

# Illinois Court Decision Clarifies when Special Circumstances Create a Fiduciary Relationship between Auditor and Client

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To prove a breach of fiduciary duty in Illinois, a plaintiff must show an existence of the duty, a breach of that duty, and damages proximately caused by that breach. The first element, whether a fiduciary duty exists at all, is not always clear. In *Asian Human Services Family Health Center, Inc. v. Asian Human Services, Inc.*, 2020 IL App (1st) 191049, a company sued (in a third-party complaint) its auditor, who prepared certain financial statements. The company took the position that an independent auditor stands in a fiduciary relationship to its client by the nature of the relationship or, alternatively, “special circumstances” existed that created a fiduciary relationship.

The appellate court found that an independent auditor does not automatically owe a fiduciary duty to its client. Citing precedent, the court drew a distinction between the duties of a fiduciary and those of an auditor: “the duty of a traditional fiduciary is to act ‘in a representative capacity for another in dealing with the property of the other,’ whereas an auditor acts ‘independently, objectively and impartially, and with the skills which it represented to its clients that it possessed.’”

Even though a fiduciary relationship did not automatically exist between the company and its auditor, the appellate court acknowledged “special circumstances” might exist that could create that fiduciary duty. A fiduciary duty by “special relationship” may arise where “one party places trust and confidence in another, thereby placing the latter party in a position of influence and superiority over the former.” Acting as an auditor alone will not create that relationship, even where the plaintiff alleges it trusted the defendant or had confidence in the defendant: “[T]rust and confidence are not enough to create a fiduciary relationship; *superiority and influence must result from the trust and confidence.*”

The appellate court distinguished another case where “special circumstances” created a fiduciary relationship. In *Khan v. Deutsche Bank AG*, 2012 IL 112219, the accountants “advised plaintiffs that certain investment strategies could yield a substantial profit; legally minimize plaintiffs' federal and state income tax liability; orchestrated the implementation of the investment strategies; provided the purported required legal opinion letters verifying that the investment strategies were completely legal; that plaintiffs relied on their trusted legal, accounting, and tax advisors for comprehensive legal, accounting, tax, and investment advice.” For the *Khan* Court, the plaintiffs had alleged sufficiently that “the defendants had superior knowledge and influence over the [plaintiff] and that he relied on them to give him sound investment and tax advice.” That was enough for the plaintiff to survive a motion to dismiss on its breach of fiduciary duty claim.

In *Asian Human Services*, though, plaintiff's facts were thinner: “In this case, appellee did not provide appellant with investment and/or tax advice or maintain any superior influence over the appellant. Appellee provided independent, objective and impartial auditing, which did not create a fiduciary duty to appellant as a result of special circumstances.”

There is no bright line test for when the actions of an auditor or similar professional are sufficiently intertwined with a client to create a fiduciary relationship with that client. The defendant in *Khan* clearly was involved enough with its client to create such a relationship; the defendant in *Asian Human Services* was not. The careful professional should keep in mind that a court may find the existence of a duty on facts much less involved than in *Khan*. There is a lower limit of involvement, to be sure, but the prudent path is to assume a duty is created and to act in accordance with that duty.