V. ARTÍCULO 4A SOBRE LA TRASFERENCIA DE FONDOS

A. LA TRANSFERENCIA ELECTRÓNICA DE FONDOS

CORFAN BANCO ASUNCION PARAGUAY, a foreign banking corporation, Ap-pellant, vs. OCEAN BANK, a Florida bank, Appellee. COURT OF APPEAL OF FLORIDA, THIRD DISTRICT 715 So. 2d 967; 35 U. C. C. Rep. Serv. 2d 132 June 10, 1998, Opinion Filed

OPINION BY: SORONDO [*968] Corfan Banco Asuncion Paraguay, a foreign banking corporation (Corfan Bank), appeals the lower court's entry of a Final Summary Judgment in favor of Ocean Bank, a Florida bank.

On March 22, 1995, Corfan Bank originated a wire transfer of $72,972.00 via its intermediary Swiss Bank to the account of its customer, Jorge Alberto Dos Santos Silva (Silva), in Ocean Bank. The transfer order bore Silva's name as the recipient and indicated that his account number was 01007**0**21**0**40**0** (in fact, this was a nonexistent account). Upon receipt of the wire transfer, Ocean Bank noticed a discrepancy in this number and before depositing the money, confirmed with Silva that his [**2] correct account number was 01007**6**21**6**40**6**. [1] Ocean Bank did not, however, inform Corfan Bank or Swiss Bank of the error. Once the correct number was confirmed by Silva, Ocean Bank accepted the wire transfer and credited Silva's account.

1 As indicated by the bold, underlined numbers, the three sixes in the account number had been replaced with zeros on the transfer order.

The next day, Corfan Bank became aware of the account number discrepancy and, without first checking with either Silva or Ocean Bank, sent a second wire transfer of $72,972.00 to Silva's correct account number at

Ocean Bank. The second transfer order did not indicate that it was a correction, replacement or amendment of the March 22nd transfer. Because the information of the transfer was correct, it was automatically processed at Ocean Bank and was credited to Silva's account. Several days later, Corfan Bank inquired of Ocean Bank regarding the two transfers, maintaining that only one transfer was intended. By [**3] that time, Silva had withdrawn the proceeds of both wire transfers. [2] When Ocean Bank refused to repay $72,972.00 to Corfan Bank, this litigation ensued. Corfan Bank proceeded on two claims, one based on the *section 670.207, Florida Statutes* (1995), which codifies as Florida law section 4A-207 of the Uniform Commercial Code (UCC), and one based on common law negligence. Ocean Bank answered denying liability under the statute and also contending that the negligence claim was precluded by the preemptive statutory scheme.

2 Eventually, Silva acknowledged that he owed Corfan Bank $72,972.00 and gave Corfan a series of post-dated checks to repay that amount, plus interest. However all the checks bounced.

The trial court, emphasizing that Florida's adoption of the UCC sections concerning wire transfers did not abrogate the basic tenets of commercial law, found that Ocean Bank had not contravened *section 670.207* by crediting the erroneous March 22nd wire transfer to Silva's account. Finding that Corfan Bank was [**4] the party best situated to have avoided this loss, the court held that [*969] Corfan Bank must bear that loss and, therefore, the court granted Ocean Bank's motion for summary judgment as to count one (the UCC count). Additionally, the court dismissed count two (the negligence count).

We begin with a review of the exact language of *section 670.207(1), Florida Statutes*:

(1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

Corfan Bank argues that this language is clear and unambiguous, where a name or bank account number, or other identification refers either to a nonexistent or unidentified person or a nonexistent account, the order cannot be accepted. Ocean Bank responds that such a "highly technical" reading of the statute is "contrary to commercial and practical considerations and common sense." It suggests that we look to the legislative intent and conclude that the "or" in the statute should be given conjunctive [**5] rather than disjunctive effect. [3] We respectfully decline Ocean Bank's invitation to look behind the plain language of the statute and conclude that given its clarity it must be read as written.

3 See *Byte Int'l Corp. v. Maurice Gusman Residuary Trust No. 1, 629 So. 2d 191 (Fla. 3d DCA 1993)*; *Harper v. Cooper, 226 So. 2d 878 (Fla. 4th DCA 1969)*; *Infante v. State, 197 So. 2d 542 (Fla. 3d DCA 1967)*; *Dotty v. State, 197 So. 2d 315 (Fla. 4th DCA 1967)*.

In *Capers v. State, 678 So. 2d 330 (Fla. 1996)*, the Florida Supreme Court stated:

The plain meaning of statutory language is the first consideration of statutory construction. *St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071, 1073 (Fla. 1982)*. Only when a statute is of doubtful meaning should matters extrinsic to the statute be considered in construing the language employed by the legislature. F*lorida State Racing Comm'n v. McLaughlin, 102 So. 2d 574, 576 (Fla. 1958)*. *678 So. 2d at 332*. See also *Starr Tyme, Inc. v. Cohen,*

[**6] *659 So. 2d 1064 (Fla. 1995)*; *C. W. v. State, 655 So. 2d 87 (Fla. 1995)*; *Baker v. State, 636 So. 2d 1342 (Fla. 1994)*; *State v. Jett, 626 So. 2d 691 (Fla. 1993)*; *Weber v. Dobbins, 616 So. 2d 956 (Fla. 1993)*; *In re McCollam, 612 So. 2d 572 (Fla. 1993)*; *Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank, 609 So. 2d 1315 (Fla. 1992)*; *Taylor Woodrow Constr. Corp. v. Burke Co., 606 So. 2d 1154 (Fla. 1992)*; *Streeter v. Sullivan, 509 So. 2d 268 (Fla. 1987)*. These cases preclude the analysis urged by Ocean Bank. Although Ocean Bank's position has been noted in the legal literature, [4] "unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language." *Jett, 626 So. 2d at 693*. Then Chief Justice Rosemary Barkett explained the reasoning [*970] behind this principle in *Weber v. Dobbins, 616 So. 2d 956 (Fla. 1993)*:

4 One respected treatise on the Uniform Commercial Code analyzes the code provision, 4A-207(a), which is identical to the statute in question, as follows:

The requirements of subsection 4A-207(a) are stated in the disjunctive. Thus, apparently, if the payment order name and bank account number provide an identifiable or known person but "other identification of the beneficiary" refers to a nonexistent or unidentifiable person or account, subsection 4A-207(a) is literally applicable. The express deference in subsection 4A-207(a) to subsection 4A-207(b) does not appear to resolve this conundrum. Subsection 4A-207(b) provides rules only for payment orders in which the beneficiary is identified "by both name and an identifying or bank account number" in the instance in which the name and the number identify different persons.

It does not appear that this anomaly in subsection 4A-207(a) was intended; nonetheless, the subsection 4A-207(a) suggests only one preventive mechanism for

avoiding this conundrum: the sender should include no "other identification of the beneficiary" which might "refer to a nonexistent or unidentifiable person or account." Then subsection 4A-207(a) would be harmonized with subsection 4A-207(b) as long as the name and account number refer to the same identifiable person or account. If they refer to different identifiable persons or accounts then subsection 4A-207(b) controls. If either the name or account number refers to a nonexistent or unidentifiable person then subsection 4A-207(a) is again applicable.

William D. Hawkland & Richard Moreno, Uniform Commercial Code Series, § 4A-207:01 (1993)(emphasis added).

[**7] The reason for the rule that courts must give statutes their plain and ordinary meaning is that only one branch of government may write laws. Just as a governor who chooses to veto a bill may not substitute a preferable enactment in its place, courts may not twist the plain wording of statutes in order to achieve particular results. Even when courts believe the legislature intended a result different from that compelled by the unambiguous wording of a statute, they must enforce the law according to its terms. A legislature must be presumed to mean what it has plainly expressed, and if an error in interpretation is made, it is up to the legislature to rewrite the statute to accurately reflect legislative intent. *616 So. 2d at 959-60* (Barkett, C. J., dissenting)(citations omitted).

The Supreme Court of Florida has fashioned only one exception to this general rule: "this Court will not go behind the plain and ordinary meaning of the words used in the statute unless an unreasonable or ridiculous conclusion would result from failure to do so." *Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)*. The plain and ordinary meaning of

the words of the statute under review do not lead to either [**8] an unreasonable or ridiculous result. As discussed more thoroughly below, one of the critical considerations in the drafting of Article 4A was that parties to funds transfers should be able to "predict risk with certainty, to insure risk with certainty, to adjust operational and security procedures, and to price funds transfer services appropriately." See 19A Fla. Stat. Ann. 15 (U. C. C. cmt. 1995). All of these goals are reasonable and assured by the plain statutory language.

In the present case, although the payment order correctly identified the beneficiary, it referred to a nonexistent account number. Under the clear and unambiguous terms of the statute, acceptance of the order could not have occurred. As the Florida Supreme Court stated in Jett:

We trust that if the legislature did not intend the result mandated by the statute's plain language, the legislature itself will amend the statute at the next opportunity. *Jett, 626 So. 2d at 693*.

As indicated above, the trial court dismissed count two of the complaint which sounded in negligence. The court concluded that the statutory scheme preempts the common law remedy of negligence. It is not clear whether the [**9] adoption of Article 4A of the UCC abrogated the common law cause of action for negligence relating to a wire transfer, as raised in count two of the complaint. The Uniform Commercial Code Comment following *section 670.102, Florida Statutes* (1995), which delineates the subject matter for chapter 670, provides in part:

In the drafting of Article 4A, a deliberate decision was made to write on a clean slate and to treat a funds transfer as a unique method of payment to be governed by unique rules that address the particular issues raised in this method

of payment. A deliberate decision was also made to use precise and detailed rules to assign responsibility, define behavioral norms, allocate risks and establish limits on liability, rather than to rely on broadly stated, flexible principles. In the drafting of these rules, a critical consideration was that the various parties to funds transfers need to be able to predict risk with certainty, to insure against risk, to adjust operational and security procedures, and to price funds transfer services appropriately. This consideration is particularly important given the very large amounts of money that are involved in funds transfers.

[**10] Funds transfers involve competing interests -- those of the banks that provide funds transfer services and the commercial and financial organizations that use the services, as well as the public interest. These competing interests were represented in the drafting process and they were thoroughly considered. ***The rules that emerged represent a careful and delicate balancing of those interests and are intended to be the exclusive means of determining the rights, duties and liabilities of the affected parties in any situation covered by particular provisions of the Article.*** Consequently, resort [*971] to principles of law or equity outside of Article 4A is not appropriate to create rights, duties and liabilities inconsistent with those stated in this Article.

(Emphasis added). See U. C. C. § 4A-102 cmt. (1977); see also, 19A Fla. Stat. Ann. 15 (U. C. C. cmt. 1995)(emphasis added). This comment suggests the exclusivity of Article 4A as a remedy. Although the commentary to the UCC is not controlling authority, see *Solitron Devices, Inc. v. Veeco Instruments, Inc., 492 So. 2d 1357, 1359 (Fla. 4th DCA 1986)*; 1 Ronald A. Anderson, Anderson on the [**11] Uniform Commercial Code, §§ 1-102:34-:37 (1995 Revision), we are persuaded by the expressed intent of the drafters.

In addressing this issue we restrict our analysis to the pleadings and facts of this case. In pertinent part, count two reads as follows:

Ocean Bank owed Corfan Bank a duty of care to follow the accepted banking practice of the community, and to return the funds from the first transfer to Corfan Bank upon receipt due to the reference in the first transfer to a non-existent account number.

The duty claimed to have been breached by Ocean Bank in its negligence count is exactly the same duty established and now governed by the statute. Under such circumstances we agree with the trial judge that the statutory scheme preempts the negligence claim in this case and affirm the dismissal of count two. [5] We do not reach the issue of whether the adoption of Article 4A of the UCC preempts negligence claims in all cases.

5 We note that allowing a negligence claim in this case would "create rights, duties and liabilities inconsistent" with those set forth in *section 670.207*. In a negligence cause of action, Ocean Bank would be entitled to defend on a theory of comparative negligence because Corfan Bank provided the erroneous account number which created the problem at issue and then initiated the second transfer without communicating with Ocean Bank. *Section 670.207* does not contemplate such a defense. (Oddly enough, allowing Corfan Bank's negligence claim in this case might actually inure to Ocean Bank's benefit). As explained in the comment, one of the primary purposes of the section is to enable the parties to wire funds transfers to predict risk with certainty and to insure against risk. The uniformity and certainty sought by the statute for these transactions could not possibly exist if parties could opt to sue by way of pre-Code remedies where the statute has specifically defined the duties, rights and liabilities of the parties.

[**12] We reverse the Final Summary Judgment entered by the trial court in favor of Ocean Bank as to count one of the complaint and affirm the dismissal of count two. We remand this case for further proceedings consistent with this opinion.

DISSENT BY: NESBITT I respectfully dissent. I would affirm final summary judgment for Ocean Bank. In my view, the trial court's well-reasoned and pragmatic approach to the interpretation of *section 670.207, Florida Statutes* (1995), was the best solution to the disagreement between these parties. Corfan Bank itself was negligent in handling the wire transfer in question. Corfan Bank incorrectly listed Silva's account number on the first wire transfer order and, compounding that error, Corfan sent the second wire transfer order with no indication that it was a correction of the first. These errors caused Corfan's loss.

More important, the language of *section 670.207* does not proscribe the actions taken by Ocean Bank. *Section 670.207* precludes acceptance of a wire transfer order only if "the name, account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account." [**13] Considering this section in its entirety as statutory construction requires, see *Fleischman v. Department of Professional Regulation, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983)*, it seems apparent that the part of the statute that permits the receiving bank to look to "other identification" surely allows more flexibility than the majority here would permit.

In my view, the statute question should neither be construed in the disjunctive or the conjunctive. As stated above, the construction of a statute that will reject part of it should be avoided. See *Snively Groves, Inc. v. Mayo, 135 Fla. 300, 184 So. 839 (1938)*; or, as sometimes stated, "A court should avoid [*972] reading the statute so that it will

render part of the statute meaningless." *Unruh v. State, 669 So. 2d 242, 245 (Fla. 1996)*. There are segments of this statute that plainly permit a receiving bank to look at other identification, thus affording the receiving bank more flexibility in making the correct identification than the court recognizes today.

Ocean Bank's actions seem to better comport with the overall statutory scheme relating to funds transfers [6] than the avenue supported by the court. The primary purpose [**14] of using a wire transfer of funds is to enable the beneficiary to get the funds quickly. Indeed, commercial or contract deadlines may be adversely impacted if the wire transfer does not go through quickly, as anticipated. We should recognize that the importance of speed in a wire transfer becomes even more critical in transactions involving different countries with, perhaps, different time zones. For example, if transmitting bank Corfan was closed by the time the funds were received by Ocean Bank, Ocean Bank would not have been in a position to rectify the error until the next business day--which might well render the entire reason for the transfer moot.

6 *Chapter 670, Florida Statutes* (1995).

Ocean Bank chose to use the beneficiary's name (which was properly included on the first wire transfer order) and "other identification of the beneficiary"--the fact that the account number given was similar to that of the beneficiary, as well as verification that the beneficiary was expecting the transfer--in order to [**15] accept the wire transfer and properly credit the beneficiary's account. Ocean Bank decided that there was enough information in the first wire transfer order for it, after verification, to credit the transfer to the beneficiary's account. The order contained the beneficiary's name and account number, with a few zeros replacing the correct "6"s. This information

referred not to a "nonexistent or unidentifiable person or account" but rather to an existing customer--the intended beneficiary--and to an identifiable (through "other identification") account.

I can find no common sense reason to prohibit Ocean Bank or other banks from accepting the responsibility that goes with choosing to use "other identification" in order to deposit funds into a customer's account. Basically, by verifying with Silva that he was the intended beneficiary, Ocean Bank was correcting Corfan Bank's error. Ocean Bank was seeking to aid its customer, the intended beneficiary of the funds, in getting the funds in an expeditious manner. Had Ocean Bank erroneously deposited the funds into the wrong account, it would have to face the liability associated with that decision. However, it should not face liability [**16] because it deposited the funds into the correct account--the intended beneficiary's account. Indeed, it was only because of Ocean Bank's actions that the intended beneficiary, Mr. Silva, received the funds from the first transfer.

Moreover, as the trial court emphasized, Florida's enactment of the U. C. C. did not abrogate other common law principles applicable to commercial transactions. A longstanding equitable tenet of Florida law is that, as between two innocent parties, the party best suited to prevent the loss caused by a third party wrongdoer must bear that loss. See *Exchange Bank of St. Augustine v. Florida Nat'l Bank of Jacksonville, 292 So. 2d 361, 363 (Fla. 1974)* ("If one of two innocent parties is to suffer a loss, it should be borne by the one whose negligence put in motion the flow of circumstances causing the loss.") See also *In re International Forum of Florida Health Benefit Trust, 607 So. 2d 432, 437 (Fla. 1st DCA 1992)* ("if two innocent parties are injured by a third party, either by negligence or fraud, the one who made the loss possible

must bear legal responsibility"); *Cheek v. McGowan Electric Supply Co., 483 So. 2d 1373, 1377 (Fla. 1st DCA 1986)* [**17] ("as between [two] innocent parties, the responsibility for [a third party's fraud] rests with the party who was in the better position to protect himself .")

In a federal case applying Florida law and the U. C. C. to a "lost check" situation, a U. S. District Court held that: "a negligent defendant will prevent a plaintiff from recovering for damages under [U. C. C.] Article 4 if the defendant can demonstrate that the plaintiff [*973] was negligent and that the plaintiff's negligence played a substantial role in the plaintiff's loss." *Norstar Bank of Upstate New York v. Southeast Bank, 723 F. Supp. 187, 191-92 (N. D. N. Y. 1989)*.

Here, Corfan put in issue the question of the correlative negligence of its and Ocean's actions. It is undisputed that Corfan was initially negligent in transmittal of the first wire transfer. It realized its mistake the following business day, and sent a second wire transfer with no indication it was a correction of the former. It was entirely unnecessary to transmit additional funds merely to correct the previous days error. If it had not sent the additional funds, it is unlikely there would ever have been a dispute bringing the matter before [**18] us. Simply, Corfan Bank was in a better position to prevent the loss and, indeed, Corfan's negligence played a "substantial role" in that loss. These facts should prevent its recovery from Ocean Bank. See *Exchange Bank, 292 So. 2d at 363*; *Cheek, 483 So. 2d at 1377*; *Norstar, 723 F. Supp. at 191-92*.

For the above-mentioned reasons, I would affirm.

¿Cuál es el problema si llegó a su destinatario esta transferencia bancaria despachada con los datos de la cuenta bancaria erróneos?

B. LA OPERACIÓN ELECTRÓNICA CON TARJETA DE CRÉDITO

FRANCIS H. AZUR, Appellant v. CHASE BANK, USA, NATIONAL ASSOCIA-TION formerly known as CHASE MANHATTAN BANK, USA, NATIONAL AS-SOCIATION formerly known as FIRST USA BANK, N. A. UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT 601 F.3d 212 January 27, 2010, Argued April 1, 2010, Filed

OPINION BY: FISHER [*213] Francis H. Azur filed suit against Chase Bank, USA, alleging violations of *15 U. S. C. §§ 1643* and *1666 of the Truth in Lending Act* (TILA) and a common law negligence claim after Azur's personal assistant, Michele Vanek, misappropriated over $1 million from Azur through the fraudulent use of a Chase credit card over the course of seven years. The District Court granted Chase's motion for summary judgment, and Azur appealed. We are presented here with three discrete issues for our review. [**2] First, we must determine whether *§ 1643 of the TILA* provides the cardholder with a right to reimbursement. [*214] Second, we must evaluate whether Azur's *§§ 1643* and *1666* claims are precluded because Azur vested Vanek with apparent authority to use the Chase credit card. Third and finally, we must decide whether Azur's negligence claim is barred by Pennsylvania's "economic loss doctrine." For the reasons stated herein, we will affirm, on partly different grounds, the District Court's order granting Chase's motion for summary judgment.

I.

A.

ATM Corporation of America, Inc. (ATM) manages settlement services for large national lenders. Azur, the

founder of ATM, served as its president and chief executive officer from 1993 until September 2007, when ATM was sold. In July 1997, ATM hired Vanek to be Azur's personal assistant. Vanek's responsibilities consisted of picking up Azur's personal bills, including his credit card bills, from a Post Office Box in Coraopolis, Pennsylvania; [1] opening the bills; preparing and presenting checks for Azur to sign; mailing the payments; and balancing Azur's checking and savings accounts at Dollar Bank. According to Azur, it was Vanek's job alone to review Azur's [**3] credit card and bank statements and contact the credit card company to discuss any odd charges. Azur also provided Vanek with access to his credit card number to enable her to make purchases at his request.

1 Azur had never been to the P. O. Box and did not have a key to it.

From around November 1999 to March 2006, Vanek withdrew without authorization cash advances of between $200 and $700, typically twice a day, from a Chase credit card account in Azur's name. [2] Azur was the sole cardholder and only authorized user on the account. Although Azur recalls opening a credit card account in or around 1987 with First USA, Chase's predecessor, [3] Azur was unaware that he had a Chase credit card.

2 When the misappropriation began in 1999, the account was at First USA Bank, National Association (First USA), Chase's predecessor. In April 2003, First USA became Bank One, Delaware, National Association (Bank One); in February 2006, Bank One merged with Chase.

3 Chase has possession of a letter dated July 20, 1999, and signed by Azur that authorizes First USA to "discuss and/or release information with my assistant Michelle Vanek." (App. at 1443A.)

Each fraudulent transaction included a fee of approximately [**4] $2.00 and a finance charge that corresponded to the amount withdrawn, ranging from $4.00 for a $100 advance, to $21.06 for a $700 advance. The fraudulent charges were reflected on at least 65 monthly billing statements sent by Chase to Azur, and Vanek paid the bills by either writing checks or making on-line payments from Azur's Dollar Bank checking account. When writing checks, Vanek forged Azur's signature. Over the course of seven years, Vanek misappropriated over $1 million from Azur.

The transactions occasionally triggered Chase's fraud strategies. [4] On April 16, 2004, Chase detected its first potentially fraudulent transaction, made outbound calls to the account's home telephone number, and left an automated message on the number's answering machine. Chase received [*215] no response. On April 23, 2004, one week later, Chase detected a second potential problem and left another automated message at the same telephone number. Three days later, Chase received a call from someone that was able to verify the account's security questions and validate the card activity. Although Chase's records indicate that the caller was female, Chase did not use voice recognition or gender identification [**5] as a means of security verification. Finally, on May 14, 2005, approximately one year later, Chase detected a third potentially fraudulent transaction and called the home telephone number. As before, five days later, a return caller once again verified the account activity. The account was paid in full without protest after each incident. [5]

4 Chase employed a computerized fraud detection system known as FALCON, which Chase claimed was the best fraud detection tool in the industry. In addition to FALCON, Chase reviewed authorizations in real time and employed other authorization controls, including placing

limitations on the number of ATM transactions completed in a day and on the dollar amounts of withdrawals.

5 Chase's records indicate that the calls were not made from the telephone number listed on the account.

On or about March 7, 2006, Azur discovered a suspicious letter requesting a transfer of funds from his checking account. After investigating, Azur and ATM discovered Vanek's fraudulent scheme and terminated her employment. On March 8, 2006, Azur notified Chase by telephone of the fraudulent use of the Chase account and closed the account. Thereafter, Azur sent Chase three pieces [**6] of correspondence relevant to this appeal: (1) a letter dated April 7, 2006; (2) an executed Affirmation of Unauthorized Use dated April 21, 2006; and (3) a letter dated May 17, 2006.

In the letter dated April 7, 2006, Azur notified Chase of the fraudulent use of the card, stated that he "is formally disputing that he is responsible for the payment of any unpaid charges and accompanying finance charges on [the] account" (App. at 48A), and requested statements, correspondence, and other documents regarding the account.

The Affirmation of Unauthorized Use, which Chase drafted and sent to Azur for execution, stated, "Any transaction(s) occurring on or after 10/09/2001 is/are also unauthorized." (*Id*. at 50A.) The Affirmation listed three credits, titled "unauthorized transactions," to Azur's account: (1) a "returned payment" in the amount of $10,000; (2) a "returned payment" in the amount of $20,000; and (3) a "fraudulent transaction" in the amount of $28,717.38. (*Id*.) Azur executed the document and returned it to Chase on April 21, 2006.

Finally, in the letter dated May 17, 2006, Azur once again notified Chase that he "continues to dispute any and

all unpaid charges stemming from the [**7] [Chase account], as well as all prior fraudulent transactions on that account, which have been the subject of prior communications between you and Mr. Azur and/or his representatives." (*Id*. at 52A.)

Because Azur closed the account on March 8, 2006, the account's final billing period ended on March 6, 2006. Chase has a "policy and practice" of mailing billing statements within two days of the close of each billing cycle.

B.

On February 22, 2007, [6] Azur filed an amended complaint against Chase under *§§ 1643* and *1666 of the TILA*, *15 U. S. C. §§ 1601 et seq. (2006)*, and common law negligence. [7] On April 8, 2008, Chase filed [*216] under seal a motion for summary judgment seeking dismissal of all three of Azur's claims.

6 Azur filed his original complaint on August 16, 2006.

7 Azur's requested relief included (a) " [d] amages in the amount of all payments collected by Chase for money misappropriated and [fraudulent] purchases;" (b) " [a] n injunction restraining Chase from collecting or attempting to collect, from Mr. Azur, amounts representing money misappropriated and [fraudulent] purchases;" (c) " [a] n order requiring Chase to request the removal of the adverse credit reports that Chase made to credit reporting [**8] agencies concerning Mr. Azur's credit status, and restraining Chase from submitting any further adverse credit reports concerning Mr. Azur;" and (d) " [c] ompensatory and punitive damages for Chase's unlawful submission of adverse credit reports concerning Mr. Azur's credit status." (App. at 80A-83A.)

On October 24, 2008, the Magistrate Judge issued a Report and Recommendation (R&R) suggesting that Azur's *§ 1643* claim proceed to trial but that Azur's other two claims be dismissed. Both parties filed objections, and Chase filed an additional motion for judgment on the pleadings for the *§ 1643* claim, arguing, based on this Court's decision in *Sovereign Bank v. BJ's Wholesale Club, Inc., 533 F.3d 162 (3d Cir. 2008)*, that *§ 1643* does not provide the cardholder with a right to reimbursement.

On January 7, 2009, the Magistrate Judge vacated his first R&R and issued a Supplemental R&R recommending that all three of Azur's claims be dismissed. The Magistrate Judge found that (1) Azur's *§ 1643* claim failed because Vanek had apparent authority to use Azur's credit card; (2) Azur's *§ 1666* claim failed because Azur did not send Chase a timely, written notice properly identifying the specific charges [**9] and amounts he was disputing; and (3) Azur's negligence claim was barred by Pennsylvania's economic loss doctrine. In light of this finding, the Magistrate Judge recommended that Chase's motion for judgment on the pleadings be dismissed as moot. On February 3, 2009, the United States District Court for the Western District of Pennsylvania adopted the Supplemental R&R, granted Chase's motion for summary judgment on all three counts, and dismissed Chase's motion for judgment on the pleadings as moot. Azur filed a timely notice of appeal.

II.

The District Court had jurisdiction pursuant to *28 U. S. C. §§ 1331* and *1367*, and we have jurisdiction pursuant to *28 U. S. C. § 1291*. "We review an order granting summary judgment de novo, applying the same standard used by the District Court." *Nicini v. Morra, 212 F.3d 798, 805 (3d Cir. 2000)* (en banc). "Summary judgment is proper where the

pleadings, depositions, answers to interrogatories, admissions, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id. at 805-06* (citing *Fed. R. Civ. P. 56(c)*). "Once the moving party points to evidence demonstrating no issue of material [**10] fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor." *Ridgewood Bd. of Educ. v. N. E. ex rel. M. E., 172 F.3d 238, 252 (3d Cir. 1999)*. We may affirm the District Court's order granting summary judgment on any grounds supported by the record. *Nicini, 212 F.3d at 805*. "To the extent that the District Court made conclusions of law, our review is de novo." *In re Merck & Co., Inc. Sec., Derivative & ERISA Litig., 493 F.3d 393, 399 (3d Cir. 2007)* (italics omitted).

III.

Azur appeals the District Court's order granting Chase's motion for summary judgment. Azur argues that the District Court erred in dismissing (1) his *§ 1643* claim based on its conclusion that Vanek had apparent authority to make the credit [*217] card charges as a matter of law; (2) his *§ 1666* claim based on its determination that Azur failed to meet the section's notice requirement; and (3) his negligence claim as barred by Pennsylvania's economic loss doctrine. Chase, in contrast, asks that we affirm the District Court's order. In addition, Chase contends that Azur does not have a right to reimbursement [**11] under *§ 1643* and that Vanek's apparent authority also precludes Azur's *§ 1666* claim. [8] We will begin by addressing, as an initial matter, whether *§ 1643* provides Azur with a right to reimbursement. Then, we will turn to Vanek's alleged apparent authority and Azur's negligence claim, respectively. [9]

8 Chase also argues that Azur's contributory negligence bars his negligence claim. Chase, however, likely waived this defense by failing to raise it in front of the Magistrate Judge or District Court. *See In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 262 (3d Cir. 2009)* ("For an issue to be preserved for appeal, a party must unequivocally put its position before the trial court at a point and in a manner that permits the court to consider its merits." (quotations and citations omitted)). Regardless, because we hold that Azur's negligence claim is barred by Pennsylvania's economic loss doctrine, *see* Section C, *infra*, we do not need to reach this issue.

9 Because we find that Vanek's apparent authority precludes both Azur's *§ 1643* and *§ 1666* claims, we decline to reach the issue of notice.

A. Right to Reimbursement

Chase argues that Azur cannot recover the money already paid to Chase under [**12] *§ 1643 of the TILA*. We agree. *Section 1643* does not provide the cardholder with a right to reimbursement. This is clear from the statute's language: "A cardholder shall be liable for the unauthorized use of a credit card only if ." *15 U. S. C. § 1643(a)*. "Liable" means " [r] esponsible or answerable in law" or "legally obligated." *Black's Law Dictionary* 998 (9th ed. 2009). *See also Webster's Third New Int'l Dictionary* 1302 (1993) (defining "liable" as "bound or obliged according to law or equity"). Accordingly, the statute's plain meaning places a ceiling on a cardholder's obligations under the law and thus limits a card issuer's ability to sue a cardholder to recover fraudulent purchases. The language of *§ 1643* does not, however, enlarge a card issuer's liability or give the cardholder a right to reimbursement.

We already reached this conclusion in *Sovereign Bank, 533 F.3d 162*. *Sovereign Bank* concerned, among other

things, an indemnification action by Sovereign Bank, a card "Issuer," against Fifth Third Bank, an "Acquirer," and BJ's Wholesale Club, Inc., a "Merchant," based on Sovereign Bank's assertion that it had a duty under *§ 1643* to reimburse a cardholder's account for all fraudulent [**13] charges in excess of $50. *Id. at 164, 174*. We disagreed:

"*TILA § 1643* does not impose any obligation on issuers of credit cards to pay the costs associated with unauthorized or fraudulent use of credit cards. It simply limits the liability of cardholders, under certain circumstances, to a maximum of $50 for unauthorized charges. Indeed, *§ 1643* does not address, nor is it even concerned with, the liability of an Issuer or any party other than the cardholder for unauthorized charges on a credit card. *Section 1643* imposes liability only upon the cardholder."

Id. at 175. Faced here with the same issue in a new context, we arrive at the same outcome: *§ 1643 of the TILA* does not provide the cardholder with a right to reimbursement. [10] Accordingly, to the extent [*218] that Azur requests reimbursement under *§ 1643* for money already paid to Chase, his claim fails.

10 Although other federal courts of appeals have assumed that a right to reimbursement exists, they have done so without analysis. *See Minskoff v. Am. Exp. Travel Related Servs. Co., Inc., 98 F.3d 703, 707, 710 (2d Cir. 1996)* (holding that the "appropriate resolution" on remand of a cardholder's *§ 1643* reimbursement claim is that " [the card [**14] issuer] is liable for [the user's] fraudulent purchases from the time the credit card was issued until [the cardholder] received the first statement from [the card issuer] containing [the user's] fraudulent charges plus a reasonable time to examine that statement."); *DBI Architects, P. C. v. Am. Express Travel-Related Servs. Co.,*

Inc., 388 F.3d 886, 888, 894, 363 U. S. App. D. C. 365 (D. C. Cir. 2004) (remanding a cardholder's *§ 1643* reimbursement claim to determine at what point the cardholder created apparent authority in the fraudulent user). *See also Asher v. Chase Bank USA, N. A., 310 F. App'x 912, 919 (7th Cir. 2009)* (stating, for statute of limitations purposes, that "a violation [of *§ 1643*] occurs when the card issuer notifies the cardholder that despite the cardholder's claim of fraud, the card issuer will not reimburse the cardholder for the disputed amount" in a nonprecedential opinion, which we cite solely due to Azur's reliance on the case at oral argument and in a subsequent Rule 28(j) letter) *and Carrier v. Citibank (S. D.), N. A., 383 F. Supp. 2d 334, 338, 341 (D. Conn. 2005)* (assuming a right to reimbursement under a card issuer's policy of "$0 liability for unauthorized use" but holding that [**15] the fraudulent user had apparent authority).

B. Apparent Authority

Vanek's alleged apparent authority is a more difficult issue. Relying on three cases, *Minskoff v. American Express Travel Related Services. Co., Inc., 98 F.3d 703 (2d Cir. 1996)*, *DBI Architects, P. C. v. American Express Travel-Related Services. Co., Inc., 388 F.3d 886, 363 U. S. App. D. C. 365 (D. C. Cir. 2004)*, and *Carrier v. Citibank (S. D.), N. A., 383 F. Supp. 2d 334 (D. Conn. 2005)*, the Magistrate Judge recommended that Azur's *§ 1643* claim be dismissed because Azur vested Vanek with apparent authority to make charges to the Chase account as a matter of law:

" [T] he plaintiff vested Michele Vanek with apparent authority to use the account, as the repeated payment of billed charges led Chase to reasonably believe the charges were authorized. Furthermore, the plaintiff's failure to

review his account statements and his lax supervision of Vanek, in whom he delegated authority to review his statements, prepare checks on the account, and discuss routine questions with the card issuer, constituted a negligent omission that created apparent authority in Vanek to incur the charges."

(App. at 17A.) The District Court agreed and dismissed Azur's *§ 1643* claim. [**16] On appeal, Azur argues that whether he clothed Vanek with apparent authority is an issue of fact to be decided by a jury.

The application of both *§§ 1643* and *1666 of the TILA* depend, in part, on whether the fraudulent user had apparent authority to use the credit card. As stated above, *§ 1643* provides that " [a] cardholder shall be liable for the unauthorized use of a credit card" in certain circumstances. *15 U. S. C. § 1643(a)*. The term "unauthorized use" is defined as the "use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit." *15 U. S. C. § 1602(o)*. Relatedly, *§ 1666(a)* sets forth the procedures a creditor must follow to resolve alleged billing errors. *15 U. S. C. § 1666(a)*. Like the phrase "unauthorized use," the phrase "billing error" includes " [a] reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan." *12 C. F. R. § 226.13(a)(1)*.

[*219] To determine whether apparent authority exists, we turn to applicable [**17] state agency law. *See* 12 C. F. R. Pt. 226, Supp. I ("Whether such [apparent] authority exists must be determined under state or other applicable law."); *Minskoff, 98 F.3d at 708* ("'Congress apparently contemplated, and courts have accepted, primary reliance

on background principles of agency law in determining the liability of cardholders for charges incurred by third-party card bearers.'" (quoting *Towers World Airways v. PHH Aviation Sys., 933 F.2d 174, 176-77 (2d Cir. 1991)))*. In this case, the parties do not refute the application of Pennsylvania law. Citing the Restatement (Second) of Agency, the Pennsylvania Supreme Court has explained as follows:

"Apparent authority is power to bind a principal which the principal has not actually granted but which he leads persons with whom his agent deals to believe that he has granted. Persons with whom the agent deals can reasonably believe that the agent has power to bind his principal if, for instance, the principal knowingly permits the agent to exercise such power or if the principal holds the agent out as possessing such power."

Revere Press, Inc. v. Blumberg, 431 Pa. 370, 246 A.2d 407, 410 (Pa. 1968). Similarly, we have stated that under Pennsylvania [**18] law " [t] he test for determining whether an agent possesses apparent authority is whether a man of ordinary prudence, diligence and discretion would have a right to believe and would actually believe that the agent possessed the authority he purported to exercise." *In re Mushroom Transp. Co., Inc., 382 F.3d 325, 345 (3d Cir. 2004)* (quotations and citations omitted). [11]

11 Pennsylvania agency law is comparable to general agency law principles. Restatement (Second) of Agency § 8 provides that " [a] pparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons," and § 27 explains that the "apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the

principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." Restatement (Second) of Agency §§ 8 and 27 (1958). Agency Third, adopted in 2005 and published in 2006, is similar: "apparent authority" [**19] is "the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." *Restatement (Third) of Agency § 2.03* (2006).

Although the articulation of the proper agency law standard is fairly easy, the application of that standard is difficult. Two decisions of the Second and D. C. Circuits, respectively, are instructive. In both cases, the Second and D. C. Circuits held that a cardholder's negligent omissions clothed the fraudulent card user with apparent authority under facts similar to those present in the instant case.

The Second Circuit in *Minskoff* was the first court of appeals to address this issue. Minskoff served as the president and chief executive officer of a real estate firm. *98 F.3d at 706*. In 1988, the firm opened an American Express corporate credit card account and issued one card in Minskoff's name. *Id*. In 1992, Minskoff's assistant, whom the firm had recently hired, applied for and obtained an additional card to the account in her own name without Minskoff's or the firm's knowledge. [**20] *Id*. From April 1992 to March 1993, the assistant charged a total of $28,213.88 on the corporate card. *Id*. During this period, American Express sent twelve monthly billing statements to the firm's address; each statement listed both Minskoff and the assistant as cardholders and separately [*220] itemized their charges. *Id*. At the same time, American Express was paid in full by a total of twelve forged checks drawn on bank accounts maintained by either Minskoff or

the firm at Manufacturers Hanover Trust (MHT), which also periodically mailed statements to the firm showing that the payments had been made. *Id. at 706-07, 710*. The assistant used the same system to misappropriate another $300,000 after applying for a platinum account. *Id. at 707, 710*. After discovering the fraud, Minskoff filed suit against American Express under the TILA. *Id. at 707*.

In determining whether or not the assistant had apparent authority to use the credit card, the Second Circuit began by differentiating between the acquisition and use of a credit card obtained through fraud or theft: " [W] hile we accept the proposition that the *acquisition* of a credit card through fraud or theft cannot be said to occur under the apparent [**21] authority of the cardholder, [that] should not preclude a finding of apparent authority for the subsequent *use* of a credit card so obtained." *Id. at 709*. Then, noting that " [n] othing in the TILA suggests that Congress intended to sanction intentional or negligent conduct by the cardholder that furthers the fraud or theft of an unauthorized card user," the court held that "the negligent acts or omissions of a cardholder may create apparent authority to use the card in a person who obtained the card through theft or fraud." *Id*. Applying that reasoning to the facts before it, the Second Circuit found that Minskoff's and the firm's failure to examine any of the credit card or bank statements created, as a matter of law, "apparent authority for [the assistant's] continuing use of the cards, especially because it enabled [the assistant] to pay all of the American Express statements with forged checks, thereby fortifying American Express' continuing impression that nothing was amiss with the Corporate and Platinum Accounts." *Id. at 710*. [12]

12 The Second Circuit relied in part on a New York law obligating consumers to exercise reasonable care and promptness in examining bank statements [**22] for errors.

Minskoff, 98 F.3d at 709. According to the court, the law derived from common law obligations. *Id*.

In *DBI Architects*, the D. C. Circuit took a narrower approach. DBI was a corporation with an AMEX [13] credit card account. *388 F.3d at 888*. In 2001, DBI appointed a new account manager of its D. C. and Virginia offices. Soon thereafter, the new manager requested that AMEX add her as a cardholder on DBI's corporate account without DBI's knowledge, although AMEX sent DBI an account statement reflecting the change. *Id*. From August 2001 to May 2002, the manager charged a total of $134,810.40 to the credit card. *Id*. As in *Minskoff*, AMEX sent DBI ten monthly billing statements -- each listing the manager as a cardholder and itemizing her charges -- and the manager paid AMEX with thirteen DBI checks. *Id*. Most of the checks were signed or stamped in the name of DBI's president; none were signed in the manager's own name. *Id*. Like Minskoff, DBI eventually filed suit against AMEX under the TILA. *Id. at 888*.

13 "AMEX" is the abbreviation used by the *DBI Architects* court to refer to American Express Travel-Related Services Company. *388 F.3d at 887*.

Acquainted with the Second Circuit's decision [**23] in *Minskoff*, the D. C. Circuit decided its case on narrower grounds. Rather than fault the cardholder for merely failing to inspect monthly credit card statements, the court focused on the cardholder's continuous payment of the fraudulent charges without complaint:

[*221] "DBI is correct that its failure to inspect its monthly billing statements did not clothe [the manager] with apparent authority to use its corporate AMEX account. [However,] AMEX is correct that DBI clothed [the manager] with apparent authority to use its corporate AMEX account by repeatedly paying without protest all of

[the manager's] charges on the account after receiving notice of them from AMEX."

Id. at 891. The court later explained its reasoning as follows:

"By identifying apparent authority as a limit on the cardholder's protection under *§ 1643*, Congress recognized that a cardholder has certain obligations to prevent fraudulent use of its card. DBI's troubles stemmed from its failure to separate the approval and payment functions within its cash disbursement process. [The manager] had actual authority both to receive the billing statements and to issue DBI checks for payment to AMEX. While DBI did not voluntarily relinquish [**24] its corporate card to [the manager], it did mislead AMEX into reasonably believing that [the manager] had authority to use the corporate card by paying her charges on the corporate account after receiving AMEX's monthly statements identifying her as a cardholder and itemizing her charges."

Id. at 893. Although the court acknowledged that payment might not always create apparent authority, it held that such authority existed as a matter of law in that case:

" [T] his is not a case involving an occasional transgression buried in a welter of financial detail. [] Nor is this a case involving payment without notice, as might occur when a cardholder authorizes its bank to pay its credit card bills automatically each month. Where, as here, the cardholder repeatedly paid thousands of dollars in fraudulent charges for almost a year after monthly billing statements identifying the fraudulent user and itemizing the fraudulent charges were sent to its corporate address, no reasonable juror could disagree that at some point the cardholder led the card issuer reasonably to believe that the fraudulent user had authority to use its card."

Id. at 893-94 (quotations and citation omitted). Ultimately, the [**25] court remanded the case to determine at what point the manager's apparent authority began. *Id. at 894*.

We agree with the D. C. Circuit's more nuanced analysis. "Apparent authority is power to bind a principal which the principal has not actually granted but which he leads persons with whom his agent deals to believe that he has granted." *Revere Press, 246 A.2d at 410*. A cardholder may, in certain circumstances, vest a fraudulent user with the apparent authority to use a credit card by enabling the continuous payment of the credit card charges over a period of time. As the D. C. Circuit reasoned, by identifying apparent authority as a limitation on the cardholder's protections under *§ 1643*, Congress recognized that the cardholder is oftentimes in the best position to identify fraud committed by its employees.

Here, Azur's negligent omissions led Chase to reasonably believe that the fraudulent charges were authorized. Although Azur may not have been aware that Vanek was using the Chase credit card, or even that the Chase credit card account existed, Azur knew that he had a Dollar Bank checking account, and he did not review his Dollar Bank statements or exercise any other oversight over [**26] Vanek, his employee. Instead, Azur did exactly what the D. C. Circuit in *DBI Architects* cautioned [*222] against: he "fail [ed] to separate the approval and payment functions within [his] cash disbursement process." *388 F.3d at 893*. Had Azur occasionally reviewed his statements, Azur would have likely noticed that checks had been written to Chase. Because Chase reasonably believed that a prudent business person would oversee his employees in such a manner, Chase reasonably relied on the continuous payment of the fraudulent charges.

Many of Azur's counter-arguments are beside the point. Azur asserts that *Minskoff* and *DBI Architects* are distinguishable because the fraudulent users in those cases were cardholders on the accounts. This distinction is irrelevant: Chase's belief that the fraudulent charges were authorized did not depend on whether the fraudulent charges were made by a second cardholder; Chase's belief was contingent upon the continuous payment of the fraudulent charges -- regardless of which card they were on -- without objection. Azur also focuses on Chase's failure to identify the fraud. [14] The issue, however, is whether Azur led Chase to believe that Vanek had authority to make [**27] the charges, not whether Chase's fraud-detecting tools were effective. Moreover, Vanek's ability to answer the account security questions over the telephone and the fact that Chase's fraud-detecting tools identified relatively few problems reinforce the conclusion that Chase was reasonable in believing, and did in fact believe, that the charges were authorized. In short, none of the arguments Azur has advanced persuade us to disturb the District Court's apparent authority determination.

14 First, Azur argues that Chase could not have reasonably believed that the charges were authorized because (1) Vanek's telephone calls were made from telephone numbers that did not match the number listed on the account, and (2) Vanek was female, when the account indicated that the only cardholder was male. Second, Azur contends that Chase's fraud-detecting tools, including FALCON, were ineffective because only three out of hundreds of fraudulent transactions triggered a response.

Accordingly, we hold that Azur vested Vanek with apparent authority to use the Chase credit card, thus barring his *§§ 1643* and *1666* claims.

C. Economic Loss Doctrine

Lastly, the District Court adopted the Magistrate Judge's recommendation [**28] and held that Pennsylvania's economic loss doctrine bars Azur's common law negligence claim against Chase. On appeal, Azur contends that the Pennsylvania Supreme Court case *Bilt-Rite Contractors, Inc. v. The Architectural Studio, 581 Pa. 454, 866 A.2d 270 (Pa. 2005)*, created an exception to the doctrine that applies to Azur because Azur does not have a contractual remedy. In response, Chase argues that the *Bilt-Rite* exception is narrow and does not cover Azur's claim.

Pennsylvania's economic loss doctrine "'provides that no cause of action exists for negligence that results solely in economic damages unaccompanied by physical or property damage.'" *Sovereign Bank, 533 F.3d at 175* (quoting *Adams v. Copper Beach Townhome Cmtys., L. P., 2003 PA Super 30, 816 A.2d 301, 305 (Pa. Super. 2003))*. The doctrine "'is concerned with two main factors: foreseeability and limitation of liability.'" *Id.* (quoting *Adams, 816 A.2d at 307*). The first Pennsylvania appellate court to discuss the doctrine explained,

"To allow a cause of action for negligent cause of purely economic loss would be to open the door to every person in the economic chain of the negligent person or business to bring a cause of action. Such an outstanding burden [**29] is clearly [*223] inappropriate and a danger to our economic system."

Aikens v. Baltimore & Ohio R. R. Co., 348 Pa. Super. 17, 501 A.2d 277, 279 (Pa. Super. 1985). The Pennsylvania Supreme Court has recognized the doctrine's existence. *See Excavation Techs., Inc. v. Columbia Gas Co. of Pa., 985 A.2d 840, 841-43 (Pa. 2009)*.

The Pennsylvania Supreme Court crafted a narrow exception to the doctrine in *Bilt-Rite*, where a building contractor filed a negligent misrepresentation claim against

an architect after its reliance on the architect's allegedly incorrect plans in its winning bid resulted in economic loss. *866 A.2d at 272*. Adopting *Section 552 of the Restatement (Second)*, which "sets forth the parameters of a duty owed when one supplies information to others, for one's own pecuniary gain, where one intends or knows that the information will be used by others in the course of their own business activities," *id. at 285-86*, the court refused to apply the economic loss doctrine to claims of negligent misrepresentation under *Section 552*: "to apply the economic loss doctrine in the context of a *Section 552* claim would be nonsensical: it would allow a party to pursue an action only to hold that, once the elements of [**30] the cause of action are shown, the party is unable to recover for its losses," *id. at 288*.

The Pennsylvania Supreme Court emphasized the narrow scope of the *Bilt-Rite* exception in *Excavation Techs*., where an excavator filed a negligent misrepresentation claim against a utility company pursuant to *§ 552* after the excavator sustained economic damages because the utility company erred in marking the locations of some of the gas lines. *985 A.2d at 841, 844*. In applying the economic loss doctrine, the court distinguished the case from *Bilt-Rite* on the grounds that, unlike architects, " [a] facility owner [] does not engage in supplying information to others for pecuniary gain. [Therefore], *§ 552(1)* and *(2)* do not apply here." *Id. at 843* (quotations and citations omitted). The court also declined to expand the exception: " [P] ublic policy weighs against imposing liability here. Permitting recovery would shift the burden from excavators, who are in the best position to employ prudent techniques on job sites to prevent facility breaches." *Id. at 844*.

We agree with Chase that the Pennsylvania Supreme Court would likely hold that the economic loss doctrine

bars Azur's negligence claim: Azur's [**31] economic damages are unaccompanied by physical or property damage and, because Chase is not in the business of providing Azur with information for pecuniary gain, this is not the *§ 552* negligent misrepresentation case contemplated by *Bilt-Rite*. Rather, like *Excavation*, we find that Pennsylvania public policy weighs against imposing liability because cardholders, and not card issuers, are in the best position to prevent employees with access to security information from committing fraud.

Azur's main argument against the imposition of the economic loss doctrine focuses on Azur's assertion that he does not have a contractual remedy. However, we already rejected an identical argument in *Sovereign Bank*, where we applied the doctrine in a case concerning a card issuer's negligence claim against other financial institutions with which it had no contractual relationship. We explained,

"*Bilt-Rite* did not hold that the economic loss doctrine may not apply where the plaintiff has no available contract remedy. [T] he Bilt-Rite Court simply carved-out an exception to allow a commercial plaintiff to seek recourse from an 'expert supplier of information' with whom the plaintiff has no contractual [**32] relationship, in very narrow circumstances not relevant here. [] The Pennsylvania [*224] Supreme Court emphasized that its holding was limited to those 'businesses' which provide services and/or information that they know will be relied upon by third parties in their business endeavors."

Sovereign Bank, 533 F.3d at 180 (citing *Bilt-Rite, 866 A.2d at 286*). Therefore, Azur's contention that the *Bilt-Rite* exception encompasses all cases in which the plaintiff has no contractual remedy is without support.

IV.

For the foregoing reasons, we will affirm, on partly different grounds, the order of the District Court. [15] As an initial matter, we hold that *§ 1643 of the TILA* does not provide the cardholder with a right to reimbursement. With regards to the specifics of the instant case, we find that Azur vested Vanek with apparent authority to use the Chase card and thus that Azur's *§§ 1643* and *1666* claims cannot stand. Finally, we hold that Pennsylvania's economic loss doctrine bars Azur's common law negligence claim.

15 We decline to reach the issue of notice under *§ 1666*. *See* note 9, *supra*.

 ¿Este caso pasa a engrosar los anales de la historia comercial estadounidense como ejemplo de un fraude millonario descarado y chulesco?

VI. ARTÍCULO 9 SOBRE LA PRENDA MOBILIARIA

A. LA CONSTITUCIÓN Y LA PERFECCIÓN DE LA PRENDA

LA CLASIFICACIÓN DE LOS BIENES, DERECHOS O ACCIONES QUE PUEDEN SER OBJETO DE GARANTÍA MOBILIARIA

 IN RE: ROBERT O. TROUPE, DAWN LYNN TROUPE, Debtors, LYLE R. SELSON, TRUSTEE, Plaintiff, vs. JOHN DEERE CREDIT a/k/a DEERE & COMPA-NY, Defendant. UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA 340 B. R. 86; 59 U. C. C. Rep. Serv. 2d 23 March 10, 2006, Decided March 10, 2006, Filed

OPINION BY: Weaver [*88] Presented by the parties' cross-motions for summary judgment is the issue of whether the debtors' tractor, in which the defendant has a purchase money security interest, is consumer goods under