



The Nature of Card Supplier's Card Pinching and Withdrawal Behaviour

Na J* and Xiang L

Law Professor, Beijing Normal University School of Law, China
Master's student, Beijing Normal University School of Law, China

*Corresponding author: Jiang Na, Law Professor, Beijing Normal University, China, Email: na.jiang@bnu.edu.cn

Review Article

Volume 9 Issue 4

Received Date: September 17, 2024

Published Date: October 03, 2024

DOI: 10.23880/ijfsc-16000412

Abstract

Introduction: The main controversy against such card pinching cases exists between theft and misappropriation offences. In the judgment documents, most of the funds involved are referred to as deposits. And, previous studies have not examined this controversy in particular detail.

Aim: The purpose of this article is to determine the legal relationship of the three parties and the issue of possession, and to analyze what crime is constituted.

Result: Firstly, this article argues that the essence of deposits is the deposit claim made by card supplier to the bank. Secondly, there is a legitimate legal relationship of debt and credit between the card supplier and the bank, while there is no legal relationship between the card user and the bank. The transaction process of the three parties in this case can be regarded as the card user conducting transactions with the bank through the intermediary of the card supplier. Then it can be determined that the holder of the deposit should be the card supplier rather than the card user.

Conclusion: After identifying the correct possessor, the logic of determining the crime of misappropriation is clarified. The withdrawal behavior after card pinching can be regarded as a natural behavior after committing a crime, but in cases involving other crimes such as fraud, withdrawal behavior has substantive significance.

Keywords: Card Pinching Behavior; Deposit Claim; Misappropriation; Theft

Introduction

The main controversy against such card pinching cases exists between theft and misappropriation offences. It has been pointed out that when the card user transfers the deposit to the bank card of the card provider, the card provider should be recognised as the possessor of the deposit in terms of national law, and the card provider is under the actual control and domination of the deposit. Accordingly, the unauthorised loss of the bank card to transfer the deposit of the conduct of the crime of misappropriation. However,

there are views that, when the bank card was handed over to the use of the cardholder, the cardholder actually hold the card and the card password, even if the cardholder has the authority to lose and replace the card, it still does not enjoy the substantive rights of the card deposit. Therefore, the card deposit is still by and only by the cardholder in possession, the cardholder to transfer the deposit was established theft. As can be seen from the controversial viewpoint, the attribution of the deposit possession is the key issue in the characterisation of this case and similar cases of wrongful remittance. This paper starts from the possession of the



deposit, discusses the card user, the card supplier and the bank in such cases, in order to solve the differences in judicial practice on the case.

Differences in Judicial Practice - Misappropriation and Theft Offences

Judicial practice of the misappropriation of the offence of the core reasons are: the nominal cardholder is legally the card funds in the possession of the person, about the funds of the card user and the card supplier is entrusted with the custody of the relationship, the bank of the actual source of the funds of the card has no obligation to review. For example, in the case of Gao Mou Er misappropriation, Gao Mou Er on 11 May 2016, the bank card with his own identity information to Gao Mou Yi possession and actual use, and the card is bound to the mobile phone number of Gao Mou Yi's daughter. 2021 March 10, Gao Mou Er will be the card loss, replacement, the card will be the amount of money 12,813,960.45 yuan transferred to the new card, and then within five days through the transfer of Alipay, Cash withdrawals, bank transfers, and WeChat transfers to transfer 127,8029 yuan of it. After Gao Mouyi repeatedly contacted Defendant Gao Mouyi through mobile phone calls and text messages to ask him to return his deposit, Defendant Gao Mouyi refused to do so. After the defendant GaoMouDi divided many times will the card in the 1281395.61 yuan deposits transferred, and by the self-prosecutor GaoMouYi urge defendant GaoMouDi refused to return. The court of first instance held that, although Gao Mouyi held a bank card with the defendant Gao Mouyi's real identity information, and mastered the card's access code, but due to China's implementation of the real-name registration system of the bank card, the bank card applicant is regarded as the owner of all the rights of the bank card, which has the domination and use of all the funds in the card, freezing of the card's funds, the application for the loss of the card, and to stop the card from being used, and other rights. Therefore, no matter who actually hold and use the bank card, the rights and obligations of the bank card by the applicant, the card funds in legal form are under the control of the applicant. Therefore, the self-prosecution of high once the funds into the bank card with the defendant's real identity information, the funds in the defendant's actual control of high. Defendant GaoMouDi knew that his real identity information for the bank card by self-claimant GaoMouYi hold use, still through the loss of the old card, replacement of the new card and a short period of time for many times to transfer means, the card will be the deposit of 1281395.61 yuan transfer, unlawful appropriation of his own possession, and by the self-claimant repeatedly demand refused to return, his behaviour has constituted the crime of misappropriation, the intermediate people's court of Lvliang city, shanxi province, maintains this The Intermediate

People's Court of Lvliang City, Shanxi Province, upheld the judgement [1].

The reasons for judicial practice that the crime of theft can be summarised in two points: the card user took possession of the funds in the card, so the card supplier's behaviour violated the will of the actual card user and transferred the funds in the card, thus constituting the crime of theft; there was no entrusted custodianship of the funds in the card between the card user and the card supplier, and the funds in the card were not the forgotten property of another person; therefore, the card supplier's behaviour did not comply with the constitutive elements of the crime of misappropriation [2].

In the face of the differences between misappropriation and theft in judicial practice, there have been many discussions prior to this study: Some people believe that the object of behavior in such cases is the property interests of the user who can withdraw money anytime and anywhere, and the behavior of the card provider destroys the user's possession of the interests, constituting the crime of theft [3]. Another point of view is that under the premise that the user of the card pays the rent to the card provider, the card provider still reports the loss of the card while knowing that the card memory is useful to the card user's funds, which should be identified as the crime of misappropriation [4]. There are also views that the deposit is a deposit claim, which is occupied by the user of the card, and emphasizes that the time of producing the "illegal possession purpose" of the card provider, if it is generated in the process of borrowing the card, it constitutes the crime of theft, if it is generated after reporting the loss, it constitutes the crime of misappropriation [5]. The fourth view is that the ownership and possession of the deposit belong to the actual depositor rather than the nominal depositor, and the behavior of the nominal depositor using the ID card to report the loss and make up for it is not the normal exercise of rights, but the behavior of covering up the purpose of illegal possession. Therefore, it should be identified as theft [6]. The last point of view is that deposit is a kind of creditor's right protected by criminal law, and the nominal depositor actually owns the creditor's right exclusively, so it is only possible to establish the crime of misappropriation of non-transferable possession [7]. There are many different points of view and arguments, and although some of the conclusions are the same as in this article, the process of reaching the conclusions is not exhaustive. The paper argues that the first step should be to determine the nature of the 'deposits' lost by the victim as mentioned in the judgement, the second step should be to identify the subject in possession of the deposits, so as to confirm the nature of the perpetrator's behaviour, and the last step should be to determine whether the perpetrator's

behaviour ultimately conforms to the constitutive elements of the crime of misappropriation or the constitutive elements of the crime of theft. Finally, it was determined whether the behaviour of the perpetrator ultimately fulfilled the elements of the offence of misappropriation or theft, so that a proper conclusion could be reached.

The nature of the 'deposit' is discussed, whether it is cash or a deposit claim or a property interest to withdraw money at any time and from any place. The deposit contract between the depositor and the bank establishes a relationship of rights and obligations between the depositor and the bank, i.e., a relationship of debt and obligation. In the deposit contract relationship, the bank's main payment obligations for the custody of the obligation and the return of funds and the payment of interest in two aspects, the depositor mainly enjoys the right to request the bank to custody and payment of cash and the corresponding interest. When the depositor and the bank on a specific money deposit contract, the depositor will be deposited in the bank, the random loss of cash in fact and legally control and domination of the cash, the right by the bank to obtain. The depositor has a claim and the bank carries a debt. Currently, to withdraw more than \$50,000 from a bank the bank will review the depositor's withdrawal, which means that the depositor has no de facto dominion and control over the cash in his account. The bank transfers possession of the corresponding cash to the depositor only when the depositor provides proof of his bank card and password or even more. Therefore, it can be argued that the depositor has no dominion over the cash in the account, but has direct control and domination over the deposit claim, and the withdrawal of the money means a reduction of the claim on the bank's deposit, and the bank's debt to the depositor is reduced at the same time. So the depositor enjoys only to the bank's deposit claim.

The Legal Relationship in Such Cases

The Legal Relationship between the Card Supplier and the Card User: Article 28(3) of the Measures for the Administration of Bank Card Business stipulates that bank cards and their accounts shall be restricted to the personal use of the cardholder as approved by the issuing bank and shall not be rented or lent out; and Article 55 stipulates that a commercial bank shall sign an acceptance contract with a merchant for the development of merchants accepting bank cards. For example, the CITIC Bank RMB Debit Card Acceptance Contract stipulates that if you rent, lend, sell or buy a RMB debit card or account from another person, Party A has the right to disqualify you from using the card and authorise its affiliates and special merchants to take back the RMB debit card. Therefore, the bank card is usually limited to the use of the cardholder himself, private borrowing of other

people's bank cards or bank card owners to lend their bank cards to other people to use both a violation of the use of the contract, but also in the law does not support the behaviour of the offence, the law can not produce due legal effect, not protected by law [8]. The spirit of the real-name system for bank cards, as demonstrated by the Provisions on Real-Name System for Individual Deposit Accounts, affirms the principle that bank cards are for personal use only, and prohibits the use of another person's bank card to transact business with the bank. In addition, Article 545 of the Civil Code of the People's Republic of China stipulates that a creditor may assign all or part of a claim to a third party, except under one of the following circumstances: (1) it may not be assigned in accordance with the nature of the claim; (2) it may not be assigned in accordance with the agreement of the parties; and (3) it may not be assigned in accordance with the provisions of the law. Therefore, there is also no situation in which the card user uses the bank card of the card provider to transfer the deposit claim, and there is not a legal relationship. The fact that the cardholder deposits his own money into another person's account is a sign of extreme carelessness with regard to his own money and property, and it is suspected that the victim is putting himself at risk. It can be concluded that the legal relationship between the card provider and the card user is not protected by the law. However, if it is necessary to clarify the nature of the act of borrowing a card between the card user and the card supplier, this study argues that this is in fact the card user asserting a claim against the bank through the card supplier. After the card user deposits money into the bank card, a tripartite, linear debt relationship is formed between the card user, the card provider and the bank. When the cardholder deposits money in the bank, a debt relationship is formed between the bank and the card provider, who is the creditor. However, since the bank card is actually used by the cardholder under circumstances recognised by the cardholder, it can be considered as a simplification of the linear process of the cardholder conducting banking business through the identity of the cardholder, i.e., omitting the involvement of the cardholder in reality. When the card user takes the card donor's bank card to the bank to withdraw money, it can be regarded as the card donor to the bank to send a notice of the fulfilment of the debt, so the act is often effective.

Relationship between the Card User and the Bank: Article 6 of the Law of the People's Republic of China on Commercial Banks provides that commercial banks shall safeguard the legitimate rights and interests of depositors against infringement by any entity or individual. With regard to the meaning of 'depositor', reference can be made to the provisions of the 2000 Regulations on the Real-Name System for Individual Deposit Accounts. In order to ensure the authenticity of individual deposit accounts, this provision requires that individuals should use their real names to

open individual deposit accounts in financial institutions, and that financial institutions shall not open individual deposit accounts for individuals who do not present or use their own identity cards. Therefore, it can be concluded that the depositor in the Commercial Banks Law of the People's Republic of China refers to the card provider who uses his or her own identification to open a bank card. Since the spirit of the Provisions on the Real Name System for Individual Deposit Accounts is to ensure the authenticity of individual deposit accounts, it is not appropriate for us to extend the scope of the depositor from the card-supplying person to the card-using person, which is a substantive violation of the provisions.

Since it is recognised that the nature of the deposit is a creditor-debt relationship between the card supplier and the bank, the way for the card user to join the legal relationship is to assign the deposit claim to the card user through the card supplier, and for the card user to claim the deposit claim from the bank. Reflected in practice is that one party through the bank transfer the claim of the money in the card to the other party. However, in this type of case, there is always only a bank card for the cardholder's identity information, the transfer of deposit claims through the transfer of the operation cannot be completed, naturally, there is no claim ceded. From a legal perspective, the cardholder using another person's bank card to transact with the bank is always trapped in the claim relationship between the other person and the bank.

Therefore, no legal relationship exists between the card user and the bank. In practice in such cases, the cardholder is often alone in possession of the card's password, and the cardholder is not involved in the transaction process. The fact that the cardholder alone uses the card to complete the deposit and withdrawal of funds does not cause the bank to examine the actual controller of the card because, limited to China's real-name management system for bank cards, as long as the password is entered correctly, it is a verification of identity. Although the card provider does not expressly authorise the card user to act on its behalf, the bank has reason to believe that it is the cardholder or has access to the card. For example, the CITIC Bank RMB Debit Card Contract directly stipulates that, unless otherwise provided for by laws and regulations, any transaction using Party B's PIN is deemed to be done by Party B himself; unless otherwise provided for by laws and regulations, any transaction using Party B's PIN is deemed to be done by an attorney-at-law who has obtained a legally valid authorisation from Party B. Any loss arising from the use of the attorney-at-law shall be borne by the bank. All losses arising from the commissioning agent shall be borne by Party B. However, this act does not constitute apparent agency, because the entrusted agent relationship does not exist, and the card user will not form a debt relationship with the bank [9].

Analysis of the Nature of Card Pinching Behaviour

The Card Supplier's Act of Pinching the Card does not Constitute the Crime of Theft: Theft theory advocates that the cardholder substantially possesses the deposit, although the cardholder uses another person's bank card to deposit the act of violating the requirements of the real name system of the bank card, but the cardholder actually masters the card and the password and does not make the actual control of the card invalid due to the borrowing behaviour illegal, so the card provider in the absence of the necessary information on the premise of the loss of withdrawals constitutes the crime of theft.

Although the reality of the cardholder in possession of the bank card and know the password, does it mean that the possession of the deposit that deposit claims? In this paper, the cardholder in possession of a bank card is not equivalent to the possession of the card recorded deposit claims, cannot be simply confused with the two. As mentioned above, the situation where the cardholder holds the PIN and takes possession of the card is essentially a simplification of the linear process, sacrificing the legitimacy of the deposit and withdrawal process for the convenience of withdrawing funds. This ease of access creates the illusion that the cardholder, in possession of the claim and the PIN, is in possession of the recorded deposit claim. This is in fact a misunderstanding of the simplicity of the process, i.e., the formal disregard of the cardholder's existence evolves into a substantive disregard of the cardholder's actual possession of the deposit claim. Therefore, the cash is always in the possession of the bank, and the cardholder is in possession of the deposit claim. The act of withdrawal committed by the perpetrator violates the property in his possession, and it is impossible for him to re-establish a new possession of the property in his possession, or to establish the offence of transfer of possession as a constituent element.

It is argued that giving a bank card to a cardholder for use by the card provider is similar to a landlord renting out a house to a tenant, who places his or her own private property in the house; the landlord does have legal title to the house, but it cannot be said that the property is in the landlord's possession. A bank account, it is argued, is such a space. The so-called 'account space' is essentially for the depositor and the bank for the performance of the debt contract between a figurative analogy, it is because of this contractual relationship, the deposit of cash possession transferred to the bank, the depositor will be the ownership of the cash into the deposit of the corresponding claims. For such a deposit claim existing in the virtual space, when it comes to the infringement of property interests, cannot be based solely on the bank's rules and regulations to assert that the card

provider is the owner of the deposit claim, in the case of the deposit creditor to make substantive judgement [10].

This study argues that there is some rationality in this view, but it does not provide justification for constituting the offence of theft.

The argument that 'account space' is similar to renting out a house is fundamentally wrong and does not have legitimacy. Because the act of renting a house is a lawful act under the Civil Code of the People's Republic of China, and the lawful act of renting actually embodies the disposition of the right of property - disposing of the right of possession and the right of use in the right of property to the tenant. At the completion of the act, the landlord loses the right of possession and use of the premises for a certain period of time, and the tenant acquires the right. Therefore, the tenant's private property placed in the house within a certain period of time is certainly not possessed by the landlord. But China's attitude towards personal deposit accounts is real-name and identity-based. Bank cards are usually limited to the use of the cardholder himself, and borrowing another person's card or lending the card to another person is an illegal act that is not supported by the law. Therefore, the 'account space' belongs exclusively to the cardholder, who cannot dispose of the right to occupy or use the space, and cannot be involved by a second person. Therefore, the cash deposited by the cardholder in the 'account space' cannot be equated to the private property of a tenant in a rented house and enjoys the protection of possession.

The exclusive use of the cardholder's card by the provider, as expressed in this argument, in fact ignores the role played by the provider in the cardholder's deposits and withdrawals. The card user may appear to be in a direct debt relationship with the bank in the deposit and withdrawal operations, but as we said above, there is no legal relationship between the card user and the bank. How then can we explain that the card user is able to carry out deposit and withdrawal operations independently? In fact, it is the card user's independence in using the bank card that conceals the debt-credit relationship between the card provider and the bank. We should unfold all the legal relations between the card user and the bank: first, the card user gives the cash to the card supplier, who then deposits the cash in the bank through the bank card; the card supplier takes the cash out of the bank through the bank card, and then hands it back to the card user.

The legal relationship between the two businesses is as follows: the cardholder gives the cash to the cardholder, who acquires the ownership of the cash and at the same time incurs an obligation to repay the debt of the cash in the same amount to the cardholder; the cardholder deposits the

cash in the bank and acquires the right to claim the same amount of money from the bank, which incurs a debt to the cardholder; the same is true of the withdrawal of cash, which is claimed by the cardholder from the bank. In the withdrawal operation, similarly, the supplier claims a claim from the bank, the bank fulfils a specific amount of debt and delivers the cash to the supplier; the same amount of debt relationship is extinguished, and the supplier then delivers the cash to the cardholder to fulfil the debt repayment obligation incurred by the bank to the cardholder at the time of the deposit operation. In the scenario where the card provider hands over the card and the PIN to the card user, the role played by the card provider in the above process is in fact weakened, and the card user is substituted for, or de facto eliminated from, the link that should have been played by the card provider.

This clearly explains the viewpoint's equation of 'account space' with a rented house. The above viewpoint equates the omission of the participation of the card provider in fact with the elimination of the participation of the card provider in the legal relationship, and rents out the 'account space' of the card provider to the card user. The correct understanding is that, since the 'account space' belongs exclusively to the card provider, the card user needs to 'open the door' of the card provider each time he or she enters or leaves the 'account space'. This process is inevitably a bit cumbersome, so the card supplier hands over the address and key of the 'account space' directly to the card user to facilitate both parties. We cannot say that the cardholder is in possession of the 'account space' at this point, because there is nothing to prevent the cardholder from accessing the space anytime, anywhere, and there is no exclusivity. Translated into the scenario of the deposit and withdrawal business is that the card user every time in the cardholder's identity to use the card and the bank to generate debt relations, the card provider can always cut off the card user to use their own identity to facilitate their own identity independently of the business dealings with the bank.

In this way, the card supplier's act of pinching the card seems to have the legality. However, based on the complete legal relationship mentioned above, the card supplier's act of pinching the card is essentially that the card supplier indicates by his own behaviour that he will no longer use the cash withdrawn from the bank to fulfil the obligation of repaying the debt to the card supplier arising from the fact that the card user has given the cash to the card supplier in the deposit business. The card supplier's act of pinching the card was done with the obvious purpose of illegal appropriation, with the aim of appropriating for himself the claim of the card user against the bank (through the medium of the card supplier's claim against the bank).

As stated at the beginning of this section, the perpetrator committed the act of pinching the card to violate the property in his possession, and it is not possible for him to establish a new possession against the property in his possession, and it is not possible to establish the offence of transfer of possession as a constituent element. Therefore, the offence of theft cannot be established.

The Act of Supplying the Card Pinch Card Constitutes the Offence of Misappropriation: For the current judicial practice on the misappropriation of crime and theft of differences, this study that from the two crimes on the 'possession' of the different start can draw the correct conclusion. By clarifying the core components of the constituent elements of the two offences, it is possible to conduct a standardised criminal law evaluation of such cases.

Article 270 of the Criminal Law of the People's Republic of China provides that anyone who illegally appropriates for himself the property of another person for which he has been entrusted with the custody of another person, with a relatively large amount of money, and refuses to return it, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or a fine; if the amount of money is huge or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than two years and not more than five years and shall be punished with a fine. Paragraph 2: Anyone who illegally appropriates another person's forgotten or buried property for himself or herself, in a larger amount, and refuses to hand it over shall be punished in accordance with the provisions of the preceding paragraph. The law provides for two different types of appropriation, namely, appropriation of entrusted objects and appropriation of detached objects. The actual possessor of the deposit claim has been discussed above, and the legal relationship between the card supplier, the card user and the bank has been analysed. The deposit claim obviously does not belong to the forgotten or buried objects of the card user, therefore, the act of the card donor losing the bank card to collect the deposit of others is subject to the judgement of the conformity of the constituent elements of the entrusted object appropriation. In this judgement, the identity of the subject and the object of the entrusted property infringement of unquestionable, and entrusted property infringement of the content of the act of illegal possession, refused to return the act, so the focus needs to be discussed illegally occupied and illegally occupied refused to return the relationship, there are different views in the academic community.

There is a view that 'illegal appropriation' and 'refusal to return' express one meaning and do not have an independent meaning: to turn the property of others in one's possession

into one's own property [11]. There is a view that refusal to return refers to the owner or the relevant authorities requesting the return or surrender of the property, and refusing to return or surrender it has an independent meaning [12]. There is also the view that, the constitutive act of the crime of misappropriation is the act of infringing upon or hindering the right of others to request for return, and that 'unlawfully appropriating for oneself' and 'refusing to return' are both acts of infringing upon the right of request for return. The specific meanings of the two, both overlap and independence [13].

The determination of a property offence should be based on the means of acquiring the property, and not on the behaviour after the acquisition of the property. In the crime of misappropriation, the means of obtaining property is illegal occupation for oneself, and refusing to return it is only the behaviour after obtaining the property. This paper believes that 'refusing to return' is 'illegal possession' of the complement and emphasis, does not have independent meaning, both to express is to change the legal possession for illegal ownership. In addition, from the perspective of interpretation theory, theft is a crime of destroying the old possession so as to establish a new possession, i.e., the crime of transferring possession, while the crime of misappropriation is a non-transferring possession crime, compared with the crime of theft, because the crime of misappropriation is not easy to differentiate whether or not to transfer the possession in the objective aspect, so the legislator expressly stipulates 'refusing to return' to emphasise that the essence of the offence of misappropriation lies in turning legal possession into illegal ownership. In other words, the real constituent element in the offence of misappropriation is only 'unlawful appropriation', while 'refusal to return' is not a constituent element of the offence of misappropriation, but only an emphasis and description of 'unlawful appropriation'.is emphasised and illustrated, and does non necessitate that the perpetrator has cognition of the ' refusal to return '.

It has been sufficiently argued that the act of pinching the card by the card supplier does not constitute the offence of theft, that it constitutes the offence of misappropriation. Therefore, the card supplier was in possession and illegally appropriated for himself the claim asserted by the card user against the bank, which constitutes the offence of misappropriation. Regarding the fact that the object of the act required by the offence of misappropriation must be a custodial object or a lost or buried object, after excluding lost and buried objects, this paper believes that it can be regarded as a custodial object. Because in the cardholder to the bank to claim deposit claims need to go through the medium of the cardholder, in fact, the cash to the cardholder, the cardholder to the cash and the bank for deposit withdrawal business,

by the cardholder to the bank to claim the deposit claims, only when the cardholder's deposit claims can be realised, the cardholder can regain the cash, so that the cardholder's cash to the cardholder for safekeeping is justified. In the case of a cardholder pinching the card, the cardholder's deposit claim against the bank is lost because the cardholder cuts off the realisation of his deposit claim against the bank, the cardholder's claim against the cardholder is realised, and the cash which belongs to the cardholder in the custody of the cardholder is illegally appropriated by the cardholder. Similarly, there is no need for the circumstance that 'after Gao Mouyi repeatedly contacted Defendant Gao Mouyi through mobile phone calls and text messages to ask him to return his deposits, Defendant Gao Mouyi refused to do so' [1]. In order to satisfy the crime of misappropriation.

As to whether to evaluate the withdrawal behaviour, this paper believes that in the normal use of the card provider pinch card cases do not need to pay attention to the withdrawal behaviour, because the card provider in the card against the will of the card user under the premise of the private pinch card is sufficient to show that it has the purpose of illegal occupation, and the implementation of the objective aspects of the act. The withdrawal act can be regarded as in the completion of the crime as a matter of course, does not have the significance of evaluation.

The Withdrawal of Money Behaviour Nature Analysis

In the case of wire fraud, since the property interests of the card user are not protected by criminal law, the card pinching behaviour of the card pinching person objectively prevents the telecommunication fraudster from ultimately obtaining the property, and it has a positive effect on recovering the property loss of the victim of telecommunication fraud, so it cannot be dealt with as a property crime [2].

However, the act of withdrawal committed by the card donor after pinching the card constitutes a property crime.

In practice, the card provider's various withdrawal acts are considered as theft, is the 'card funds' as the object of the act, and that the card funds are in the possession of the card user, i.e., telecommunication fraudsters, the card provider's actions against the will of the telecommunication fraudsters, and thus constitute the crime of theft of the telecommunication fraudsters.

However, the bank is not allowed to provide the cardholder to take out the cash obtained by fraud from the bank, and the cardholder's act of taking out the money either violated the bank's will or deceived the bank by concealing

the truth. Article 20 of the Law of the People's Republic of China Against Telecommunications Network Fraud provides that the public security department of the State Council, in conjunction with the relevant departments, shall establish and improve the system of instant enquiry, emergency stop payment, rapid freezing, timely unfreezing and return of funds involved in telecommunications network fraud, and shall specify the relevant conditions, procedures and relief measures; where the public security organ decides to take the aforesaid measures in accordance with the law, the banking financial institutions and non-banking payment institutions shall co-operate with them.

The bank should not have fulfilled its obligations to the card provider, but the card provider took out the cash, which of course belongs to the loss of property. Only formally speaking, the bank's loss of cash is compensated by reducing the cardholder's 'deposit claim'. But the cardholder's 'deposit claim' should never have been realised in the first place.

Based on the above discussion, it is necessary to consider whether the bank disposed of the property on the basis of cognitive error, and then distinguish whether the behaviour of the card supplier constitutes the crime of theft or fraud. The People's Bank of China's Notice on Matters Relating to Strengthening Payment and Settlement Management and Preventing Emerging Illegal Crimes in Telecommunications Networks provides that: 'Where new types of illegal crimes in telecommunications networks occur, banks and payment institutions should be investigated for the implementation of their responsibilities. If banks and payment institutions violate the relevant system as well as the provisions of this Circular, they shall be punished in accordance with the relevant provisions.' This makes it abundantly clear that if the bank staff knows that the funds in the bank card of the card supplier belong to the funds obtained by telecommunication fraud, it is absolutely impossible for them to want to pay cash to the card supplier. On the contrary, the card-supplier can withdraw money from the bank counter only if he or she fakes and conceals the truth. Similarly, the bank could not have agreed to the card supplier obtaining remittances from ATMs derived from telecommunication fraud. This is sufficient to show that the card supplier's act of obtaining the remittance of the proceeds of fraud is a crime of fraud or theft.

In summary, the act of withdrawing money by the card supplier constitutes a property offence. The act of withdrawing money from the machine against the will of the bank administrator constitutes the offence of theft, while the act of the card donor concealing the truth and withdrawing money from the bank counter, which caused the bank employee to make a mistake and thus dispose of the cash,

constitutes the offence of fraud.

Conclusion

The term 'deposit', which is commonly used in legal documents, refers to a claim for a deposit made by a cardholder against a bank, and the cash to which the claim for the deposit refers is separate from the claim itself. Determining the nature of the 'deposit' is important for resolving disagreements in kind, and helps to clarify that the card supplier always has possession of the deposit claim. The lending of the card between the provider and the user is a violation of both the law and the contract with the bank. The card user's deposit claim against the bank is legally dependent on the card supplier's deposit claim against the bank, and there is no debt relationship between the card user and the bank. In the normal use of type pinch card occasions, although the cardholder in fact control of the bank card, but not in possession of its recorded deposits and the corresponding deposit claims, the bank is always in possession of the deposits of cash, deposit claims in the possession of the cardholder under the control of the control of the cardholder, therefore, the cardholder in the case of against the will of the cardholder card loss, reappointment, the funds in the card transfers or cash withdrawals, in line with the crime of misappropriation of the constituent elements of the crime. Elements. Since the subsequent withdrawal of funds is an ex officio act after the offence, the withdrawal of funds under this type may not be evaluated.

In the case of a wire fraud type where the card donor pinches the card, the act of the card donor pinches the card may not be treated as a property offence because the act of the card donor pinches the card can, in fact, have a positive effect on recovering the victim's loss. However, in this case, the act of withdrawing money after the cardholder has pinched the card constitutes a property offence. But the source of the property does not belong to the telecommunications fraudsters but the bank, because the card provider does not need to telecommunications fraudsters to assume the obligation to return the cash, the card provider was able to take out the cash from the telecommunications fraud victims. Banks based on the prevention of telecommunications fraud and other illegal and criminal events, should not be the source of the telecommunications fraud stolen funds deposit claims to perform the obligation to pay cash, and the card provider's withdrawal in fact caused the bank's property losses, the establishment of property crime.

Specifically, the act against the bank teller constituted the offence of fraud, and the act against the ATM constituted the offence of theft.

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