly entered judgment in favor of RCH for the full \$808,098.77 paid by RCH to Baley, which represented economic losses caused by Baley.

On appeal, Baley raises two issues: she was not a fiduciary to RCH, and RCH was not damaged by her breaches. Both arguments are soundly defeated by well-settled law and a clear trial record. Both issues (and all sub-issues) should be overruled in their entirety and the final judgment should be affirmed.

ARGUMENT

Standard of Review

The Court reviews a trial court's findings of fact for legal and factual sufficiency of the evidence under the same standards as applied to review jury verdicts for sufficiency of the evidence. *Graco, Inc. v. CRC, Inc. of Tex.*, 47 S.W.3d 742, 744 (Tex. App.—Dallas 2001, pet. denied) (citing *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994)). In reviewing a “no evidence” point of error, the Court considers only the evidence and inferences that tend to support the challenged findings and disregard all evidence and inferences to the contrary. *Graco*, 47 S.W.3d at 744 (citing *Catalina*, 881 S.W.2d at 297).

The Court reviews a factual sufficiency challenge by examining all of the evidence presented at trial and setting aside the finding only when it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Graco*, 47 S.W.3d at 744 (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per

curiam)). In other words, the Court considers the evidence “in the light most favorable to the challenged findings and indulge[s] every reasonable inference that supports them.” *Zhang v. Capital Plastic & Bags, Inc.*, 587 S.W.3d 82, 91 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).

When reviewing findings for legal sufficiency, the Court considers only the evidence and inferences tending to support the findings and disregards all the evidence and inferences to the contrary. *See Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995). The Court upholds the finding if it is supported by more than a scintilla of evidence. *Id.* When reviewing findings of fact for factual sufficiency, the Court considers and weighs all of the evidence and set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam).

The Court independently reviews challenges to a trial court’s conclusions of law to determine “whether the trial court correctly drew the legal conclusions from the facts.” *Lewis v. Dallas Soundstage, Inc.*, 167 S.W.3d 906, 912 (Tex. App.—Dallas 2005, no pet.). “However, incorrect conclusions of law will not require a reversal if the controlling findings of fact will support the judgment under a correct legal theory.” *Id.* When the Court evaluates a trial court’s conclusions of law, it

grants limited deference to the trial court's application of the law to the facts. *Petrie v. Widby*, 194 S.W.3d 168, 174 (Tex. App.—Dallas 2006, no pet.).

RESPONSE TO ISSUE NO. 1: The trial court properly concluded that Baley breached fiduciary duties she owed to RCH.

In her first issue, Baley challenges the trial court's conclusion that she owed RCH fiduciary duties and that she breached any of those duties. Ant's Br. at 31-43.

A. Applicable Law

Texas law recognizes two types of fiduciary relationships—formal and informal fiduciary relationships. *Meyer v. Cathey*, 167 S.W.3d 327, 330-31 (Tex. 2005) (per curiam). A formal fiduciary relationship is one that arises as matter of law and includes the relationships between attorney and client, principal and agent, partners, and joint venturers. *Ins. Co. of North Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998). An informal fiduciary relationship 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, Inc.*, 964 S.W.2d 276, 287 (Tex. 1998).

One who occupies a fiduciary relationship to another must measure her conduct by high equitable standards, and not by the standards required in dealings between ordinary parties. *Kinzbach Tool Co. v. Corbett–Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942). “A fiduciary duty encompasses at the very minimum a duty of good faith and fair dealing, and it requires a party to place the interest of the other

party before his own.” *Abetter Trucking Co. v. Arizpe*, 113 S.W.3d 503, 508 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

One may also act as a fiduciary under a formal fiduciary agency relationship. *Abetter Trucking Co.*, 113 S.W.3d at 508–09 (“By its answer to question one, the jury agreed that Arizpe was Abetter’s agent; thus, there was a formal fiduciary relationship between Arizpe and Abetter as a matter of law.”); *see also Integ Corp. v. Hidalgo Cnty. Drainage Dist. No. 1*, No. 13-18-00123-CV, 2019 WL 6205474, at *5 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet.) (holding that an independent contractor who had a written contract stating that he was an independent contractor was a fiduciary of the Hidalgo County Drainage District). However, the focus is not on the label or title of the party, but on the relationship between the parties and the trust and confidence placed by the beneficiary on the fiduciary.

B. The trial court properly concluded Baley was a fiduciary of RCH, regardless of whether she is labeled an “employee.”

Here, the evidence at trial overwhelmingly supported that Baley was an employee and agent of RCH, and thus a fiduciary to RCH. Against the weight of this evidence, Baley argues she is not a fiduciary because she was not RCH’s employee (Ant’s Br. at 34-41) and because an informal fiduciary relationship should not be recognized despite the binding Texas Supreme Court precedent that recognizes such a relationship (Ant’s Br. at 41-43). Baley’s arguments should be rejected.

1. The trial record conclusively establishes that Baley was an employee of RCH.

As an initial matter, the evidence at trial conclusively established Baley was a W-2 employee of RCH. *See* 3RR 38:19-23 (“Q. What was your understanding when you joined the board, Mr. Naylor, regarding the employees that worked for the entity? A. My understanding that there are two, Robin Baley and Dwight Lindop.”).⁷ In fact, *Baley readily testified on multiple occasions at trial that she was an employee of RCH:*

Q. So you were employed by RCH?

MR. MORGAN: Objection, Your Honor. Calls for a legal conclusion.

MR. WELDON: Your Honor, I’m merely asking her what her answer says here.

THE COURT: Absolutely. It’s overruled. *Were you employed by them?*

THE WITNESS: *Yes.* I did their billing and their collections through H2O Services.

Q. (BY MR. WELDON) As an employee?

A. *As an employee.*

....

Q. Could you describe just generally the information on the RCH website?

⁷ 3RR 115:23 – 116:2 (“Q. . . . how was Ms. Baley treated from an accounting perspective? A. There were payroll payments made, ACH payments. *There were W-2s filed for some of the years indicating she was an employee.*”).

A. The RCH website has when it was established, how it was established by farmers that -- we're trying to get water to the rural community. It's got forms, and -- you can fill out if you're moving in, moving out. And *I haven't looked at the website in a long time. This is when I was an employee. It was -- when I was an employee*, it was updated every day with water usage for the previous day.

3RR 139:5-15 (emphasis added); 4RR 57:7-16 (emphasis added); *see also id.* 149:2-9; 149:6-9 (“Q. . . . I believe you testified in your deposition that you were paid as a -- *as an employee* on a per meter basis; is that correct? A. *That's correct.*”) (emphasis added); 151:7-8.

Thus, the trial court's Findings and Conclusions that Baley was an employee of RCH and that she thus was a fiduciary of RCH is well-supported by legally and factually sufficient evidence. *Abetter Trucking Co.*, 113 S.W.3d at 510 (“When a fiduciary relationship of agency exists between employee and employer, the employee has a duty to act primarily for the benefit of the employer in matters connected with his agency.”). Baley's challenge to these findings should be overruled.

2. The trial record conclusively establishes Baley was a fiduciary regardless of whether she was RCH's “employee.”

Regardless, the notion that Baley cannot be a fiduciary because she was not an employee of RCH is a red herring in any event. That is, an individual need not be labeled an “employee” of a company in order to create a fiduciary relationship. For example, “[u]nder the common law of most jurisdictions, including Texas, agency

is also a special relationship that gives rise to a fiduciary duty.” *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 200 (Tex. 2002); *see also, e.g., Coastal Mobile Homes, Inc. v. Gen. Elec. Credit*, 995 F.2d 223 (5th Cir. 1993) (“Agency is a fiduciary relationship.”) (citing *Matter of Carolin Paxson Advertising, Inc.*, 938 F.2d 595 (5th Cir. 1991) (applying Texas law)).

Baley claims just because one is authorized to “handle money for someone, a fiduciary relationship does not spring from that authority.” Ant’s Br. at 33. But Baley’s role with RCH for 28 years encompassed far more than merely “handling money.” As detailed above and in the trial record as well as the trial court’s Findings and Conclusions, Baley was in possession of all of RCH’s business records, she had unfettered access to RCH’s bank accounts, and she could (and did) write checks drawn from those accounts. *See* 3RR 145:14-25; 147:15-18. She was also put in a position of trust by presenting reports to the board and keeping minutes of the board’s meetings. 3RR 61:1-11. Finally, all of this conduct occurred over a period of 28 years.

Baley’s actions in this suit are thus similar to those in *Ruiloba v. State*, No. 08-17-00123-CR, 2019 WL 6001565 (Tex. App.—El Paso Nov. 14, 2019, pet. ref’d). There, Anna Ruiloba, a title clerk for an El Paso Harley-Davidson dealer, wrote almost half a million dollars in unauthorized company checks to her personal accounts over a period of nine years. *Id.* at * 1. Considering that Ruiloba was given

access to the company checks and was responsible for filling out that amount of tax payment checks and the payee for those checks, the El Paso Court of Appeals held that there was sufficient evidence that a fiduciary relationship of trust existed between the company and Ruiloba. *Id.* at *5.

Baley's action are also similar to *McElroy v. State*, a case in which the court concluded a secretary performed fiduciary functions on behalf of the company she worked for by receiving premium payments from customers, inputting information into the business's computer system, and depositing money entrusted to her into various bank accounts. No. 08-00-00246-CR, 2001 WL 1137612 (Tex. App.—El Paso Sept. 27, 2001, no pet.).

The trial court's Findings and Conclusions that Baley was an employee of RCH (*e.g.*, Findings Nos. 3 and 10 and Conclusion No. 5) are well-supported by the evidence at trial and not erroneous. The Findings and Conclusions that Baley was a fiduciary of RCH based on an agency relationship (Findings No. 5 and Conclusion No. 5), as well as informally⁸ based on a position of trust and confidence, are also supported by sufficient evidence. The trial court did not err by its Findings and Conclusions that Baley was a fiduciary of RCH, and Baley's challenge to the same should be overruled.

⁸ Baley's purported good faith argument challenge existing Texas Supreme Court precedent that an informal fiduciary relationship may be formed is wholly unpersuasive and should be rejected outright.

C. The trial court was not “careless” in ascribing certain fiduciary duties to Baley.

Baley takes issue with the trial court’s conclusions that Baley owed RCH the fiduciary duty not to put her interests over those of RCH with respect to loyalty, fair dealing, and financial accountability. The trial court also concluded Baley owed RCH 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.

Baley argues that to the extent her check-writing authority imposes a fiduciary duty, it would be a duty of loyalty, which encompasses three principal obligations: (1) not to disclose the employer’s trade secrets, (2) not to compete with the employer during employment, and (3) not to misappropriate the employer’s property and engage in self-dealing through use of the position. Ant’s Br. at 50. Remarkably, Baley asserts “[t]his is not a case involving evidence of unlawful self-dealing” *Id.* But this case is *precisely* about self-dealing as the trial evidence overwhelmingly established that Baley used her check-writing authority to write checks to herself totaling \$808,098.77, ostensibly for reimbursement of expenses, which she was unable present any documentation to support. As Ms. Kimery of WHITLEY PENN testified, “there were a lot of checks with no explanation, description. And that normally . . . with good accounting procedures, you wouldn’t be writing yourself checks. You would have someone else sign the check.” 3RR 110:8-12.

Moreover, the trial court’s conclusions as to the types of fiduciary duties owed by Baley are amply supported by the undisputed evidence that for almost 28 years, Baley had total access and unfettered control over RCH’s business records, bank accounts, and financials. She was solely responsible for keeping RCH’s board apprised of bank account balances. Finally, Baley was able to write checks from RCH. Accordingly, under both agent-principal and employee-employer relationships, Baley owed RCH fiduciary duties. *Diakiw v. Stites Mgmt., L.L.C.*, 693 S.W.3d 582, 598 (Tex. App.—Houston [14th Dist.] 2023, pet. denied) (“The employee has a duty to deal openly with the employer and to fully disclose to the employer information about matters affecting the company’s business.”); *Johnson*, 73 S.W.3d at 200 (“Among the agent’s fiduciary duties to the principal is the duty to account for profits arising out of the employment . . . and the duty to deal fairly with the principal in all transactions between them.”) (quoting RESTATEMENT (SECOND) OF AGENCY § 13, cmt. a (1958)).⁹

Hardly “careless” (Ant’s Br. at 48) or overly broad conclusions, Baley’s role and responsibilities with RCH give rise to the exact types of fiduciary duties in a principal-agent relationship as well as an employee-employer relationship that were

⁹ *Pitts v. Rivas*, 709 S.W.3d 517 (Tex. 2024), a case relied upon by Baley, is factually inapposite as the accountants in *Pitts* were engaged in a much more traditional independent contractor role, occupied that role for a much shorter duration than Baley, and did not enjoy the same “peculiar confidence and trust” RCH placed in Baley. CR 287 (Finding No. 5).

ascribed by the trial court. Baley's challenges to these findings and conclusions (Conclusions Nos. 6-7) should be overruled.

D. The trial court properly determined that Baley breached her fiduciary duty to RCH by writing 40 checks to herself for a total of \$808,098.77.

Baley next contends the trial court erred by determining that Baley writing herself 40 checks totaling \$808,098.77 was a breach of her fiduciary duties to RCH. Ant's Br. at 43-47. Challenging Conclusion No. 7, Baley argues the trial court does not identify which fiduciary duty this conduct breached, and in any event, none of those duties would preclude Baley from writing checks to herself. *Id.* at 43-44.

First, the conclusion *expressly identifies and recites* the fiduciary duties, which Baley violated through this conduct:

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.

Her actions described in this conclusion clearly identify and violate the fiduciary duties imposed by the trial court that act with loyalty and utmost good faith, integrity of the strictest kind, and a duty of full disclosure. Baley's argument is thus baseless on its face.

Second, as noted above, a fiduciary in an agency relationship has a duty to account for profits arising out of employment and a duty to deal fairly in all transactions with the principal. *Johnson*, 73 S.W.3d at 200. Baley’s writing checks to herself totaling \$808,098.77 without providing any documents to support the reimbursements violates each of these duties.¹⁰

Accordingly, there is legally and factually sufficient evidence to support the trial court’s determination that Baley wrote checks to herself without supporting documentation (Conclusion Nos. 7 and 8), and the Court should overrule Baley’s challenge to the same.

E. Because Baley was a fiduciary, she bore the burden but failed to overcome the presumption of unfairness in the reimbursement checks she wrote herself.

Baley argues that because no fiduciary relationship existed between her and RCH, the trial erroneously concluded (No. 8) that the 40 checks written by Baley to Baley with no board oversight create a presumption of unfairness, which shifts the burden to Baley to show the transactions were fair and equitable to RCH. CR 287.

¹⁰ It is noteworthy that Baley does not challenge the trial court’s finding (No. 14) that Baley’s testimony that she submitted vouchers to not be credible. *George Joseph Assets, LLC v. Chenevert*, 557 S.W.3d 755, 765 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (“[T]he trial court, as the trier of fact in this case, is the sole judge of the credibility of the witnesses and the weight to afford their testimony.”) (internal quotation marks omitted). Where the trial court’s finding of fact is unchallenged by complaint on appeal, it is binding on the appellate court and entitled to the same weight as a jury verdict, unless the contrary is established as a matter of law or there is no evidence to support the finding. *In re Estate of Miller*, 243 S.W.3d 831, 839 (Tex. App.—Dallas 2008, no pet.) “Any unchallenged findings of fact that support the judgment will preclude reversal of the case.” *Id.*

Ant’s Br. at 51. Baley further argues that even if a fiduciary relationship existed, the trial court’s burden shift conclusion was still erroneous because Baley had already presented invoices to RCH and because the relevant evidence was in RCH’s custody and control. *Id.*

As a starting point, because a fiduciary relationship did exist between Baley and RCH—whether as an employee or an independent contractor or an informal relationship—there is “a presumption of unfairness” applied “to transactions involving a fiduciary and the person or entity to whom he owes his duty.” *Critical Path Res., Inc. v. Huntsman Int’l, LLC*, No. 09-17-00497-CV, 2020 WL 1291327, at *6 (Tex. App.—Beaumont Mar. 19, 2020, no pet.). When a fiduciary profits or benefits in any way from a transaction with a beneficiary—*e.g.*, Baley profiting in the amount of \$808,098.77 in “reimbursement” checks—a presumption of unfairness arises that shifts the burden of persuasion to the fiduciary to show that the transaction was fair and equitable to the beneficiary. *Texas Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 509 (Tex. 1980); *see also Critical Path Res., Inc.*, 2020 WL 1291327, at *7 (“[W]hen defendants act as fiduciaries, the presumption of unfairness operates to shift both the burden of producing evidence and the burden of persuasion to the fiduciary.”) (internal citation omitted). If there is no evidence rebutting the presumption of unfairness, the plaintiff is “not required to request an issue inquiring if the [fiduciary] breached a fiducial obligation to [the beneficiary].”

Texas Bank & Tr. Co., 595 S.W.2d at 509. In light of the evidence and these authorities, the trial court did not err by applying a presumption of unfairness and shifting the burden to Baley to explain why the 40 checks totaling \$808,098.77 Baley wrote herself were fair and equitable.

At trial, Baley was given the opportunity, but was wholly unable to explain and support the 40 checks she wrote herself from RCH that totaled \$808,098.77. Although Baley claimed she submitted invoices to herself for the checks, no invoices or other document was admitted into evidence supporting the contention, and Baley conceded she had none. Baley also conceded that RCH's Board never signed off on her supposed invoices. Moreover, the trial court found Baley's testimony that she submitted vouchers lacked credibility. CR 286. Thus, the evidence clearly supports the trial court's Findings and Conclusions.

Finally, the relevant evidence was in Baley's—not RCH's—control. Baley conceded this fact on cross examination:

Q. So H2O Services did not retain copies of its invoices that it sent to its customers or vendors?

A. No. We retained billing registers – billing registry for each customer each month.

Q. But you don't have copies of those, as you sit here today?

A. No, I do not.

3RR 156:1-7 (emphasis added).

The trial court's Findings and Conclusions are well-supported by legally and factually sufficient evidence and are not erroneous. Baley's first issue and all sub-issues should be overruled.

RESPONSE TO ISSUE NO. 2: The trial court properly rendered judgment against Baley in the amount of \$808,098.77 in economic losses to RCH that were caused by Baley.

In her second issue, Baley challenges the trial court's final judgment awarding RCH \$808,098.77 in economic losses. Baley claims this represents an equitable forfeiture and contends the trial court erred by awarding that amount without findings that RCH suffered actual damages and without offsetting certain expenses RCH purportedly agreed to pay. Ant's Br. at 52-60.

A. Applicable Law

"A fiduciary must account for, and yield to the beneficiary, any profit he makes as a result of his breach of fiduciary duty." *Daniel v. Falcon Int. Realty Corp.*, 190 S.W.3d 177, 187 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (citing *Int'l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 576–77 (Tex.1963)). When a fiduciary breaches his duty, "he is entitled to no compensation for conduct related to the breach, and if his breach is willful, 'he is not entitled to compensation even for properly performed services.'" *Orbison v. Ma-Tex Rope Co., Inc.*, 553 S.W.3d 17, 30 (Tex. App.—Texarkana 2018, pet. denied) (quoting *Burrow v. Arce*, 997 S.W.2d 229, 244 (Tex. 1999)).

Courts are clear that a breach of fiduciary duty can give rise to actual damages. *See McLeod v. McLeod*, 644 S.W.3d 792, 806 (Tex. App.—Eastland 2022, no pet.); *see also W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 377 (Tex. App.—Fort Worth 2007, no pet.) (upholding the trial court’s award of actual damages for a breach of fiduciary duty claim).

B. The final judgment and findings and conclusions do not call for equitable forfeiture.

Baley’s second issue should be overruled because, as an initial matter, neither the final judgment nor Findings and Conclusions award equitable forfeiture. Rather, the trial court concluded Baley had caused “\$808,098.77 in economic loss to RCH.” CR 288.

The Findings and Conclusions leave no ambiguity on that point. The trial court identified the elements of RCH’s breach-of-fiduciary-duty claim as including an injury to RCH or a benefit to Baley. CR 287 (Conclusion No. 3). It then concluded that Baley’s conduct caused both: Baley “clearly benefited from, and RCH (and its customers) have been harmed by,” her breach “in the amount of \$808,098.77.” CR 288 (Conclusions No. 11).¹¹ The trial court expressly characterized that amount as an “economic loss to RCH.” CR 288 (Conclusions No. 10). The trial court’s Findings

¹¹ The Conclusion was supported by Mr. Naylor’s testimony quoted above. *See* 3RR 88:13-17

and Conclusions, thus, clearly describe compensatory damages, not an equitable forfeiture imposed without proof of injury.

The trial court's calculation confirms the distinction. It found that Baley received an undisputed salary through monthly ACH transfers based on the number of RCH water meters. CR 285 (Finding Nos. 10–11). *RCH did not seek—and the trial court did not order—return of that salary as a forfeiture or disgorgement.* Rather, the award corresponds precisely to 40 separate checks that Baley wrote, signed, and paid to herself between January 2020 and December 2022, purportedly as “reimbursements.” CR 285 (Finding No. 12). Thus, the trial court did not require Baley to forfeit all salary earned during her nearly thirty-year relationship with RCH or the three-year period of unsupported reimbursements—it awarded the amount RCH lost through a discrete series of unsupported, self-interested transactions.

Because this award constitutes actual damages, the equitable-forfeiture authorities on which Baley relies do not apply. That is, the trial court was not required to determine whether RCH lacked an adequate remedy at law, whether equitable forfeiture was necessary, or how much compensation should be forfeited. Nor does the abuse-of-discretion standard governing equitable relief apply to the characterization of this award. Baley's authorities relied upon are therefore inapposite. Each case addressed an award expressly imposed as equitable forfeiture despite the absence—or inadequacy—of traditional damages. *See ERI Consulting*

Eng'rs, Inc. v. Swinnea, 318 S.W.3d 867, 872–75 (Tex. 2010); *Cooper v. Sanders H. Campbell/Richard T. Mullen, Inc.*, No. 05-15-00340-CV, 2016 WL 4487924, at *10–12 (Tex. App.—Dallas Aug. 24, 2016, no pet.); *Burrow v. Arce*, 997 S.W.2d 229, 237–45 (Tex. 1999). Here, by contrast, the trial court expressly found that RCH suffered an economic loss and awarded that loss as damages. CR 288 (Conclusion Nos. 10–11).

The same distinction counsels against Baley's reliance on *Liu v. SEC*, 591 U.S. 71 (2020), as *Liu* addressed the permissible scope of disgorgement in an enforcement action brought by the SEC. *Id.* at 75–80. It does not allow Baley to convert an award for well-supported economic losses into disgorgement or require RCH recovering actual damages for breach of fiduciary duty to establish Baley's "net profit."

C. The evidence is sufficient to support the trial court's finding that RCH suffered \$808,098.77 in economic loss.

The trial court's detailed findings also defeat Baley's sufficiency challenges. Baley exercised "total access and unfettered control" over RCH's bank accounts and financial records. CR 287 (Conclusions No. 5). Using that authority, she wrote 40 checks to herself totaling \$808,098.77. CR285 (Findings No. 12). She made each check payable to herself, signed them herself, and frequently deposited or cashed them the same day. *Id.* Baley admitted that RCH's Board provided no approval or

oversight for those payments and that she had no documentation to support the amounts reimbursed. *Id.*

These fiduciary transactions were presumptively unfair, placing the burden on Baley to establish their fairness to RCH. CR 287 (Conclusions No. 8); *see Tex. Bank & Tr. Co. v. Moore*, 595 S.W.2d 502, 508–09 (Tex. 1980). Baley failed to carry that burden as she produced no vouchers, receipts, invoices, tax returns, or other records establishing that any of the 40 checks reimbursed a legitimate RCH expense. CR 285–86 (Findings Nos. 14–15). Although Baley testified that she had submitted supporting vouchers, the trial court expressly found that testimony not credible. CR 286 (Finding Nos. 14); CR 287–88 (Conclusion No. 9). This Court must defer to that credibility determination. *City of Keller v. Wilson*, 168 S.W.3d 802, 819–20 (Tex. 2005).

Whether Baley may have been entitled to reimbursement for legitimate expenses does not establish that these particular 40 checks represented legitimate expenses. Nor did isolated testimony suggesting that Baley may have incurred some expenses compel the trial court to invent an offset. Baley controlled the records, required other vendors and subcontractors to provide receipts, and understood the importance of maintaining supporting documentation. CR 286 (Findings No. 15). Yet she produced nothing substantiating the 40 payments she made to herself. *Id.* The trial court was not required to speculate about unidentified expenses or assign

undocumented credits against RCH's proven loss. As the trial court pointedly stated, Baley's position invited the court "to use its judicial imagination to apply undocumented credits sufficient to zero out \$808,098.77 in economic loss to RCH." CR 288 (Conclusion No. 10). The trial court properly declined the invitation.

Accordingly, the Findings and Conclusions establish both sides of the injury-or-benefit coin: RCH suffered \$808,098.77 in economic losses through unsupported reimbursement payments, and Baley received that same amount. CR 288 (Conclusions Nos. 10–11). Legally and factually sufficient evidence supports the award, and Baley's challenge to these Findings and Conclusions should be overruled.

D. Even if the award is treated as an equitable forfeiture, the trial court acted within its discretion in doing so.

Baley contends the trial court's Findings and Conclusions are in error because they do not include a predicate finding that a legal remedy would not be adequate, and alternatively that the evidence is legally and factually insufficient to support actual damages would be an inadequate remedy. Ant's Br. at 53. But even if the Court were to characterize the award as equitable forfeiture, it should still affirm, as the findings establish a clear and serious breach and address the considerations identified in *Burrow* and *ERI Consulting*.

First, Baley is incorrect that forfeiture required proof that RCH lacked an adequate remedy at law. While the adequacy of other remedies is a consideration in

the forfeiture analysis, it “does not preclude forfeiture when a client can be fully compensated by damages.” *Burrow*, 997 S.W.2d at 243–44; *accord Heatley v. Red Oak 86, L.P.*, 629 S.W.3d 377, 389 (Tex. App.—Dallas 2020, no pet.). Thus, even the availability of actual damages would not foreclose forfeiture for a clear and serious breach of fiduciary duty.

Second, the trial court’s findings in total establish the gravity, duration, centrality, culpability, and actual harm associated with Baley’s conduct. Baley managed virtually every aspect of RCH’s day-to-day operations for nearly thirty years. CR 284 (Finding Nos. 3–5). RCH entrusted her with all its bank accounts, bookkeeping, billing, collections, and check-signing authority. *Id.* The resulting fiduciary relationship imposed duties of loyalty, utmost good faith, strict integrity, fair dealing, full disclosure, and financial accountability. CR 287 (Conclusion Nos. 6–7).

Baley’s breach went to the heart of that relationship. Over three years, she used her unfettered financial authority to issue 40 checks to herself totaling \$808,098.77, without Board approval, oversight, or supporting documentation. CR 285–87 (Finding Nos. 12, 14–15; Conclusion Nos. 7–9). These were not isolated or inadvertent transactions. They were repeated acts of self-dealing involving the precise financial responsibilities RCH had entrusted to her.

The evidence also supports a finding of substantial culpability. Baley required *her* subcontractors and vendors to furnish receipts, demonstrating that she understood the importance of documenting reimbursement requests. CR 286 (Finding No. 15). Nevertheless, she included no explanatory information on the checks she wrote to herself and retained no receipts, invoices, vouchers, tax records, or other documentation supporting them. *Id.* She frequently negotiated the checks on the same day she issued them. CR 285 (Finding No. 12). The payments then ceased shortly before she abruptly resigned after RCH’s new president requested basic financial information and the Board authorized an independent audit. CR 284–85 (Finding Nos. 6–7, 13). At minimum, those circumstances permitted the trial court to find that Baley’s conduct was not merely inadvertent. Moreover, no particular level of intent is an indispensable element of equitable forfeiture. *Heatley*, 629 S.W.3d at 392–93; *see also id.* at 394 (“[F]orfeiture, as we have noted, can be based on less than intentional conduct.”).

Finally, the remedy was tailored to Baley’s misconduct. The trial court did not order Baley to surrender her undisputed salary or all compensation received during her decades of service. It awarded only the amount of the 40 unsupported checks she wrote to herself during the three-year period at issue. CR 285–88 (Finding Nos. 10–12; Conclusion Nos. 10–11). The award therefore bears a direct

relationship to the transactions constituting the breach and does not produce the indiscriminate “complete forfeiture” Baley describes.

Burrow cautioned against denying all compensation for “slight, inadvertent misconduct that left the principal unharmed.” 997 S.W.2d at 241. This case presents the opposite circumstances: deliberate, repeated, and undocumented self-payments, undertaken through authority entrusted to Baley as RCH’s fiduciary, that caused RCH an actual loss exceeding \$800,000 and impaired its ability to complete an independent audit. CR 285–88 (Finding Nos. 12–15; Conclusions Nos. 7–11). Those findings establish a clear and serious breach and amply support forfeiture of the challenged payments.

Nor do *ERI Consulting* and *Cooper* require remand. In those cases, the record gave no indication that the trial court had evaluated the considerations governing equitable forfeiture. *ERI Consulting*, 318 S.W.3d at 875; *Cooper*, 2016 WL 4487924, at *12. Here, the trial court made detailed findings addressing the nature of the fiduciary relationship, the centrality and duration of the breach, Baley’s culpability, the benefit she received, the actual harm to RCH, and the relationship between the misconduct and the amount awarded. CR 284–88. Those findings provide more than a sufficient basis for meaningful appellate review, and Baley’s argument to the contrary is based on an overly formalistic approach, requiring the use of magic words.

E. Baley did not preserve her complaint that the trial court omitted required predicate forfeiture determinations.

Finally, even if the award were characterized as equitable forfeiture, Baley did not preserve her complaint that the trial court failed to make sufficiently specific findings. Texas Rule of Civil Procedure 298 provides the remedy when a party believes the trial court's original findings omit a material determination: the party must timely request "specified additional or amended findings or conclusions." TEX. R. CIV. P. 298. When a party fails to make a timely Rule 298 request, she waives any appellate complaint that the trial court omitted the additional findings or conclusions. *See in re Marriage of C.A.S. & D.P.S.*, 405 S.W.3d 373, 381–82 (Tex. App.—Dallas 2013, no pet.); *see also Robles v. Robles*, 965 S.W.2d 605, 611 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

While Baley made an initial request for findings and conclusions, she did not timely request additional or amended findings addressing whether her breach was "clear and serious," whether forfeiture was warranted, or the appropriate amount of any forfeiture. She therefore cannot obtain a remand based on the trial court's alleged failure to make those determinations. *See In re Marriage of C.A.S. & D.P.S.*, 405 S.W.3d at 381–82. Because Rule 298 required Baley to identify the alleged omissions while the trial court still had an opportunity to address them, she cannot raise them for the first time on appeal.

Rule 299 independently requires any omitted, unrequested determinations supported by the evidence to be supplied by presumption in favor of the judgment. TEX. R. CIV. P. 299. The trial court expressly found the existence and extraordinary scope of the fiduciary relationship; Baley's unfettered control over RCH's finances; forty self-interested payments totaling \$808,098.77; the absence of Board approval or oversight; Baley's failure to produce any supporting documentation; the lack of credibility of her explanation; and the resulting benefit to Baley and corresponding harm to RCH. CR 284–88 (Findings Nos. 3–15; Conclusions Nos. 4–11). To the extent the judgment required additional determinations that Baley's breach was clear and serious, that forfeiture was appropriate, or that \$808,098.77 was the proper amount, those unrequested determinations are presumed because the evidence supports them. *See* TEX. R. CIV. P. 299.

The Court should, therefore, affirm the \$808,098.77 award whether it is treated—as the trial court treated it—as compensation for RCH's economic loss or, alternatively, as equitable forfeiture arising from Baley's clear and serious breach of fiduciary duty. Baley's second issue should be overruled in its entirety and the final judgment of the trial court affirmed.

PRAYER

Therefore, Appellee requests that the Court affirm the final judgment, and for all other relief to which Appellee is justly entitled.

Dated: September 21, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that, absent the caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, restatement of issues presented, signature, proof of service, certification, certificate of compliance, and any appendices, the computer program used to prepare this document prior to its conversion to portable document format calculate the number of words in the foregoing brief as 8,949.

/s/ Colin P. Benton

Colin P. Benton

CERTIFICATE OF SERVICE

I certify that on September 21, 2026, a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Appellate Procedure.

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