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Contracts--Holder's Liability for Unauthorized Purchases on Credit Card

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In a later case, *Boggess v. Briers*, 134 W. Va. 370, 59 S.E.2d 480 (1950), the court said the trial court was under no duty to advise the defendant of the possible punishment his plea of guilty might entail. The court said that "whatever may be the rule in some courts, there is no such requirement in the courts of this state." However, in this case, the court pointed out that the defendant was himself an attorney, and had competent counsel by his side when he entered his plea. Other evidence also refuted the idea that the defendant had entered his plea in ignorance of the consequences. *Accord, State ex rel. Post v. Boles*, 124 S.E.2d 697 (W. Va. 1962).

In conclusion, it would seem that the requirements of "due process" are not met where an accused is permitted to plead guilty to a criminal charge without being aware of the direct penalties which might legally be imposed following the conviction. The concepts of justice and fair play to which the courts so frequently refer in defining "due process" would seem to dictate such a conclusion. With the United States Supreme Court's present tendency to extend increasingly greater safeguards to those accused of crime, it seems likely that a case similar to the principal case will soon reach the Court. If and when it does, it is probable the Court will hold that the petitioner was denied "due process" in being permitted to plead guilty under a misapprehension, honestly held, of the maximum prescribed period of confinement.

*Charles Edward Barnett*

**Contracts—Holder's Liability for Unauthorized Purchases on Credit Card**

*D's* credit card was lost or stolen by an unknown imposter who used it to incur substantial charges before the required notice of the loss was given to *P*, the issuer of the card. *P* paid the merchants for the charges and sought recovery from the *D* under the terms set out on the back of the card, holding the issuee liable for all purchases made prior to the issuer's receiving notice of the loss or theft of the card. *Held*, recovery denied. A cardholder is not absolutely liable. The issuer and the merchants each owe a duty of reasonable care to prevent improper charges from being made. *P* failed to show that either it or the merchants were free from
negligence and since $P$ voluntarily paid the charges to promote its good will, having only been liable to the merchants for valid charges made with the card, $P$ had suffered no damages for which $D$ was liable. *Diner's Club v. Whited*, Los Angeles Super. Ct. App. Dep't (Cal. 1964).

The few reported cases on this subject are in conflict. The principal case presents an additional factor to be considered in determining a credit cardholder's liability for unauthorized purchases. None of the prior cases have considered the lack of damages on the part of the issuer when it voluntarily pays for charges to maintain its good will with the merchants.

Most credit cards contain terms similar to those involved in the instant case, purporting to make the cardholder liable for any purchases made with the card before the required notice of its loss or theft has been received by the issuer. The question in each of these cases becomes whether the cardholder has any defense to the issuer's action for the cost of the unauthorized charges.

The majority of reported cases, as the principal case, have allowed the cardholder to avoid liability under certain circumstances notwithstanding the terms on the card. However, a recent case *Texaco, Inc. v. Goldstein*, 229 N.Y.S.2d 51 (N.Y. Munic. Ct. 1962), aff'd, 241 N.Y.S.2d 495 (App. Div. 1963), held that the cardholder, by signing and using the card, accepted the terms on the back and was liable for a misuser's purchases until the company received the specified notice. The court stated that the conditions were reasonable and that the negligence of the cardholder in losing and not reporting the loss of the card was greater than that of the individual dealers in failing to determine whether or not the person bearing the card was authorized to use it. The court went on to say that it was unreasonable to expect the 30,000 dealers to be on the lookout for a single stolen card they had no reason to know was missing. This is in accord with an earlier Texas case, *Magnolia Petroleum Co. v. McMillan*, 168 S. W.2d 881 (Tex. Civ. App. 1943), which held that the card owner was liable, under the terms of the card, for the purchases made with it and the fact that they were unauthorized was not a valid defense.

There is an important distinction between the all-inclusive Diner's Club-type card in the principal case and the common oil company credit card, for example. The Diner's Club type is restricted to use
by the issuee. Oil company cards have no such limitation and may be used by any authorized person. The court in the Texaco case, supra, noted this difference, indicating by dicta that in the case of such a restricted card the merchant extending credit would be held to a standard of reasonable care in ascertaining the card bearer’s identity. Apparently the strict liability doctrine of the Texaco case would be applied by the New York court to oil company cards but not necessarily to the all-inclusive type with which the principal case is concerned.

Other oil company card cases have held for the cardholder. In fact the New York court distinguished their decision in the Texaco case, supra, from one of these cases, Union Oil Company of California v. Lull, 220 Ore. 412, 349 P.2d 243 (1960), on the basis of the wording on the respective cards. In the Union Oil case the words were to the effect that the cardholder “guarantees payment” for any purchases while under the Texaco card he “assumes full responsibility” for them.

The Oregon court in the Union Oil case stated, that it was the duty of the dealers to exercise reasonable care to ascertain if the person presenting the card was an authorized user. The court also indicated that because the automobile used by the imposter was licensed from a different state than the one which appeared on the face of the card as the owner’s home state it became a jury question whether due care had been exercised. This case was relied upon in the principal case in support of its holding that a cardholder was not absolutely liable.

The principal case also cited Gulf Ref. Co. v. Williams Roofing Co., 208 Ark. 362, 186 S.W.2d 790 (1945), another leading case which supports its position limiting the cardholder’s liability. The factual situation in this case was rather unusual in that the issuee had received several cards for use in his business, on which he had typed, “Good for Truck Only.” One of the issuee’s truck drivers neglected to pick up a card after having made a purchase and a service station attendant misappropriated it. The circumstances clearly indicated collusion between some of the dealers and the misuser. All the purchases were made while the imposter was driving an automobile and most of the invoices had a fictitious license number written in by the dealer which was different from that upon the automobile he was driving. The court, in dismissing
the oil company's action for lack of equity, stated that the company had taken the invoices subject to all the defenses existing between the issuee and the dealers even though the company was a bona fide purchaser for value without notice of the defenses. It is interesting to note that the terms on this card were the "assumes full responsibility" wording used on Texaco's cards; however this court did not treat them as an absolute promise to pay on the part of the issuee.

The major difficulty the courts and writers have had in this area is trying to determine the exact nature of the legal relationship that exists in a credit card transaction. West Virginia has no reported cases on this subject, although the legislature has made it a misdemeanor to improperly obtain or attempt to obtain credit with a credit card. W. Va. Code ch. 61, art. 3, § 24(a) (Michie 1961).

The Texaco case, supra, by making the cardholder's agreement to pay the issuer an original undertaking, has eliminated, at least with respect to the transferable oil company-type card, the problem of the relationship between the parties. Under a strict application of this rule the conduct of the dealer in extending the credit to the imposter would have no bearing on the duty of the issuee to pay the issuer. On the other hand earlier oil company card cases have allowed the cardholder to use the negligence or misconduct of the dealer or merchant as a defense to the issuer's action for recovery. The principal case, dealing with the all-inclusive type card which is limited to use by the issuee, develops the lack of damages on the part of an issuer who voluntarily pays for charges in order to keep up its good will.

The law in this area is far from settled and the principal case has added an additional aspect to be considered in determining the cardholder's liability. However, the cases do appear to indicate that when the merchants or dealers extending the credit are free from negligence and the issuer has paid them without knowledge of any wrongdoing, thinking the charges valid, in all probability the liability will fall on the cardholder who has failed to report the loss of his card. In any event it is unlikely that the cardholder's lack of knowledge as to the conditions on the card will be a sufficient excuse to avoid liability.

David Gail Hanlon