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CIVIL LIABILITY OF BANKS IN ELECTRONIC FRAUD CASES: IMPLICATIONS FOR CIVIL PROCEEDINGS

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Abstract: This study addresses the civil liability of financial institutions in light of the rise in electronic fraud within the context of Brazilian civil procedure. The general objective of the research is to analyze the strict liability of banks for damages resulting from such fraud, in light of the theory of risk of activity and consumer protection legislation. The specific objectives are: to examine the applicability of the Consumer Protection Code to banking relationships; to analyze the application of Precedent No. 479 of the Superior Court of Justice; and to investigate the main procedural implications of this liability, particularly the reversal of the burden of proof and the granting of emergency relief. The data sample comprises recent judicial decisions from the Superior Court of Justice and state courts, as well as specialized legal doctrine on the subject. Furthermore, the research problem lies in the effectiveness of judicial protection for consumers who are victims of electronic fraud, given the technical and informational asymmetry existing in their relationship with financial institutions. In this context, the following research question is formulated: to what extent are the available procedural instruments capable of ensuring effective redress for the damages suffered by consumers in cases of electronic banking fraud? The hypothesis posits that strict liability of banks, combined with the reversal of the burden of proof and emergency relief, constitutes an essential mechanism for consumer protection and for the effectiveness of judicial protection. Regarding the methodological approach, the deductive method is used, with qualitative research of a bibliographic and jurisprudential nature. Therefore, there is a need for a firm and consistent judicial stance that reconciles legal certainty with consumer pro-

tection, encouraging financial institutions to improve their security and fraud prevention systems.

Keywords: Civil Liability; Electronic Fraud; Banks; Civil Procedure; STJ Precedent 479; Reversal of the Burden of Proof.

Introduction

Technological advancements and the digitization of banking services have brought greater efficiency, convenience, and financial inclusion, but they have also increased the incidence of electronic fraud, such as phishing, fake call center scams, and fraudulent transactions via PIX, constituting an inherent risk in modern banking. In light of this, it is essential to analyze the civil liability of financial institutions, especially from the perspective of Brazilian Civil Procedure, considering the effectiveness of judicial protection for consumers who are victims of electronic fraud, a situation marked by evident technical, informational, and economic asymmetry in relation to banks.

In this context, the study investigates how the strict civil liability of financial institutions impacts procedural dynamics, particularly regarding the allocation of the burden of proof and the granting of emergency injunctions. The choice of this topic is justified by the academic and legal interest in understanding the foundations and limits of this liability, as well as by the implications of the growing judicialization of banking fraud within the national legal landscape.

From social, scientific, and practical perspectives, the research highlights the role of financial institutions as agents engaged in risky activities, the need to adopt effecti-

ve security and prevention measures, and a theoretical exploration of strict civil liability, internal fortuitous events, and the procedural instruments of the Code of Civil Procedure, in light of Precedent No. 479 of the Superior Court of Justice. The starting point is the hypothesis that strict liability, combined with the reversal of the burden of proof and emergency injunctions, is essential for the effectiveness of judicial protection and for adequate compensation for damages.

Thus, the general objective is to analyze the civil liability of financial institutions in the face of electronic fraud and its implications for Brazilian civil procedure, examining the applicability of the Consumer Protection Code, the application of Precedent No. 479 of the Superior Court of Justice, and the main procedural effects.

Methodology

This research employs a qualitative approach, of an exploratory and descriptive nature, guided by the deductive method, moving from general categories of civil liability, consumer law, and civil procedure to examine their specific application to electronic banking fraud. It was developed through bibliographic, legislative, and jurisprudential research, providing an overview of specialized doctrine, relevant legislation, and judicial precedents related to the strict liability of financial institutions, the theory of activity risk, internal fortuitous events, and procedural mechanisms for consumer protection. This legislative analysis was based on the Federal Constitution, the Consumer Protection Code, and the Code of Civil Procedure, as they constitute the essential normative framework for the substantive

and procedural understanding of the subject in Brazil.

In the jurisprudential field, recent precedents from the Superior Court of Justice and state courts were selected, prioritizing decisions directly related to electronic fraud, unrecognized transactions, digital banking scams, reversal of the burden of proof, and emergency relief. The material was examined through systematic interpretation and legal content analysis, with the aim of identifying central categories, such as consumer relations in banking activities, consumer informational vulnerability, strict liability, and the effectiveness of judicial protection. The methodology does not seek statistical quantification, but rather a critical understanding of the legal treatment afforded to electronic banking fraud, articulating normative, doctrinal, and jurisprudential foundations to assess the capacity of procedural instruments to ensure adequate protection for the aggrieved consumer.

Foundations of Civil Liability in Banking

The Consumer Relationship and the Theory of Risk

The legal relationship between the customer and the financial institution constitutes a consumer relationship, and it is settled law within the Superior Court of Justice that the Consumer Protection Code applies to banking services, given the recognized vulnerability of the consumer. From this perspective, the protective norms of the consumer protection framework apply, especially due to the technical and informational complexity of the services offered.

Article 14 of the Consumer Protection Code establishes the supplier's strict liability for damages resulting from defects in the provision of the service, requiring only proof of the damage and the causal link, regardless of fault, as a means of facilitating the defense of the economically disadvantaged consumer.

In the banking sector, civil liability is based on the Theory of Risk of Activity or Enterprise, according to which those who profit from economic activity must assume the risks inherent to it and may not transfer to the consumer the losses resulting from service failures (CAVALIERI FILHO, 2022; NUNES, 2022). As Tartuce (2025) points out, those who benefit economically from the activity must bear its burdens, especially in essential and highly profitable services, with this theory representing a choice for the socialization of losses (BENJAMIN; MARQUES; BESSA, 2025).

Thus, because it involves the safekeeping and circulation of funds, banking activity is characterized as high-risk, such that fraud and security breaches constitute an internal fortuitous event that cannot absolve financial institutions of liability. This understanding is supported by legal doctrine and the case law of the Superior Court of Justice, notably in Precedent No. 479, which recognizes the strict liability of financial institutions for damages resulting from fraud committed by third parties in banking transactions. Consequently, there is a duty to adopt effective security mechanisms, under penalty of civil liability for losses caused to consumers.

STJ Precedent No. 479 and Internal Fortuitous Events

The understanding regarding the strict liability of financial institutions in cases of fraud has been consolidated with the issuance of Precedent No. 479 of the Superior Court of Justice (STJ), according to which *“Financial institutions are strictly liable for damages caused by internal fortuitous events related to fraud and crimes committed by third parties in the context of banking transactions.”* This statement represents a landmark in case law by affirming that the risks inherent in banking activities cannot be transferred to the consumer, thereby reinforcing the application of the Consumer Protection Code to banking relationships.

In this context, for the correct application of the aforementioned summary, it is essential to distinguish between internal fortuitous events and external fortuitous events. Internal fortuitous events correspond to unforeseeable events, yet related to the normal risks of business activity, such as electronic fraud resulting from failures in banking security systems. External fortuitous events, on the other hand, refer to facts that are entirely unrelated to the activity being carried out, unpredictable and unavoidable, and have no connection to the enterprise's risk (CAVALIERI FILHO, 2022).

Furthermore, the jurisprudence of the STJ recognizes that fraud committed by third parties, including through social engineering, constitutes internal fortuitous events, as the duty of security of financial institutions encompasses the adoption of effective prevention and protection mechanisms. Thus, such frauds are part of the risk inherent in banking activities and do not preclude the provider's civil liability (BRAZIL, STJ, REsp 1.197.929/PR; BRAZIL,

STJ, REsp 1.899.304/SP; MESQUITA, 2024). In this regard, Cavalieri Filho asserts that internal unforeseeable events do not exclude the duty to compensate, while Tartuce highlights that electronic frauds reveal a failure in service provision, especially given the vulnerability of the systems used (CAVALIERI FILHO, 2022; TARTUCE, 2025).

Finally, although the victim's exclusive fault is, in theory, the only possible exclusion, the prevailing understanding of the STJ rules out its application when the vulnerability of the banking system—which enables the fraudster's actions—is evident. It is also considered that the consumer lacks technical and informational resources in the face of the complex technological structures of financial institutions, reaffirming consumer protection and the attribution of the risks of banking activity to the providers (BRAZIL, STJ, Precedent No. 479; NUNES, 2022; SAMPAIO, 2023).

Civil Procedure as an Instrument of Protection

The Reversal of the Burden of Proof

Initially, The 2015 Code of Civil Procedure, in line with the principles of the Consumer Protection Code, provides mechanisms designed to mitigate the material inequality between consumers and financial institutions, notably the reversal of the burden of proof, provided for in Article 373, § 1, of the CPC, as an instrument of procedural balance and the effectiveness of judicial protection.

Furthermore, in cases involving bank fraud, the reversal of the burden of proof

may occur in two forms: the reversal *ope legis*, arising from Article 14, § 3, of the CDC, when the requirements for the supplier's strict liability are met, and the reversal *ope judicis*, determined by a reasoned decision of the judge, pursuant to Article 6, item VIII, of the CDC, in light of the plausibility of the allegations or the consumer's lack of legal standing.

In this regard, the application of this principle is particularly relevant in cases involving electronic banking fraud, since financial institutions possess technical control over security systems and access to transaction records, and it is incumbent upon them to demonstrate the authenticity of the disputed transaction and the absence of flaws in the provision of the service. Legal doctrine emphasizes that the reversal of the burden of proof does not constitute undue privilege, but rather a measure of procedural justice intended to correct the asymmetries in the consumer relationship, given the consumer's vulnerability (CAVALIERI FILHO, 2022).

In the same vein, the Superior Court of Justice has recognized the appropriateness of reversing the burden of proof in disputes involving bank fraud, as it considers it excessive to require the consumer to demonstrate a system failure, thereby assigning to the financial institution the duty to prove the adoption of effective security measures. Thus, the reversal of the burden of proof is established as an essential instrument for the effectiveness of contemporary civil proceedings and for the realization of the principle of substantive equality (MARINONI; ARENHART; MITIDIERO, 2024).

EMERGENCY RELIEF

To begin with, the 2015 Code of Civil Procedure authorizes the granting of emergency relief, pursuant to Article 300, as an instrument intended to prevent the aggravation of harm in situations that demand an immediate judicial response, such as in cases of electronic fraud. From this perspective, emergency relief is essential to ensure the effectiveness of judicial protection, especially when the passage of time may render the protection sought by the consumer ineffective.

Similarly, in cases involving bank fraud, the requirements of a probable cause of action and the risk of harm or jeopardy to the outcome of the proceedings are, as a rule, met. Legal plausibility stems from the strict liability of financial institutions, established by Precedent No. 479 of the Superior Court of Justice, while the risk of harm is evident in the immediate financial loss suffered by the consumer, which is often capable of compromising their economic stability.

In this context, emergency relief may order the swift freezing of the misappropriated funds, whether through the Special Return Mechanism (MED) of the PIX system or through SISBAJUD, in order to prevent the dispersion of the funds and enable the restoration of the damaged assets, in line with the preventive and instrumental nature of the measure. Legal doctrine emphasizes that an emergency injunction does not imply a definitive determination of the merits of the case, but rather a technical measure aimed at mitigating the effects of time on the proceedings, ensuring its social function and preventing the occurrence of injustices (MARINONI; ARENHART; MITIDIEIRO, 2024).

Thus, the provisional restitution of unduly appropriated funds, when the legal prerequisites are met, proves to be a proportionate measure given the consumer's vulnerability and the economic capacity of financial institutions, ensuring a swift, effective, and judicially *ad e* response that is compatible with the protection of fundamental rights in consumer relations.

CONCLUSION

An analysis of banks' civil liability in cases of electronic fraud highlights the existence of a consistent legal system, guided by consumer protection and the Theory of Activity Risk. The Brazilian legal system recognizes that banking activities involve inherent risks, especially in light of the intensification of digital services, which justifies the adoption of strict liability, consolidated by Precedent No. 479 of the Superior Court of Justice, in classifying such frauds as internal fortuitous events.

This liability does not result from an isolated jurisprudential position, but from a systematic framework that integrates consumer protection legislation, the theory of business risk, and the protection of the vulnerable party in the legal relationship, preventing the undue transfer of losses to the consumer. Within the scope of Civil Procedure, this logic is realized through instruments such as the reversal of the burden of proof and emergency relief, intended to ensure procedural balance and the effectiveness of judicial protection.

Finally, strict liability is not punitive in nature, but rather preventive and incentivizing, encouraging financial institutions to continuously improve their security mechanisms, in accordance with the principles of good faith, reliance, and consumer protection.

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