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Client Alert: The OppFi Decision and What It Means for Bank-Fintech Lending in Florida

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I. Introduction

The explosive growth of bank-fintech lending partnerships has brought renewed regulatory scrutiny to a deceptively simple question: when a federally chartered or state-chartered bank originates a loan through a fintech platform, is the bank truly the lender? If a regulator or court concludes that the fintech, not the bank, is the "true lender," the arrangement may expose the fintech to state usury penalties, licensing requirements, and enforcement actions.

In a typical bank-fintech partnership, a chartered bank and fintech company jointly offer financial services, frequently to subprime consumer borrowers who wouldn't otherwise qualify for bank-only loans. The bank extends a short-term loan to a subprime consumer, which is then sold, in part, to the fintech business which services the loan and provides the digital application and user experience. Such partnerships are highly scrutinized by regulatory authorities.

The true lender doctrine is the common law anti-evasion principle that allows courts to disregard the nominal form of a lending arrangement and identify the real lender based on economic reality. Some courts employ the predominant economic interest test, asking which entity placed its own money at risk. Other courts apply a fact-specific, totality-of-the-circumstances analysis.

On May 19, 2026, the California Superior Court for Los Angeles County issued its Statement of Decision in *Opportunity Financial, LLC v. Hewlett*, No. 22STCV08163 (Cal. Super. Ct. May 19, 2026) (the OppFi Decision), granting summary judgment in favor of Opportunity Financial, LLC (OppFi) and its bank partner, FinWise Bank, a Utah state-chartered, Federal Deposit Insurance Corporation (FDIC)-insured depository institution. The ruling represents one of the most significant state court victories to date for the bank-fintech partnership model and offers a rigorous analytical framework that will resonate well beyond California's borders, including in Florida, where the doctrinal building blocks for a true lender challenge already exist.

II. The OppFi Decision: Key Findings

The California Department of Financial Protection and Innovation (DFPI) alleged that OppFi, not FinWise Bank, was the true lender on consumer loans originated through OppFi's platform, characterizing the arrangement as a "rent-a-bank" scheme designed to evade California's 36 percent interest rate cap. DFPI sought over $100 million in penalties and restitution for approximately 38,000 California borrowers.

The court applied an analytical framework that distinguishes a genuine lending relationship from a "dummy lender" arrangement in which the nominal lender contributes no capital, bears no risk, and serves merely as a pass-through intermediary. The court examined three central factors:

A. Which Party Funded the Loans at Origination

Undisputed evidence established that FinWise funded every loan using its own money, from accounts it solely controlled, in which OppFi had no possessory or beneficial interest. OppFi did not provide FinWise the initial capital to fund loans. The court rejected DFPI's argument that OppFi's collateral accounts, which were tied to its post-origination purchase of receivables, effectively funded the loans, finding no evidence the collateral accounts were used to fund originations and noting the accounts were often insufficient by millions of dollars to cover FinWise's funding obligations.

B. Which Party Exercised Meaningful Underwriting Control

The court found that FinWise controlled the application and underwriting process, independently underwrote and approved all loans, and was the ultimate decision maker with respect to underwriting criteria and loan terms, including interest rate, per the Loan Program Agreement (LPA). FinWise employed its own team to review underwriting criteria changes, a process that can take a week to several months and involves multiple bank employees. The court rejected the argument that OppFi's ownership of credit model intellectual property made it the lender, analogizing to banks' routine use of third-party FICO scores without making Fair Isaac Corporation the lender.

C. Which Party Bore the Predominant Economic Risk at Origination

At origination, FinWise was exposed to 100 percent of the risk of loss on each loan until it later sold a receivable interest to an OppFi affiliate. FinWise retained a continuing two-five percent interest in every receivable throughout the loan's life, exposing FinWise to ongoing credit risk and entitling it to a share of collections, program fees, and volume-based servicing fees.

The court reaffirmed the longstanding California principle that a contract which is not usurious in its inception does not later become usurious from events such as the sale or assignment of loan receivables. The court relied on Section 27 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831d, and the FDIC's "valid when made" doctrine, 12 C.F.R. § 331.4(e), which provides that the permissibility of a loan's interest rate is determined at origination and is unaffected by a later sale, assignment, or transfer. Because FinWise lawfully originated the loans under Utah law (which does not have a maximum cap on interest rates or usury restrictions), the interest rate remained valid after any subsequent transfer.

III. Persuasive Value for Florida

Florida has no published appellate authority directly applying a true lender doctrine to a bank-fintech partnership. However, this doctrinal gap does not mean that Florida programs operate free of true lender risk. To the contrary, Florida's robust substance over form usury jurisprudence under Chapter 687, Florida Statutes, and the Florida Consumer Finance Act, Chapter 516, Florida Statutes, provides a ready framework for recharacterization.

A. Florida's Substance Over Form Approach

Florida courts require four elements to establish usury: "(1) an express or implied loan; (2) a repayment requirement; (3) an agreement to pay interest in excess of the legal rate; and (4) a corrupt intent to take more than the legal rate from the money loaned." *Nolden v. Summit Financial Corp.*, 244 So. 3d 322, 325 (Fla. 4th DCA 2018). Importantly, Florida courts look to substance over form. Commissions, fees, and partnership interests may be valued into the usury calculation, *Party Yards, Inc. v. Templeton*, 751 So. 2d 121, 122-23 (Fla. 5th DCA 2000), and "corrupt intent" requires only that the lender intentionally charged an excessive rate, not awareness of the specific usury statute. *Saralegui v. Sacher, Zelman, Van Sant, Paul, Beily, Hartman & Waldman, P.A.*, 19 So. 3d 1048, 1051 (Fla. 3d DCA 2009).

B. Likelihood of Adoption or Distinction

The OppFi Decision's three-factor framework of funding, underwriting control, and economic risk at origination is functionally congruent with the substance over form analysis Florida courts already apply in usury cases. A Florida court confronting a true lender challenge would likely find the OppFi framework persuasive, particularly because it rests on well-established principles (i.e., the "dummy lender" doctrine and the valid when made rule) that transcend California specific statutory authority.

Recent federal activity underscores the practical stakes. In *Eldridge v. Sparrow Financial Inc.*, No. 8:25-cv-2732, 2026 WL 632387, at *3 (M.D. Fla. Mar. 6, 2026), the court remanded state law usury claims against a state-chartered bank's fintech partnership to state court, holding that Section 27 of the FDIA does not completely preempt Florida usury claims. This signals that Florida state usury claims against bank-fintech arrangements can proceed notwithstanding federal preemption arguments.

C. Regulatory Environment Comparison

California's DFPI has aggressively pursued true lender enforcement, creating a developed body of adversarial state action. Florida's Office of Financial Regulation (OFR) has not yet brought a comparable true lender enforcement action against a bank-fintech partnership, though it has historically applied substance over form reasoning to unlicensed lending. *See In Re: Cash Cow F1 LLC, et al.*, No. 6184-F-1/99, 1999 WL 35126610 (Fla. OFR 1999); *In Re: Cashcall, Inc.*, No. 16-003758, 2016 WL 11596424 (Fla. OFR 2016). Both states share strong public policy hostility to usury but apply different statutory rate caps. Florida's general civil usury ceiling is 18 percent per annum simple interest (Fla. Stat. §§ 687.02, 687.03), with criminal usury thresholds at 25 percent and 45 percent (Fla. Stat. § 687.071).

IV. Structuring Recommendations

The OppFi Decision provides a practical roadmap for structuring bank-fintech programs to withstand true lender scrutiny. The following recommendations synthesize the court's dispositive findings with Florida-specific risk considerations:

A. Funding Mechanics and Balance Sheet Treatment

Originate every loan with the bank's own funds from accounts the bank alone controls. Avoid any fintech affiliate collateral account, warehouse facility, or pre-funding arrangement that could be construed as the actual source of loan proceeds at origination. Keep any receivables purchase by the fintech strictly post-origination and ensure it is not prearranged in a manner that functions as disguised origination funding. The bank's balance sheet should reflect the loans as bank assets at origination.

B. Underwriting Authority and Credit Policy Control

Vest final underwriting authority and credit policy control, both contractually and operationally, in the bank. The bank must retain sole authority to set and modify underwriting criteria, approve or reject applications, and control interest rates and loan terms. Document the bank's dedicated underwriting staff and change control process. The fintech may supply data, technology, or credit scoring models (comparable to third-party scoring services such as FICO) without ceding ultimate approval authority.

C. Risk Retention and Loan Participation Structures

Ensure the bank bears 100 percent of the risk of loss at origination and for a defined post-origination period before any receivables sale. The bank should retain a meaningful, continuing economic interest in each loan, such as a horizontal retained interest in the range of two–five percent, as validated in OppFi, rather than executing an outright, same-day sale of 100 percent of the loan. Avoid indemnification or credit protection arrangements that shift substantially all credit risk back to the fintech immediately at origination.

D. Program Documentation and Governance

Execute a comprehensive loan program agreement that expressly designates the bank as lender, sets out the bank's final underwriting authority, and requires the bank's review and approval of all consumer-facing marketing and advertising materials. Implement ongoing bank oversight mechanisms, including compliance audits, vendor management review, and regular program management meetings. Maintain records evidencing genuine, active bank supervision, not just contractual recitals, so that, if challenged, the program can produce the same category of undisputed evidence that proved determinative in OppFi, including funding source documentation, underwriting decision logs, marketing approval records, and risk retention accounting.

V. Conclusion

The OppFi Decision offers the most detailed state court validation to date of a well-structured bank-fintech lending partnership. Its three-factor framework of funding, underwriting control, and economic risk at origination provides clear guideposts for program structuring. For Florida market participants, the decision carries persuasive authority precisely because it rests on principles already embedded in Florida's substance over form jurisprudence, even though no Florida appellate court has squarely addressed the true lender doctrine in the bank-fintech context.

The true lender landscape continues to evolve. Proactive structuring, grounded in economic substance rather than contractual form, remains the most effective defense against recharacterization risk in Florida.

If you have questions or would like more information, please contact Elizabeth Brusa.