SPC Guiding Case No. 169: Xu Xin v. China Merchants Bank Co., Ltd. Shanghai Yanxi Sub-branch (Bank Card Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / bank card dispute / online fraudulent card use / determination of liability

Holding

Where a cardholder adduces evidence proving that another person conducted online transactions by fraudulently using the cardholder's name, and requests that the card-issuing bank bear liability for the loss caused by the reduction of funds in the fraudulently used account, and the card-issuing bank fails to adduce evidence proving that the cardholder breached the obligation to properly safeguard information, but merely claims that it should not bear liability for compensation on the ground that the cardholder's identity identification information and transaction verification information matched, the people's court shall not support the bank's claim.

Basic Facts

Xu Xin was a depositor of China Merchants Bank Co., Ltd. Shanghai Yanxi Sub-branch ("CMB Yanxi Sub-branch"), holding a debit card with card number [X].

On March 2, 2016, three transfers were made from Xu Xin's above debit card in the amounts of RMB 50,000, RMB 50,000, and RMB 46,200 respectively, totaling RMB 146,200. The transferee account name for all three was Shi [X], with card number [X], and the transfer-in bank was the Agricultural Bank of China.

On May 30, 2016, Xu Xin's father, Xu [X], went to the Economic Crime Investigation Detachment of the Qingpu Branch of the Shanghai Municipal Public Security Bureau to report the case and obtained a Case Acceptance Receipt. On the same day, the Economic Crime Investigation Detachment of the Qingpu Branch of the Shanghai Municipal Public Security Bureau sent Xu Xin the Case Filing Notification, Hu Gong (Qing) Li Gao Zi (2016) No. 3923, notifying that a decision had been made to file the credit card fraud case.

On April 29, 2016, the Fuqing Municipal Public Security Bureau of Fujian Province issued the Arrest Warrant Rong Gong (Xing Zhen) Bu Zi (2016) No. 00066, stating: with the approval of the Fuqing Municipal People's Procuratorate, the bureau hereby executes the arrest of Xie [X]1, who is suspected of the crime of theft, and commits him to the Fuqing City Detention Center.

On May 18, 2016, the Criminal Investigation Detachment of the Fuqing Municipal Public Security Bureau of Fujian Province prepared an Interrogation Record for the criminal suspect Xie [X]1, which stated: "…I bought a laptop, black bank cards (bank cards processed using other people's identities), ID cards, USB drives, and other equipment from my master for RMB 9,800 to carry out the fraudulent use of other people's bank card deposits. The USB drive sold to me by my master contained the victims' identity information, mobile phone numbers, bank card numbers, withdrawal passwords, and the status of the deposits in their bank cards. …We use a portrait of one of our own people to fabricate a false temporary ID card, and the purpose of fabricating the false temporary ID card is to go to the business office of the mobile phone service provider to report the loss of the victim's mobile phone whose card we want to fraudulently use and to reissue a new SIM card. The purpose of reissuing the new SIM card is to take control of the mobile phone number the victim had reserved with the bank, so as to receive the verification codes sent by the bank for operations

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such as transfers. Only by entering the verification code can the money in the mobile banking account be successfully transferred. Moreover, after fraudulently using the victim's bank card, the SIM card he holds will not receive any information, so that the money we transfer from his bank account will not be discovered by him. …On March 2, 2016, my master told me that this time he was responsible for handling the victim's false temporary ID card and reissuing the new mobile phone SIM card associated with the victim's bank card. He gave me three bank account numbers and passwords (upon examination of the bank transaction details, …one is a CMB card with card number [X], account name: Xu Xin)."

In June 2016, the Fuqing Municipal Public Security Bureau of Fujian Province issued the Report on the Completion of the Case Investigation, stating: "…On March 2, 2016, in this operation, Xie [X]1 was responsible for the transfers and withdrawals, and the upstream party was responsible for providing the information and reissuing the cards. In this operation, Xie [X]1 fraudulently used the deposits in the bank cards of Zhou [X], Xu Xin, Wang [X], and others, totaling RMB 400,700…"

On June 22, 2016, the Fuqing Municipal People's Procuratorate of Fujian Province sent Xu Xin the Notice of the Victim's Procedural Rights and Obligations, stating: the theft case involving the criminal suspects Xie [X]1, Xie [X]2, and another has been transferred by the Fuqing Municipal Public Security Bureau for examination and prosecution…

Xu Xin sued before the people's court, requesting that CMB Yanxi Sub-branch compensate for the loss caused by the fraudulent use of the bank card and the interest.

Judgment

The People's Court of Changning District, Shanghai rendered Civil Judgment (2017) Hu 0105 Min Chu No. 1787 on April 25, 2017: 1. China Merchants Bank Co., Ltd. Shanghai Yanxi Sub-branch shall pay Xu Xin the deposit loss of RMB 146,200; 2. China Merchants Bank Co., Ltd. Shanghai Yanxi Sub-branch shall pay the plaintiff Xu Xin the interest loss calculated on the base amount of RMB 146,200 from March 3, 2016 to the date on which the judgment takes effect, at the deposit interest rate for the corresponding period published by the People's Bank of China. China Merchants Bank Co., Ltd. Shanghai Yanxi Sub-branch, dissatisfied with the first-instance judgment, appealed to the First Intermediate People's Court of Shanghai. The First Intermediate People's Court of Shanghai rendered Civil Judgment (2017) Hu 01 Min Zhong No. 9300 on October 31, 2017: dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held: the appellee applied for a debit card from the appellant and deposited funds with the appellant, and a deposit contract relationship was established between the appellant and the appellee. Article 6 of the Commercial Banking Law of the People's Republic of China provides that "commercial banks shall safeguard the lawful rights and interests of depositors from infringement by any unit or individual." In the deposit contract relationship, the appellant, as a commercial bank, has the statutory obligation to safeguard the safety of account funds toward the appellee as a depositor, as well as the contractual obligation to perform toward the appellee himself or persons authorized by him. To this end, the appellant, as the issuing bank of the debit card and the provider of the relevant technology, equipment, and operating platform, should strengthen the safety management of transaction devices and transaction venues and promptly update and upgrade the various software and hardware facilities, so as to guard against security loopholes in fund transactions to the greatest extent possible. In particular, with the development of electronic banking, a commercial bank, as the developer, designer, and maintainer of the electronic transaction system and as a party that obtains economic benefits from the convenience of electronic transactions, should also be more capable of adopting more stringent technical safeguard measures to enhance its ability to prevent illegal and criminal acts involving bank cards. In this case, according to the facts found, the fund loss in the appellee's account in issue was caused by the third party Xie [X]1's illegal acquisition of the appellee's account information, such as identity information, mobile phone number, and

withdrawal password, and then intercepting the dynamic verification code sent by the appellant by reissuing the mobile phone SIM card, and thereby conducting the transfers. In circumstances of online fraudulent card use, the appellant's claim that the transactions in issue were transactions by the cardholder himself or persons authorized by him, on the ground that the identity identification information and transaction verification information had passed, could not stand. Moreover, according to the existing evidence in this case, it could not be ascertained how the third party Xie [X]1 obtained the transaction password and other account information, and the appellant likewise did not adduce corresponding evidence proving that the leakage of account information was caused by the appellee's failure to properly safeguard and use the bank card. Therefore, with respect to the appellee's own fault, the legal consequence of failure to adduce evidence should be borne by the appellant. The appellant further claimed that the mobile phone operator was at fault in the incident in issue. However, the basis of the appellee's claim in this lawsuit is the deposit contract relationship; the mobile phone operator is not a contracting party or a party to this case, and whether the mobile phone operator was at fault and whether the appellant, after bearing liability for compensation toward the appellee, has the right to seek recovery from the mobile phone operator are not within the scope of trial in this case. In sum, the appellant, in the performance of the deposit contract, failed to fulfill its obligation to safeguard the safety of the appellee's account funds, and there was no evidence proving that the appellee had committed a breach of contract that could reduce liability; the appellant should bear full liability for compensation for the appellee's account fund loss. The appellant's appeal was without merit and was not supported.

Relevant Legal Provisions

Article 107 of the Contract Law of the People's Republic of China (Note: the currently effective provision is Article 577 of the Civil Code of the People's Republic of China).

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