

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
LIMITED ACTIONS DEPARTMENT

UNITED MISSOURI BANK-USA

Plaintiff,

VS

98 L 5924

F. W. RAGSDALE

Defendant.

FILED
LIMITED ACTIONS
98 OCT 29 PM 2:44
CLERK OF DISTRICT COURT
WYANDOTTE COUNTY, KANSAS
REPLY

Memorandum Decision of Judgment

This matter came on before the Court for trial on the 28th day of October, 1998. The plaintiff appeared through it's attorney, Geoffrey W. Hetley, and the defendant in person and through his attorney, Elmer C. Jackson, Jr. Both parties presented testimony, and evidence was received by the Court. After argument by counsel, the matter was taken under advisement. After consideration of the issues and evidence presented, the Court does hold as follows:

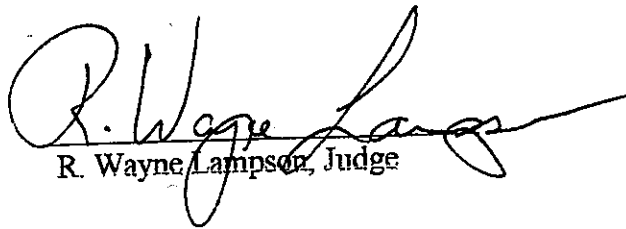
The issue before the Court deals with the liability of the issuer of a credit card, when a dispute exists between the credit card customer and the merchant who sold the goods or services for which the credit card was used to pay for the items. The plaintiff hereinafter referred to as the "Bank" maintains that they made a reasonable inquiry into the dispute, and determined that there was a reasonable basis for the charges, and now bring suit on the contract for use of the credit card. The defendant maintains that he did no receive the items he ordered, and that he should not have to pay the bank money for items he didn't receive. The merchant was not made a party to this lawsuit, nor was the delivery agent involved, Federal Express. The Court must decide between the two parties before the Court, and upon the evidence received.

A review of the law in the area was noted by the Court, set out in K.S.A. 16a-3-403, which sets out the legal liability of the issuer of a credit card. Simply put, the bank does not stand in the shoes of the merchant, but does have a responsibility to not pay certain charges, when conditions are met. These limitations are (1) the customer must first make a good faith attempt to resolve the dispute with the merchant, (2) the transaction must be for \$50 or more, and (3) the transaction must have occurred within the state of the debtor, or within a 100 miles of his residence. If these limitations are met then any defense good against the merchant is good against the bank. These three requirements are not met in this case. While clearly the dispute is for more than \$50, the Court notes the contract with the merchant was in Nevada, and therefore more than 100 miles away. This Court does not find that the defendant made a good faith effort

to resolve the dispute. He did call and complain, but no other action appears to have been taken. Therefore, the bank is not in the same position as the merchant, and is responsible by law and contract to make a reasonable investigation. Any dispute as to the contract itself is between the merchant and the customer. The Court herein does find this to be a correct statement of the law. The complaint of the defendant must be raised against the merchant.

Therefore, the Court herein does find that the plaintiff is entitled to judgment. However, the Court does note that the defendant has been a valued customer, and appears to have a good faith dispute. The Court does not feel that the defendant should have to pay all the penalty and interest, and in application of equity, does hereby grant judgment in the amount of \$800.00, and costs.

It Is So Ordered and Decreed.


R. Wayne Lampson, Judge

cc: Geoffrey Hetley
Elmer Jackson, Jr.