

FinTech Prevails in Texas “True Lender” Challenge

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On January 11, 2023, a Texas federal court dismissed a class action lawsuit against a leading financial technology company alleging it violated Texas usury laws by charging interest on loans it made through a partnership with a state-chartered bank at rates above the maximum allowed under Texas law. The plaintiff alleged that the partnership amounted to a “rent-a-bank” scheme designed to evade state law such that financial technology company, rather than its bank partner, was the “true lender” on the loans. In dismissing the lawsuit, the district court entered an [order accepting and adopting](#) the magistrate judge’s [report and recommendation](#), finding the arbitration clause in the plaintiff’s note and disclosure statement (the “Note”) enforceable and recommended that the complaint be dismissed with prejudice. The district court also compelled arbitration of the plaintiffs’ claims.

In opposing the dismissal, the plaintiff argued *inter alia* the choice of law provision in the Note required the arbiter to apply “the substantive law of Utah” and the arbitration clause stated that the “Arbiter must enforce [the] agreements . . . as they are written.” Taken together the plaintiff argued these provisions required the arbiter to enforce the loan agreement as “valid under Utah law”, which would bar her RICO claims because a violation of state law is required to show a RICO violation. The magistrate judge disagreed. The court observed that the choice of law provision excluded the arbitration clause, and that the arbitration clause required the arbiter to “apply substantive law consistent with the FAA.” As such, neither the choice of law provision nor the arbitration clause required the arbiter to apply Utah law or barred the plaintiff’s RICO claims.

Putting It Into Practice: This decision demonstrates the value of arbitration provisions as a tool in avoiding potential class action claims. Notably, however, the arbitration agreement did not eliminate the risk of “true lender” challenges brought by regulatory entities, which is demonstrated by [ongoing litigation](#) between OppFi and the California DFPI.

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