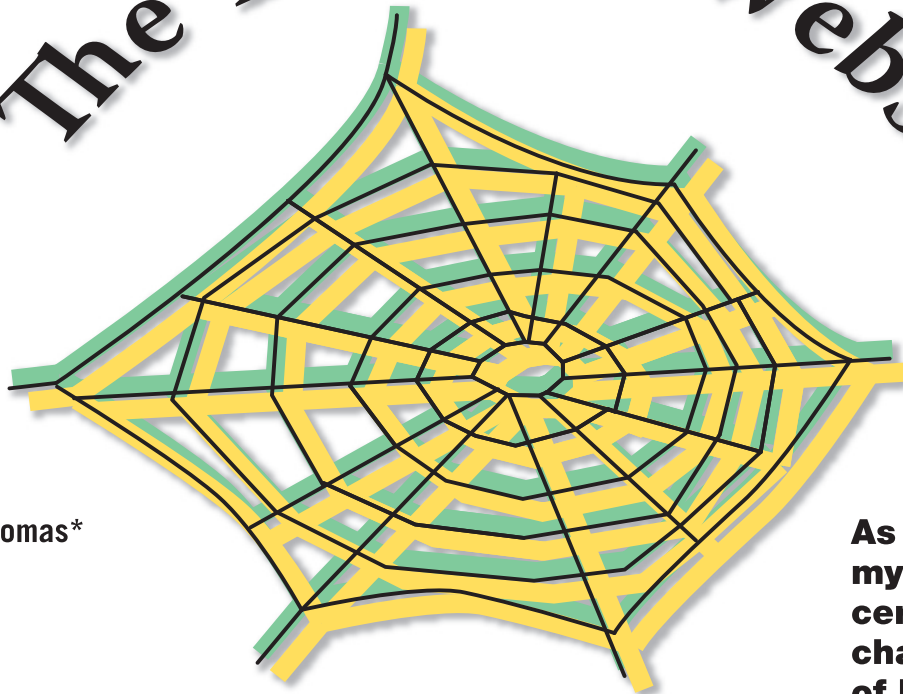


The Tangled Webs



By Shannon Thomas*

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We Weave

I. Introduction

As a law student, my view of certain issues has changed because of knowledge I've gained from studying the law. I now cringe at the mention of issues I once considered normal. One such issue is obtaining property or credit in someone else's name. I am not referring to identity theft. This article is not about when someone's personal identifying information is stolen and the information is used in a manner that eventually ruins the victim's life. I'm referring to the situation where one person knowingly agrees to obtain property or credit on behalf of another.

Before law school, getting a cell phone, signing a lease, obtaining a credit card, or obtaining personal property for another's use seemed to be no big deal; it happened all the time. Almost everyone knows someone who had a grandparent, parent, sibling, or friend obtain property or credit for someone else. There are a variety of reasons why people ask those close to them to obtain credit or property for them. The reasons may include things such as:

- Having a poor credit history
- Having no credit history
- Having overextended credit, or
- The desire to hide property from others

Now that I study law, I realize that it is a big deal to obtain property or credit in the name of another. The result of obtaining property on behalf of another may be beneficial for both parties if there are no problems. On the other hand, when problems do occur, the parties often find themselves in a complicated web of legal problems. Obtaining property or credit in someone else's name (even with their permission) has the potential of impacting many of the topics discussed in law

school. Insurance, bankruptcy, consumer credit, family law, wills, trusts, contracts and property law are just a few of the subjects that can become major concerns.

II. Insurance

When obtaining property in the name of another, the beneficiary may choose to protect the property with insurance. To do this, he must establish an insurable interest. Insurable interest is defined as "[a] legal interest in another person's life or health or in the protection of property from injury, loss, destruction, or pecuniary damage."¹ Typically, insurance companies only grant recovery under property insurance policies to people that show they have an insurable interest in the property.² But, "[a]n insurer may waive or be estopped from asserting the insurable interest defense where the insurer is aware of the lack of insurable interest yet issues the policy or continues to recognize the policy upon discovering the lack of an insurable interest."³

To illustrate the insurable interest concept, consider the following. A purchases a car titled in A's name for B's use, with B making payment to A. B obtains automobile insurance in a state that requires sole ownership as a condition of insurable interest. B has an accident that destroys the car and B suffers injuries as a result of the accident. Because B does not have an insurable interest in the vehicle, the insurance company refuses to pay on the policy. As a result, B's damages are not covered, and if A does not have an additional policy on the vehicle, A is left with the debt, and no vehicle.

If a party finds it necessary to obtain property on behalf of another, steps should be taken to mitigate such a potential loss. State law and insurance requirements should be reviewed to

determine what constitutes an insurable interest, and a proper plan of action should be implemented to protect the parties involved. Additionally, the names of both parties should appear on the title and contract for the property to assist with determining ownership and insurable interest.

III. Bankruptcy

Bankruptcy can potentially create problems when credit or property is held in someone else's name or possession. Let us assume again that A obtains property for B's use, with B making payment to A. A later files a bankruptcy petition after the property is paid off. What happens to the property? Under the Bankruptcy Code, a debtor's property as of the filing of the bankruptcy petition forms an estate for the benefit of creditors. Any interest of the debtor in property (contingent, partial, legal or equitable) goes into the estate.⁴ Although A has only legal title in the property, A and B could have potential problems with creditors trying to prove the property should remain a part of A's estate.

What if A, using credit, obtains property for B's use, with B making payment to A, and before the property is paid, B files a bankruptcy petition. Can B list the debt incurred by A to purchase the property in his petition? The bankruptcy code defines creditor as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."⁵ The creditor is considered A's creditor as credit was issued to A. The creditor does not know of the agreement between A and B, and the creditor can not enforce payment against B. As a result, B can not list the debt owed to the creditor on his bankruptcy schedules. On the other hand, B owes an obligation to A, and can list the debt owing to A on his bankruptcy petitions. Traditionally, the debt between A and B would be discharged in the bankruptcy.

Fraudulent transfer is another issue that can arise under bankruptcy law, when one transfers property or gives money to another to obtain property on one's behalf. A fraudulent transfer can be actual (transfers made with actual intent to hinder, delay or defraud creditors) or constructive (transfers for less than fair value that leave the debtor insolvent).⁶ If a fraudulent transfer is found to have occurred prior to bankruptcy, a debtor could lose his right to an entire bankruptcy discharge.⁷

IV. Consumer Credit

For various reasons, people often use the credit of another to rebuild their own. Piggybacking is when "you let someone borrow the good credit history on your credit card by allowing them to become an authorized user."⁸

If the person's whose credit is borrowed has good credit, piggybacking can be an ideal situation for people trying to establish or improve their credit history.⁹ However, often, a less than ideal situation occurs. Sometimes, the primary cardholder is left with the bills of the authorized user and the authorized user refuses to pay the primary cardholder or the creditor. Unfortunately, the law does not protect the primary cardholder in this situation. Where a cardholder grants another person actual authority, either express or implied, to make purchases on his or her card, the cardholder is liable for the authorized purchases.¹⁰

V. Family Law

When a couple divorces, a court must determine the value of property and the distribution to each spouse. Parties to a

divorce sometimes place property in the names of a third party so that the property is not considered marital property and is not distributed upon divorce. When a party to a divorce proceeding has property in the name of a third party, the distribution proceeding can become complicated, making it difficult to value and distribute the property. Additionally, placing property in the name of a third party will not prevent the property from division by a court during a divorce proceeding as a lawyer can bring the third party into the divorce proceeding and have the judge determine everyone's interest in the property.¹¹

When dealing with property titled in the names of third parties, divorce courts have used the equitable principles of resulting trust and constructive trusts.¹² "A resulting trust arises when property is titled in the name of one person but the purchase price is paid by another."¹³ "A constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if permitted to retain it."¹⁴

VI. Wills/Trusts

When an individual holds property in his or her individual name, it generally indicates that he or she is the owner of the entire property; ownership is clear, and can minimize potential problems. If one has a valid will at the time of death, property will be distributed under the will, otherwise the property is distributed according to the laws of descent and distribution of the state. The resolution of who holds what property can involve expensive litigation, and having property titled in another's name can cause unexpected, harsh, and inappropriate dispositions of property that may have an unfavorable effect on a family. One way to overcome the problem of having property in the name of another is to have an estate plan. A lawyer should check title and property registrations and review for potential problems.

The issue is similar to the problem that occurs when credit is obtained for another. For example, assume A has obtained a \$50,000 loan on B's behalf, and B dies after only \$5,000 of the loan is paid off. A is left holding the loan and will likely have to go through various proceedings in order to get the debt paid by B's estate, if at all. Consider now the same facts except B survives and A dies, A's estate may be responsible for paying the debt if the circumstances between A and B are unknown to those administering the estate.

VII. Contracts

Many property purchases are obtained using credit and contracts. When obtaining property on behalf of another through the use of a contract, third party beneficiary issues can arise. Generally, only parties to a contract can complain about contract breach. Under Texas law, there is an exception that "a third party may recover on a contract... if the contracting parties intended to secure some benefit to that third party and only if the contracting parties entered into the contract directly for the third party's benefit."¹⁵ A third party beneficiary can also have the same rights and standing to enforce a contract as those held by the contracting parties.¹⁶ In this respect, it seems as though the law attempts to protect third parties to a contract.

However, there is a presumption against third party beneficiary arrangements, and establishing a contractual third-party beneficiary claim can be difficult.¹⁷ Additionally, there is a presumption that the parties contracted only for themselves and not for the benefit of third parties unless the obligation to the third party is clear.¹⁸

For various reasons, people often use the credit of another to rebuild their own.

VIII. Property Law

Property law can provide relief for those who have an equitable interest in property. Trusts are property law concepts related to the situation of obtaining property on behalf of another. A trust is defined as "the right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title."¹⁹ Courts have developed constructive trusts as an equitable remedy to redress wrongdoings and to prevent unjust enrichment.²⁰ For example, A obtains property for B's use and enjoyment, with B making all payments. If A later attempts to keep the property, a court may find that a constructive trust exists between A and B with regard to the property.

A resulting trust is "a remedy imposed by equity when property transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property."²¹ In Texas, a resulting trust can be found when one party provides consideration for property, but another person holds legal title to the property.²²

IX. Conclusion

Trusts, resulting trusts, insurable interest, bankruptcy and other legal issues are not familiar terms to the average person, and as a result, he or she does not consider the issues involved with such terms when obtaining credit or property in the name of another. These issues can be eliminated by making it a personal habit not to obtain credit or property on another's behalf. For those that find it necessary to act on behalf of another, however, prudence should be exercised when assuming someone else's debts. To minimize potential problems, the parties to the agreement should sign a written statement acknowledging the debts owed and the promise of repayment according to a specified plan agreed to by all parties.

For those that find it necessary to act on the behalf of another, however, prudence should be exercised when assuming someone else's debts.

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1. BLACK'S LAW DICTIONARY 828 (8th ed. 2004).

2. 44 AM. JUR. 2D Insurance § 939 (2006) (citing *Technical Land, Inc. v. Firemen's Ins. Co. of Washington, D.C.*, 756 A.2d 439, 440 (D.C. 2000) (holding that an insurable interest in property can be shown when a party stands to benefit economically from a unique property or to suffer loss from its destruction)).

3. 44 AM. JUR. 2D Insurance § 938 (citing *Rhead v. Hartford Ins. Co. of the Midwest*, 19 P.3d 760, 765 (Idaho 2001) (holding that

insurable interest arising from a contract to purchase a house was not extinguished by certain factors identified by the trial court in a case involving an action brought by buyers of a house on an Indian reservation against their homeowners' insurer to recover for fire loss during a contract dispute with the sellers regarding ownership)).

4. 11 U.S.C.A. § 541(a) (West 2005).

5. 11 U.S.C.A. § 101(10)(A) (West 2005).

6. 11 U.S.C.A. § 548(a)(1) (West 2005).

7. 11 U.S.C.A. § 727(a)(2) (West 2005).

8. Singletary, Michelle, *Building Someone Else's Credit Can Sacrifice Your Own, Military Money* (2006), available at <http://www.militarymoney.com/columns/1/512>, last accessed Nov. 30, 2006.

9. *Id.*

10. 20 AM. JUR. 2D Credit Cards and Charge Accounts § 36 (citing *Martin v. American Express, Inc.*, 361 So. 2d 597 (Ala. Civ. App. 1978) (cardholder was under no compulsion by fraud, duress or otherwise, voluntarily permitted the use of his credit card by another person, cardholder authorized use of the card and was responsible for any charges resulting from the use even though he had orally authorized the other person to charge up to \$500)).

11. National Legal Research Group, Inc., *Marital Home Titled in Parents' Name*, 14 EQUITABLE DISTRIBUTION JOURNAL 109 (1997) (article reviewing principles governing the joinder of parents as third parties in equitable distribution proceedings, and also discussing equitable doctrines such as constructive trusts and resulting trusts that may justify disregarding the parents' legal title and treating the spouses' interest in the marital home as marital property).

12. *Id.* at 111-112.

13. *Id.* at 112.

14. *Id.*

15. *See, e.g.*, *Union Pacific R.R. v. Novus Int'l., Inc.*, 113 S.W.3d 418, 421 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (citing *Telecomm. Corp. v. Texas Util. Elec. Co.*, 995 S.W. 2d 647, 651 (Tex. 1999)).

16. *See, e.g.*, *City of Alton v. Sharyland Water Supply*, 145 S.W.3d 673, 682 (Tex. App.—Corpus Christi 2004, no pet.).

17. *See, e.g.*, *MCI Telecomm. Corp. v. Texas Util. Elec. Co.*, 995 S.W. 2d 647, 651 (Tex. 1999) (Texas Utilities was not a third party beneficiary to contract between MCI and another party, as Texas Utilities was not an intended beneficiary of the contract and language does not give rise of benefit to Texas Utilities).

18. *See, e.g.*, *Dallas Firefighters v. Booth Research Group*, 156 S.W.3d 188, 193 (Tex. App.—Dallas 2005, pet. denied).

19. BLACK'S LAW DICTIONARY 1546 (8th ed. 2004).

20. *Meadows v. Bierschwale*, 516 S.W.2d 125, 131 (Tex. 1974).

21. BLACK'S LAW DICTIONARY 1551 (8th ed. 2004).

22. *See, e.g.*, *Nolana Dev. Ass'n v. Corsi*, 682 S.W.2d 246, 250 (Tex. 1984).