

California Court Rejects DFPI's True Lender Theory*

As the law firm previously reported to BCG Members, since 2022 the Delaware-based limited liability company, Opportunity Financial, LLC ("OppFi") has been involved in litigation with the California Department of Financial Protection and Innovation (DFPI) due to the DFPI's threatened enforcement of California's Fair Access to Credit Act (Assembly Bill 539 (AB 539)) against OppFi. *Opportunity Financial, LLC v. DFPI*, Case No. 22STCV08163, (Cal. Sup. Ct. L.A. Cty. filed Mar. 7, 2022).

AB 539 placed limits on the interest rate a California Financing Law (CFL) licensee may charge on consumer loans between \$2,500 and \$10,000. After AB 539's passage in 2019, the DFPI began investigating what it deemed to be "rent-a-charter" relationships between CFL licensees and depository institutions because of the state agency's view that these relationships may have been formed to avoid California's usury law.

Initially, OppFi sued the DFPI arguing that the CFL does not apply to OppFi's loans because they are originated by FinWise Bank ("FinWise"), an FDIC-insured state-chartered bank located in Utah, which is exempt from California's usury law. OppFi argued that it only provides technology and other services to FinWise under a contractual arrangement related to loans that are made by FinWise (referred to as the "Program Loans"). In its cross-complaint, the DFPI argued that OppFi originates the consumer installment loans, as opposed to FinWise, and that OppFi is subject to the CFL. The DFPI referred to the OppFi-FinWise partnership as a "rent-a-bank ruse" that was being used to avoid California's usury limits. Essentially, the DFPI's position was that OppFi, not FinWise, was the "true lender" of the Program Loans. On October 30, 2023, the court denied the DFPI's motion holding that the DFPI "has not established a reasonable probability of prevailing on the merits." *Opportunity Financial, LLC v. Clothilde Hewlett, Comm'r*, No. 22STCV08163 (Super Ct. L.A. Cty. filed Oct. 30, 2023). While the court's ruling in 2023 was not a ruling on the merits of the case, it was a big setback for the DFPI.

* Janet Bonnefin has retired from the firm.

On February 24, 2026, the court issued a tentative decision granting summary judgment in favor of OppFi (the “Tentative Decision”). The court explained in the Tentative Decision that in order to succeed on the motion the DFPI would have to present enough evidence to demonstrate there was at least a triable issue of fact as to whether FinWise was intended to be a “dummy” lender and the OppFi-FinWise relationship was a sham created to cover up a usurious transaction. The court held that OppFi presented sufficient evidence to illustrate that FinWise was the actual lender of the Program Loans, and that the DFPI did not meet its burden to show there existed a triable issue of material fact on this point.

In the Tentative Decision the court relied on the following facts presented by OppFi to support its decision: (i) that FinWise controlled the application process, underwriting criteria, and independently underwrote the Program Loans; (ii) FinWise funded the Program Loans with its own money and retained ownership over them; (iii) FinWise was exposed to substantial risk and benefits from the Program Loans; (iv) FinWise controlled the marketing for the Program Loans; and (v) FinWise oversaw the Program Loans and maintained responsibility for legal compliance with respect to the Program Loans.

Notably, the fact that OppFi could demonstrate that FinWise controlled the application and underwriting process for the Program Loans was an important factor that worked in OppFi’s favor. The evidence presented by OppFi illustrated to the court that FinWise was the ultimate decision maker with respect to the Program Loan terms and underwriting criteria. The DFPI attempted to assert that OppFi actually controlled the underwriting criteria because OppFi owned the intellectual property to the credit model that was used in the underwriting and application processing for the Program Loans. However, the court did not agree with the DFPI’s argument, holding that the fact that OppFi owns the intellectual property to its credit model does not, in and of itself, create a triable issue of fact because it didn’t contradict the evidence that FinWise ultimately approved the credit criteria used and the approval of the Program Loans.

If the Tentative Decision is finalized it will have serious implications for bank-fintech partnerships in California. While the DFPI could still appeal a final decision from the court, the Tentative Decision could make it much more difficult for the DFPI to pursue future actions based on its “true lender” theory, if finalized.

For more information, contact John Davis at JDavis@ABLAWYERS.COM or Joel Cook at JCook@ABLAWYERS.COM.