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**THINGS LEFT UNSAID: IMPLICIT OBLIGATIONS UNDER
LOUISIANA LAW IN *STAR FINANCIAL SERVICES, INC. v.
CARDTRONICS USA, INC.***

Nancy A. Maurice*

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I. INTRODUCTION

Louisiana law is known for its French and Spanish heritage. This legacy draws a bond with civil law systems all over the world through a common basis of codified legal principles. The *Star Financial* case¹ illustrates how the civil law tradition influences Louisiana law (and practice) in the interpretation of contracts.

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1. *Star Financial Services, Inc. v. Cardtronics USA, Inc.*, 882 F.3d 176 (5th Cir. 2018).

The Louisiana Civil Code sets the determination of the common intent of the parties as the cardinal point in interpreting a contract.² This common intention is usually expressed by words, an objective declaration both parties could rely on. Yet, all the contingencies of the contract might not be put into words. In case of a dispute, courts may have to seek beyond ordinary words to ascertain the obligations of the parties and construe the meaning of the contract within the framework provided by the Louisiana Civil Code. When the plain language of the contract does not provide for all contingencies, may a court interpret it to construe implicit obligations?

II. BACKGROUND

The plaintiff Star Financial Services, Inc. (“Star Financial”), an automated teller machine (“ATM”) operator, entered into a contract with Cardtronics, USA, Inc. (“Cardtronics”) in which Cardtronics agreed to process the electronic transfer of funds associated with operating ATMs. In accordance with the contract, Star Financial had an obligation to provide Cardtronics with a “fully and accurately completed”³ terminal set-up form for every terminal. Cardtronics would credit amounts withdrawn by customers back to the bank account designated on the form. Star Financial also had the obligation to keep the terminal set-up forms “correct and complete”⁴ and to notify Cardtronics immediately in case of any change of information.

The dispute arose when Star Financial mistakenly designated an account belonging to a third-party rather than its own when submitting terminal set-up forms for three terminals to be activated. The next day, Star Financial notified Cardtronics of its mistake and provided accurate terminal set-up forms for those terminals. Cardtronics received the

2. LA. CIV. CODE. ANN. art. 2045 (2018). This provision echoes the French Civil Code, CODE CIVIL [C. CIV.] former art. 1156 (now art. 1188 following the 2016 Reform of Contract Law and Obligations).

3. *Star Financial Services*, 882 F.3d at 178.

4. *Id.*

information but only corrected the account information for one of the terminals.

As a consequence, Cardtronics credited the amounts withdrawn from the two other terminals to a third-party account, rather than to Star Financial's account. Star Financial promptly notified Cardtronics of the error when it noticed an abnormal shortage of funds in its account. The misdirected funds amounted to a total of \$250,000, of which Star Financial could only partly recover from the third-party account. Star Financial sued to recover the remaining funds, alleging a breach of Cardtronics's obligations under the contract to correct the account information of the terminals and failure to reimburse Star Financial for the resulting misdirected funds.

III. DECISION OF THE COURT

The District Court for the Eastern District of Louisiana granted Cardtronics's motion for summary judgement.⁵ The court ruled that, while the contract obliges Star Financial to provide Cardtronics with correct and complete terminal information, the "plain language of the contract"⁶ does not include Cardtronics's obligation to correct the account information after receiving updated terminal set-up forms.

On appeal, the Fifth Circuit reversed the District Court's grant of summary judgement, concluding that the District Court misread the contract. First, the court noted that the interpretative inquiry of the court stops only when the words of the contract are "clear and explicit and lead to no absurd consequences."⁷ In this case, the issue was that the contract does not explicitly state the contractual

5. *Star Financial Services, Inc. v. Cardtronics USA, Inc.*, No. 16-12537, 2017 WL 1064968, at *1 (E.D. La. Mar. 21, 2017). See *Summary judgment*, BLACK'S LAW DICTIONARY (10th ed. 2014):

A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law This procedural device allows the speedy disposition of a controversy without the need for trial.

6. *Star Financial Services*, 882 F.3d at 179.

7. *Id.*

obligations of Cardtronics upon receiving changes to a terminal set-up form. In fact, the District Court determined that Cardtronics had no obligation to use the correct information. This finding, however, was not coherent with the with the contract's repeated emphasis that Star Financial shall keep and submit correct terminal set-up forms. Indeed, this interpretation of the contract leads to the "absurd consequence" that Star Financial could never make effective changes to its terminal set-up forms. Therefore, the Fifth Circuit interpreted that the contract provided an implicit obligation of Cardtronics to deploy account information consistent with the updated terminal set-up forms provided by Star Financial Services.

IV. COMMENTARY

The tradition in Louisiana jurisprudence is to apply a rule of strict construction when interpreting contracts.⁸ As it will be discussed, this goes against the civil law tradition. Louisiana Civil Code article 2046 provides, as a general principle, that "[w]hen the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." This District Court's decision serves as an example of the application of the strict construction rule in Louisiana jurisprudence. This rule provides that "courts are bound to give legal effect to contracts according to the true intent of the parties to the contract," and that "intent must be determined by the words of the contract when these are clear and explicit and lead to no absurd consequences."⁹ Therefore, this principle does not authorize perversion of language and prevents courts from making a new contract where the language employed by the parties expresses their true intent.¹⁰

8. SAUL LITVINOFF & RONALD J. SCALISE, 5 LA. CIV. L. TREATISE: LAW OF OBLIGATIONS § 12.101 (2d ed. West 2018).

9. See *Clearview Palms Partnerships v. Hibernia Nat. Bank*, 573 So.2d 1206, 1209 (La. App. 4th Cir. 1991).

10. See LITVINOFF & SCALISE, *supra* note 8.

In this case, was the District Court's application of the strict construction rule appropriate? The words of the contract were clear and explicit as to the obligations of Star Financial, but they were not as to the obligations of Cardtronics. Under the strict construction rule, the absence of words was translated into an absence of obligation by the District Court. The Fifth Circuit deemed it an absurd consequence of the interpretation of the contract: it undermined the effectiveness of the obligations of Star Financial.

This case raises a discussion on the rules on the interpretation of contracts available to the courts (A), and how a constructive interpretation may be more appropriate to determine the intent of the parties (B).

A. Interpretation of Implied Terms in the Louisiana Civil Code

According to the Louisiana Civil Code, the interpretation of a contract is guided by the common intent of the parties.¹¹ Courts have the power to seek this common intent, but the Louisiana Civil Code governs the instances when a contract needs to be interpreted and how to preserve a contract from denaturation.

This decision brings a reflection on the provisions of the Louisiana Civil Code, which contains several guidelines for the courts. When all contingencies are not expressly put into words, Louisiana law acknowledges the existence of implied terms. Several provisions support the idea that conditions¹² and even obligations¹³ may be implied by the nature of the contract. Therefore, the reasoning that the absence of an express provision amounts to no obligation is not sound. Courts should look

11. LA. CIV. CODE ANN. art. 2045 (2018).

12. *Id.* at art. 1768: "Conditions may be either expressed in a stipulation or implied by the law, the nature of the contract, or the intent of the parties."

13. *Id.* at art. 1777: "A term for the performance of an obligation may be express or it may be implied by the nature of the contract"

at the greater purpose of the contract when interpreting it. The provisions on the interpretation of contracts encourage courts to pursue the reasonable meaning of the contract. For instance, article 2050 specifies that provisions of the contract must be interpreted in light of each other in order to give meaning to the contract as a whole.¹⁴

Surprisingly, neither the District Court nor the Fifth Circuit relied on article 2054,¹⁵ which was particularly appropriate in this dispute. Indeed, article 2054 provides for cases where the parties made no provision for a particular situation. In this contract, the parties created a procedure for Star Financial to make changes to a terminal set-up form but did not provide for Cardtronics's obligations upon receiving these changes. Both courts chose to mobilize the strict construction rule by refraining from interpreting the contract or, on appeal, by pursuing interpretative inquiry. Precisely, Cardtronics's obligation to deploy account information in an updated terminal set-up form should be considered as "implied in a contract of that kind or necessary for the contract to achieve its purpose" as provided by article 2054. Article 2051 also conveys the idea that courts may look beyond the general words of the contract to infer the obligations the parties intended to include.¹⁶

Although this decision does not embrace the abundance of the provisions in the Louisiana Civil Code, the approach of

14. *Id.* at art. 2050: "Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole."

This provision is substantially identical to C. CIV. art. 1189.

15. *Id.* at art. 2054:

When the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind or necessary for the contract to achieve its purpose.

16. *Id.* at art. 2051: "Although a contract is worded in general terms, it must be interpreted to cover only those things it appears the parties intended to include."

the Fifth Circuit raises a rather interesting alternative on constructive interpretation of contracts.

B. A Necessary Constructive Interpretation of the Contract

The District Court erred in reading the contract because its reasoning rested on an objective approach to the contract: the parties could only rely on the words used. Since there were no words describing Cardtronics's obligations in the update procedure, there was no incentive to impose the unspecified on the company. The Fifth Circuit reviewed the case under an *ad hoc gap filling* approach, which is when "the party agreement is supplemented with terms that follow from the hypothetical will of the parties in the circumstances of the case."¹⁷ Courts may interpret the agreement to fill in the gaps, implied terms that were not specified by the parties. The Fifth Circuit filled in the gaps by relying on article 2046. This provision opens the door to interpretative injury when the words of a contract lead to absurd consequences.

Furthermore, it seems that the court read the contract as synallagmatic and commutative one.¹⁸ The parties obligated themselves reciprocally, so both parties had an obligation that was correlative to the obligation of the other. On the one hand, Star Financial had to provide "accurately completed"¹⁹ terminal set-up forms to his electronic funds' provider; and on the other hand, Cardtronics had to react according to the performance of the obligation of his counterparty. Cardtronics's obligation, although implied, was complementary to Star Financial's obligation, and, necessary for the good process of the transactions.

17. JAN M. SMITS, *CONTRACT LAW—A COMPARATIVE INTRODUCTION* 122 (Edward Elgar Publ'g 2014).

18. LA. CIV. CODE ANN. art. 1908 (2018): "A contract is bilateral, or synallagmatic, when the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other." *Id.* at art. 1911: "A contract is commutative when the performance of the obligation of each party is correlative to the performance of the other."

19. *Star Financial Services*, 882 F.3d at 178.

The approach of the court can be compared to the French law theory of *économie générale du contrat* (economy of the contract). This concept was created under French jurisprudence and is increasingly used by the *Cour de cassation* to analyze contracts, to remedy unwritten provisions, and to remedy inadequacies in order to recognize the will expressed (or to substitute for the absence of expressed will of the parties).²⁰ Under this approach, the judge considers the content of the contract in a comprehensive manner and conducts a business oriented reading of the contract, dissociating it from the *prima facie* intent of the parties. The Fifth Circuit used reasoning similar to that of French civil law when interpreting the contract, such that it would not lead to absurd consequences. The common incentive is to sort out the essence of a contract by looking first at the consequences of the inexecution of obligations on the functioning of the contract as a whole, rather than the words put on paper.

V. CONCLUSION

The common intent of the parties is the starting point for the interpretation of a contract, but it cannot remain an end in itself. In circumstances where a contract is silent, or where the parties have not anticipated all the outcomes of the contract, courts can vouch for the economy of the contract. In a constructive approach, the business efficacy of the contract should be almost as important as the words or the unwritten ones of the contract: the intent of the parties is the best achievement of the contract. Unless there is evidence that the parties intended differently, it is safe to assume that they intended their contract to be economically effective and efficient.

20. Ana Zelcevic-Duhamel, *La notion d'économie du contrat en droit privé*, JCP 2001, no. 300.