

MPT – July 2015 – Selected Answer 1

7-25-15

Bryan Carr
2222 West Lane
Franklin, 78888

Re: Bryan Carr, Credit Card Dispute

Dear Mr. Carr,

We have reviewed the facts of your case as well as the applicable law. Below you will find our legal analysis as a whole regarding unauthorized use of a credit card. Then we will apply the relevant law to the facts of your case as to each one of the transactions made by your father, Henry.

In Franklin, general principles of agency law, govern disputes whether the use was considered unauthorized. *BAK v. World Airways, Inc.* You, as the primary card holder, are considered a principal (P) and your father an agent (A) for purposes of agency law. Liability of cardholders is limited for all charges made without "actual, implied or apparent authority" AND from which the cardholder receives no benefit. *BAK v. World Airways*. Thus, for each transaction, we must find that your father acted without any authority and that you derived no benefit from the transaction for you to be found not liable. We will explain the different types of authority that may be applicable to your case below, when discussing each transaction separately.

March 16, 2015 charges at Schmidt Auto Repair:

1. Did Henry have any authority to use your credit card as your agent. Yes, Henry had actual authority because you provided him with a letter on March 12, 2015, expressly allowing Henry to use your credit card and told him that you would pay to fix the vehicle.

Actual authority is created by a P's manifestation to an A that, reasonably understood by the A, expresses the P's assent that the A take action on the P's behalf. Restatement 3rd of Agency. Here, the letter provided H with actual authority to use your card. Furthermore, although the credit card is under your name, he could have shown the letter to the Auto Repair shop. Although the amount was higher than Henry originally told you, Henry specifically told you that it was an estimate and you told him that you would pay for any costs to repair his vehicle.

2. Did you derive any benefit from Henry's transaction? Yes, Henry's situation of being distressed after the death of your mother has contributed to your stress from having lost your mother.

A court will likely decide that the benefit you received was helping your father. Any benefit whatsoever, even the slightest bit, will be considered benefit under the law. It is likely that a court will see you being relieved by your father's worry as a benefit.

Thus, you are liable for the \$1850.00 charge to your bank account on March 16, 2015 to the Auto Repair Shop.

April 10, 16, 21 charges to Friendly Gas Station and Corner Store:

1. Did Henry have any authority to use your credit card as your agent? Yes, Henry had apparent authority to use your credit card.

Apparent authority is created by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor is authorized. Here, the third parties are the gas station and corner store. The issue is whether they reasonably believed Henry was authorized in using your card. Because Henry had physical possession of the card along with a signed letter authorizing his use, apparent authority was created.

2. Did you derive any benefit from Henry's transaction? No, a court will likely find that you received no benefit from this transaction.

However, court's have found that failure to examine monthly statements remove statutory limit on cardholders. *Thrasmutal v. Green Oil*. Thus, the fact that you had opportunity to review the transactions may make you liable. The fact that you both shop at the same places, will help your argument that you were not negligent in reviewing your statements because you reasonably could have assumed that those charges were made by you instead of Henry.

Thus, you will likely not be liable for the charges incurred in April.

May 16, 2015 charge to Rendell's Book Store:

The same legal and factual applications apply as the April charges. For the sake of brevity, we will not discuss this in detail. You will likely not be liable for the charges incurred in April.

June 21, 2015 charge to Franklin Hardware Store:

1. Did Henry have any authority to use your card as your agent? No, Henry had no authority to use your card.

Henry did not have any actual authority because Henry knew that only had authority to use the credit card to fix his vehicle. He also did not have any apparent authority because (1) you had already taken back the credit card and letter authorizing him to use the card. They should have realized that Henry lacked authority because he did not have the card. He only had the information written down on a sheet of paper he wrote and then provided Franklin with the numbers and expiration date. Franklin should not have authorized the purchase.

Thus, you are not liable for the charge incurred in June to Franklin Hardware Store.

I thank you for reaching out to me, and urge you to contact me if you have any questions regarding your matter.

Best regards,

Miles Anders
Anders, Davis, & Waters
Attorneys at Law

MPT – July 2015 – Selected Answer 2

Anders, Davis & Waters
Attorneys at Law
6241 Lowell Street
Franklin City, Franklin 33205

To: Bran Carr
From: Miles Anders
Date: July 28, 2015

Dear Bryan Carr,

Here is the information that I found for you regarding the charges on your credit card:

Are you responsible for the vehicle repair charges on your card?

Yes, based on your actual authority, you are responsible for the charges of the credit card on the vehicle repairs.

Under the Federal Truth in Lending Act (hereafter, "Act"), a cardholder shall be liable for the use of a credit card only if: (1) the card is an accepted credit card, (2) the liability is not in excess of \$50, (3) the unauthorized use occurs before the card issuer has been notified that an unauthorized use has occurred as a result of loss or other fraud, and (4) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. Act Sec. 1643(a)(1)(A-F). A cardholder incurs no liability from the "unauthorized use" of a credit card. Act 1643(d)

Unauthorized use means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use from which the cardholder receives no benefit. Act Sec. 1602(o). Actual authority is when there is a direct action where the person who receives the card believes he is entitled to use it in the way the person who lent it was intended. Restatement Sec. 2.01. Implied authority means actual authority (1) to do what is necessary, usual, proper to accomplish or perform an agent's express responsibilities, or (2) to act in a manner in which an [card user] believes the [person who gave permission] wishes the agent to act based on the agent's reasonable interpretation of the principal's objective and other facts. *BAK Aviation Systems v. World Airways* (2007). Implied authority means actual authority (1) to do what is necessary, usual, proper to accomplish or perform an agent's express responsibilities, or (2) to act in a manner in which an [card user] believes the [person who gave permission] wishes the agent to act based on the agent's reasonable interpretation of the principal's objective and other facts.

On March 12, 2015, you gave your father your credit card with a letter giving your permission to use the Acme State Bank card. As you stated to me, you gave permission for your dad to use the card to pay for the van repairs, which was slightly more than expected. This amount was charged to the credit card as you permission allowed. The amount exceeding the initial estimate will still be authorized because permission was implied to the repair of the van. This use was necessary and proper to finish the express responsibilities to pay for the vehicle repair. Therefore, these initial charges up to \$1500 are considered actual authority, this additional charges of \$350 would be implied authority, and you will be responsible to pay the entire amount (\$1850).

Are you responsible for the gas, grocery, and book charges?

Yes, based on the apparent authority, you are responsible for the charges on the card used for the grocery, gas, and books.

As stated above, unauthorized use does not apply to actual, implied or apparent authority. Apparent authority is created when a third party believes the actor to be authorized and the belief is traceable to the will of the authorizer. Those acts are only bound under apparent authority to third persons who have incurred liability in good faith and without ordinary negligence. *Transmutual Insurance v. Green Oil* (2009). It is also the card holder's responsibility to examine promptly, using reasonable care to discover unauthorized signatures or alterations. If the card holder fails to examine his statement, the cardholders is responsible and is stopped from asserting "unauthorized use" against the card holder after a reasonable time. The test to determine if apparent authority exists is "is the [person who gives initial permission] either intentionally or through negligence or fails to disapprove of the [person given permission]'s act or course of action so as to lead the public to believe actual authority exists, they are bound to the action." *Farmers Bank v. Wood* (1998). Basically, if the person to whom a credit card issued is careless, that person may be held liable.

In these cases, you gave your father the card for only the vehicle repairs. The permission included a letter expressly authorizing Henry permission to use the card without limitations. Any third party who takes the card and sees the letter both in Henry's possession would be found to be acting in good faith and without ordinary negligence. You might say that the merchant should have called based on the date of the issue of the letter since your contact information was listed. This, however, is not necessary to show good faith. The letter and the card presented together are enough to establish good faith. Also, most gas stations have pay-at-the pump which does not even require the presentment of identification and most establishments do not require identification. With all of these facts, there was not an exercise of bad faith give by Friendly Gas, Corner Store, or Rendell's Book Store.

Also, these charges were paid by you after you received your statements. The cardholder is responsible for those payments if they fail to examine their statements in a reasonable time. You had time once receiving your statement, have said that you glanced at your statement and did not see anything that resulted in an alarm. Overall, had you been able to dispute the charges when they arrive, you may have had an ability to claim unauthorized use, but this failure would likely make you responsible for all aforementioned purchased in this section.

Therefore, you would be responsible for all these aforementioned charges under apparent authority.

Are you responsible for the power tools purchase from Franklin Hardware Store?

No, you would not be responsible for the purchases for the tools at the hardware store due to the store's lack of good faith and negligence and your duty of care exercised.

See above section for the analysis for apparent use and duty of the cardholder to check statements. Upon notice of your statement in the month of June, you discovered unauthorized purchases on your card. This alert gave you an idea that there was unauthorized use for the card. You father, Henry, had already returned the card to your by the time the purchase was made, as well as the letter authorizing use. This would seem that there was an express revocation of the authorized use of the card, and thus any charge outside express authority, must be implied or apparent. Also, Henry made the purchase of the power tools, a total of \$1200 worth, without the credit card or the letter. Henry merely presented the credit card account name, number, and expiration date to the hardware store clerk. The clerk, solely on the word of Henry, charged the tools to your account.

When a clerk of a store charges an account without the card present, they are usually required to see some identification to check to see if that person is authorized on the account. They must manually punch in the number, which at itself, should alert that merchant to a higher duty of care when account numbers are thrown around without verification of authorization. At a minimum, there should be a check of a ID to ensure that the names match for the account orally presented, especially when there is such a high cost in the purchase, like a \$1200 tool purchase. The fact that the person did such a charge without any of the duty of care, would be classified as a breach of their duty of good faith and a showing of negligence (see above). There was nothing presented or assumed that could lead the store to reasonably believe that there was implied or apparent authority. Since it was clear that there was no implied or apparent authority presented, this would make the use an "unauthorized use"

The fact that the store breached that duty does not absolve you of all liability. We must now look to your duty of care as a cardholder. You must examine your statements promptly, as discussed above. If you fail to do so, then you would be precluded from asserting unauthorized use after a certain time. The courts do not address what "a certain time" or "promptly" means, but we can infer from the courts that checking the card statements to notify the fraud and reporting it upon notice of the statements qualifies as promptly.

Upon reviewing and preparing to pay your current statement, you noticed the \$1200 charge to Franklin Hardware for power tools. You knew that you did not make this purchase and inquired further by contacting your father. This check of the most recent amount and the fact that you reported the amount would seem to qualify as promptly according to our case law. Therefore, you would be protected from unauthorized use.

Since this charge of the power tools was unauthorized, you would be protected by the Act, which would limit your liability to \$50. Therefore you would be responsible for a maximum of \$50 for those charges.

If you have any questions, please do not hesitate to ask. We are here to assist you and would be glad to ease any additional concerns you may have. Feel free to contact us at normal business hours,

Sincerely,

Miles Anders