SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

22STCV08163
OPPORTUNITY FINANCIAL, LLC vs CLOTHILDE HEWLETT

September 30, 2022
2:09 PM

Judge: Honorable Timothy Patrick Dillon
Judicial Assistant: M. Y. Carino
Courtroom Assistant: E. Villanueva

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS:
Ruling on Submitted Matter Re: Demurrer of Opportunity Financial, LLC's (OppFi) to the Commissioner's Cross-Complaint (Res ID: 5767)

The Court, having taken the matter under submission on 08/26/2022 for Hearing on Demurrer - without Motion to Strike (Res ID: 5767), now rules as follows: The court issues its rulings regarding the demurrer of Opportunity Financial, LLC's (OppFi) to the Commissioner's cross-complaint.

On April 8, 2022, the Commissioner filed a cross-complaint against OppFi. The Commissioner alleges: "Opportunity Financial, LLC (OppFi) is a publicly traded company that originates consumer installment loans called 'OppLoans' through the website, www.OppLoans.com. OppFi is not a bank. Consumers apply for a loan on OppFi's website, and OppFi uses an automated underwriting model where loans can be instantly approved or denied with most funds available the next business day. [¶] FinWise is a Utah-chartered bank that has essentially 'rented' its charter to OppFi for the purpose of charging higher interest rates to consumers through the 'OppLoans' product. State-chartered banks that are federally insured are exempt under Section 27 of the Federal Deposit Insurance Act from state interest rate caps. Under Section 27, state-chartered banks can charge out-of-state borrowers the interest rate allowed in its home state, even if the out-of-state borrowers live in a state that has an interest rate cap. The State of Utah does not have a state interest cap, making its state-chartered banks attractive to non-bank lenders like OppFi." (Cross-Cplt., ¶¶ 3-4, footnote omitted.)

The Commissioner further alleges: "Since 1995, loans made in California under $2,500 have been subject to a tiered interest rate cap, with 30% as the highest Annual Percentage Rate (APR) that can be charged. The high level of default rates on consumer loans above $2,500 with triple-digit interest rates prompted several legislative attempts in California since 2017 to impose an interest rate cap on loans between $2,500 and $9,999 to ensure that lenders are offering loans

that consumers can repay. In 2019, Governor Gavin Newsom signed AB 539, which went into effect on January 1, 2020, and imposed an interest rate cap of 36% plus the Federal Funds Rate on consumer loans between $2,500 and $9,999." (Cross-Cplt., ¶ 14, footnote omitted.)

The cross-complaint continues: "Since 2014, OppFi has held a CFL lender license issued by the Commissioner and directly originated loans to California residents through its website, www.OppLoans.com. In 2016, for example, the OppLoans website offered California consumers direct loans above $2,500 with an interest rate of 160%, expressly made under OppFi's CFL license. However, with interest rate caps on the horizon in California, OppFi abandoned making loans in its own name and pivoted to a rent-a-bank ruse in an illegal effort to continue making high-interest loans to California consumers. [¶] In late 2017, OppFi entered into a partnership with FinWise. Under the partnership, OppFi marketed, made, and serviced loans to California residents through a website that it owns and maintains. The OppLoans website offers 'personal loans' for uses such as car repair, home repair, rent, unanticipated medical expenses, debt consolidation, and travel. The loans offered by OppFi in partnership with FinWise are called OppLoans. OppLoans typically range between $500 and $4,000 and carry an APR between 59% and 160%." (Cross-Cplt., ¶¶ 15-16.) The Commissioner alleges: "Since 2020, OppFi has provided OppLoans to over 38,000 California consumers with principal amounts between $500 and $4,000 and with an average APR of 153%, far above the rates authorized by AB 539 (codified in part at Financial Code section 22304.5) for loans of $2,500 or above and the rates for loans under $2,500 in Financial Code sections 22303 and 22304." (Cross-Cplt., ¶ 17.)

The Commissioner adds in the cross-complaint: OppFi purchases between 95 to 98 percent of the receivable for each loan originated from its 'rent-a-bank' ruse with FinWise. A receivable is the right to the interest and principal payments for a loan. On average, OppFi purchases these receivables from FinWise within three days after FinWise funds the loan before any initial payments on the loans are made to FinWise." (Cross-cplt., ¶ 20.)

The Commissioner also alleges: "OppFi insulates FinWise from essentially any credit risk by creating a guaranteed secondary market that FinWise can 'sell' its loans in order to recoup its funds. OppFi accomplishes this through fully owned subsidiaries created solely to purchase receivables from bank partners such as FinWise. Additionally, OppFi's Loan Receivables Sale Agreement with FinWise provides that FinWise is only obligated to fund loans if OppFi's purchasing subsidiary maintains a minimum amount of security, consisting of a cash collateral account, an alternative collateral account, and letters of credit for the benefit of FinWise. OppFi also pays FinWise a guaranteed monthly 'Bank Program Fee' based on a percentage of the principal amount of loans 'originated' by FinWise each month, not only further mitigating any

actual credit risk for FinWise but literally providing the bank partner loan volume-based rent for its charter. OppFi paid FinWise for the startup costs of this partnership and is also responsible for paying FinWise's expenses related to this partnership." (Cross-Cplt., ¶ 21, footnote omitted.)

The Commissioner further alleges: "OppLoans are only available through OppLoans.com, which is controlled by OppFi. Borrowers cannot obtain an OppLoan through FinWise's website. In fact, FinWise's website has a link that takes borrowers directly to OppLoans.com and contains a disclaimer titled 'Third Party Site Disclaimer' that warns the applicant that they are leaving the FinWise website and will no longer be subject to or protected by FinWise's privacy policies. [¶] OppFi is responsible for all marketing in association with OppLoans, including the use of search engine optimization, email remarketing, and referrals. OppFi's annual marketing costs associated with its loan program averages in the tens of millions of dollars according to its public filings with the Securities and Exchange Commission. Conversely, FinWise's expenses associated with OppLoans are capped at $10,000 each year and paid by OppFi pursuant to their agreement. [¶] Consumers who apply for OppLoans through OppLoans.com are underwritten by OppFi through the use of proprietary software. OppFi has the exclusive license to use the information provided by an OppLoan applicant in any manner while FinWise is prohibited from using or selling any customer lists without OppFi's approval. The underwriting criteria of OppLoans are determined by OppFi with nominal, if any, input by FinWise. In fact, OppFi, in its public filings, admits that the underwriting criteria for the bank partnership loans are supplied by OppFi to the bank partners. [¶] OppFi's underwriting is heavily automated with approximately 82 percent of OppLoans being instantly underwritten through its software, with most loans funded the next business day. OppFi owns all the intellectual property rights regarding the underwriting criteria of OppLoans, not FinWise. OppFi is also responsible for pulling the credit reports for the applicants, verifying the identities of the applicants, sending adverse action notices if an applicant is denied an OppLoan, and retaining all applicant records." (Cross-Cplt., ¶¶ 23-24.)

The cross-complaint further alleges: "OppFi also undertakes the servicing obligations of OppLoans, including: collecting all interest and principal payments made on OppLoans; setting up the collection account for borrower payments; responding to borrower inquiries; modifying a consumer's loan for loss mitigation purposes with minimal input from FinWise; and, writing off loans and transferring the written-off loans to a collection agency. [¶] OppFi's website markets OppLoans in California as carrying a maximum annual interest rate of 160% but the website does not contain any statements indicating that California imposes an interest rate cap on consumer loans of 36% plus the Federal Fund Rate. OppFi's omission of any statements concerning the California rate caps creates the false impression that OppFi can legally charge California consumers 160% APR on OppLoans when, in fact, OppFi, as the true lender of

OppLoans, is subject to California interest rate caps." (Cross-Cplt., ¶¶ 27-28.)

Based on these allegations, the Commissioner sets forth causes of action for violation of the California Financing Law and violation of the California Consumer Financial Protection Law. Under the cause of action for violation of the Financing Law, the Commissioner alleges: "OppFi is a 'finance lender' under the CFL. OppFi is a 'person who is engaged in the business of making consumer loans or making commercial loans' which 'may include lending money.' (Fin. Code, § 22009.) OppFi is not an exempt person under Financial Code section 22050 or any other provision of the CFL. OppFi is the true lender of OppLoans—consumer loans that are nominally and deceptively made in the name of FinWise. Accordingly, OppFi and its loans are subject to the CFL." (Cross-cplt., ¶ 32.) The Commissioner alleges several violations of Consumer Financing Law. Pursuant to the Consumer Financial Protection Law, the Commissioner alleges: "OppFi is a 'covered person' under the CCFPL, as it engages in offering or providing a consumer financial product or service to residents of California. (Fin. Code, § 90005, subd. (f).) Under OppFi's rent-a-bank ruse, it would also be a 'service provider' under the CCFPL. The CCFPL provides that it does not apply to a CFL licensee 'to the extent that person or employee is acting under the authority' of such license; OppFi has affirmatively disclaimed that it is conducting any of its activities under its CFL license. Therefore, to the extent that OppFi is not offering OppLoans under the authority of its CFL license, OppFi's conduct is subject to the CCFPL." (Cross-cplt., ¶ 54.) The Commissioner alleges multiple violations of the Consumer Financial Protection Law.

The Commissioner thus alleges that OppFi is the "true lender" of the loans at issue. (Cross-cplt., ¶¶ 2, 5, 28, 32.)

California has a strong and well-defined public policy against usury. (See, e.g., Mencor Enterprises, Inc. v. Hets Equities Corp. (1987) 190 Cal.App.3d 432, 440; Gamer v. duPont Glore Forgan, Inc. (1976) 65 Cal.App.3d 280, 287.) Indeed, the law of usury is based on the California Constitution, as well as a voter initiative measure adopted in 1918. (OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp. (2008) 168 Cal.App.4th 185, 198.) "The theory of [the usury] law is that society benefits by the prohibition of loans at excessive interest rates, even though both parties are willing to negotiate them." (Stock v. Meek (1950) 35 Cal.2d 809, 817.)

In enforcing the usury protections, California courts have examined the substance of a transaction to determine its true nature. (See Ghirado v. Antonioli (1994) 8 Cal.4th 791, 802 ["We are not suggesting that courts should not look beyond the surface of a transaction. To the

contrary, 'Sensitive to the ingenuity and creativity of those entrepreneurs willing to engage in legal brinkmanship to maximize profits, courts have carefully scrutinized the form of seemingly innocuous commercial transactions to determine whether the substance amounts to a usurious arrangement.'"]; Boerner v. Colwell Co. (1978) 21 Cal.3d 37, 44 (footnotes omitted) ["Although the constitutional and statutory provisions dealing with usury speak only in terms of a 'loan' or a 'forbearance' of money or other things of value, the courts, alert to the resourcefulness of some lenders in fashioning transactions designed to evade the usury law, have looked to the substance rather than the form of such transactions in assessing their effect and validity, and in many cases have struck down as usurious arrangements bearing little facial resemblance to what is normally thought of as a 'loan' or a 'forbearance' of money. [Citations.] In all such cases the issue is whether or not the bargain of the parties, assessed in light of all the circumstances and with a view to substance rather than form, has as its true object the hire of money at an excessive rate of interest. [Citation.] The existence of the requisite intent is always a question of fact."]; King v. Central Bank (1977) 18 Cal.3d 840, 847 ["We do not ignore the fact that plaintiffs attached as an exhibit to their complaint a copy of an agreement between them and Bank which agreement on its face, purports to be a loan instrument rather than an installment purchase contract. The agreement, an 'Insurance Premium Financing Installment Note, Security Agreement and Disclosure Statement,' provides among other things that the 'borrower' promises to pay Bank a specified sum in installments, in consideration of Bank's payment of the insurance premiums, and that the borrower assigns to Bank as security for that promise the policy together with all rights to cancel the policy and all proceeds or return premiums due or to become due thereunder. In determining the application of consumer protection laws to particular transactions, we have said that '. . . we must look to the substance of the transaction and not allow mere form to dictate the result.' [Citations.] Plaintiffs herein have alleged sufficient facts indicating that, despite the form of the transaction as a 'loan' of money from Bank to plaintiffs, the substance thereof was an installment sale of automobile insurance."]; West Pico Furniture Co. v. Pacific Finance Loans (1970) 2 Cal.3d 594, 603 ["Whether a particular transaction is a usurious loan or a sale is a question of fact. [Citations.] In making such a determination, the trier of fact must look to the substance of the transaction rather than to its form. [Citations.] In the last cited case the court emphasized that 'Where the form of the transaction makes it appear to be nonusurious, it is for the trier of the fact to determine whether the intent of the contracting parties was that disclosed by the form adopted, or whether such form was a mere sham and subterfuge to cover up a usurious transaction.' Thus we observed in Milana that the 'courts have been alert to pierce the veil of any plan designed to evade the usury law and in doing so to disregard the form and consider the substance. [Citations.]'"]

In Boerner v. Colwell Co., supra, 21 Cal.3d 37, the California Supreme Court stated: "We do

not, however, understand plaintiffs to here mount a broadside attack upon the so-called time-price doctrine as an 'exception' to the laws governing usury. Their position, as we perceive it, is simply that granting the nonapplicability of usury laws to bona fide credit sales, the transactions here in question—viewed from the standpoint of substance rather than form—must nevertheless be held to be usurious loans. We proceed to an examination of this contention. (Id. at p. 47.) The Supreme Court held: "We are thus brought to what we deem to be the most troublesome aspect of the subject transactions from the point of view of assessing their true substance: the role of the third-party financing institution. If it be granted—as we think it must—that these transactions would be regarded as bona fide credit sales had there been no assignment of the contracts from the respective builders to Colwell, must this characterization be altered in light of the assignments and the circumstances out of which they arose?" (Id. at p. 50.)

In Boerner v. Colwell Co., in reviewing the evidence admitted at trial, the Supreme Court further held: "We find no indication in the record before us that the parties' dealings were other than in good faith, as the trial court found them to be. The question before us, therefore, resolves itself to this: Does the mere participation by a nonexempt financing institution in a transaction such as that before us—no matter how well-intentioned and no matter how fully disclosed to the contracting parties—operate to convert what would otherwise be regarded as a bona fide credit sale (such as, for example, in the case where the builder is able to finance the sale itself without institutional assistance) into a "loan" subject to the usury laws? [¶] Under the law of this and the significant majority of other jurisdictions the answer is clearly no." (Id. at p. 52, footnote omitted.) Although the Supreme Court held that the participation of a non-exempt party did not transform the transaction into an illegal usurious one, the Court examined the evidence on which the trial court based its findings. The case was not decided on demurrer.

In Consumer Financial Protection Bureau v. CashCall, Inc. (C.D. Cal. 2016) 2016 WL 4820635, after using a "rent-a-bank scheme," CashCall switched to a tribal lender model whereby an exempt tribal lender made the loans and sold the loans to CashCall. (Id. at *2.) According to CashCall, with this structure, the loans would not be regulated. (Ibid.) By prearrangement, CashCall agreed to purchase the loans funded by the tribal entity. CashCall deposited enough money into a reserve account to fund the tribal loans. (Ibid.) CashCall fully indemnified the tribal lender and provided support for marketing and servicing of the loans. (Id. at *3.) CashCall paid the tribal lender all amounts disbursed to the borrower, plus a premium of 5%. (Id. at *2.) CashCall also guaranteed the tribal lender a minimum payment of $100,000 per month and a $10,000 monthly administration fee. Some of the loans had interest rates of 134% and 318%. (Id. at *4.)

The court held: "Indeed, as the Ninth Circuit stated in Eastern, "a lender is one who puts money at risk." Eastern, 381 F.3d at 957. [¶] Based on the totality of the circumstances, the Court concludes that CashCall, not Western Sky, was the true lender. CashCall, and not Western Sky, placed its money at risk. It is undisputed that CashCall deposited enough money into a reserve account to fund two days of loans, calculated on the previous month's daily average and that Western Sky used this money to fund consumer loans. It is also undisputed CashCall purchased all of Western Sky's loans, and in fact paid Western Sky more for each loan than the amount actually financed by Western Sky. Moreover, CashCall guaranteed Western Sky a minimum payment of $100,000 per month, as well as a $10,000 monthly administrative fee. Although CashCall waited a minimum of three days after the funding of each loan before purchasing it, it is undisputed that CashCall purchased each and every loan before any payments on the loan had been made. CashCall assumed all economic risks and benefits of the loans immediately upon assignment. CashCall bore the risk of default as well as the regulatory risk. Indeed, CashCall agreed to 'fully indemnify Western Sky Financial for all costs arising or resulting from any and all civil, criminal or administrative claims or actions, including but not limited to fines, costs, assessments and/or penalties . . . [and] all reasonable attorneys fees and legal costs associated with a defense of such claim or action.'" (Id. at *6.) The court thoroughly examined the evidence on a motion for summary judgment.

Here, at the demurrer stage, OppFi asks the court to ignore the substance of the loan transactions as alleged in the cross-complaint. As alleged, by prearrangement, OppFi purchases all the loans shortly after the loans close. FinWise funds the loans only if it is fully secured by OppFi. FinWise thereby takes no risk and is insulated from any loss. OppFi also pays all of FinWise's expenses and a volume fee based on the amount of the loans' principal. The loans are only available through OppFi, not FinWise. OppFi performs all marketing, underwriting, and servicing of the loans. Thus, OppFi collects the interest and principal, decides loan write-offs, and refers the loans to collection agencies. As alleged, the substance is that OppFi is the lender.

OppFi supports its demurrer with two decisions (Jones v. Wells Fargo Bank (2003) 112 Cal.App.4th 1527 (Jones) and WRI Opportunity Loans II, LLC v. Cooper (2007) 154 Cal.App.4th 525 (WRI) that OppFi describes as "directly on point and dispositive." OppFi's reliance on these decisions is misplaced.

In Jones, supra, 112 Cal.App.4th 1527, the court held that the shared appreciation agreement between the plaintiff borrower and the defendant national bank was exempt from the usury interest rate restrictions under Financial Code section 1504 because: "The pleadings and stipulated facts establish that Wells Fargo is a national bank whose main office is in California; it

is authorized to engage in the trust business; and it acted in its fiduciary capacity for the Reager Trust in arranging the note and forbearance agreement. These features place it squarely within the section 1504 exemption." (Id. at p. 1535.) Although the court rejected the plaintiff's argument that the agreements were "'sham' shared appreciation loans, due to defendants' usurious intent," the court held: "In determining whether a transaction is a loan or forbearance subject to the usury law, or some other sort of transaction that is not subject to that law, a court must look beyond the surface of the transaction to its substance." (Id. at pp. 1537-1538.) The court further held: "The loan and forbearance agreement fit within a separate and independent exemption from interest rate restrictions that covers all obligations, loans, or forbearances made or arranged by bank trustees." (Id. at p. 1538.) The court added: "Because the note and forbearance agreement are both exempt under Financial Code section 1504, they are not illegal under California's usury law. We therefore need not and do not address other exemptions cited by respondents." (Id. at p. 1539.) In Jones, there was no doubt that Wells Fargo were the lender. There also was none of the prearranged structure as the Commissioner alleges in the cross-complaint.

In WRI, supra, 154 Cal.App.4th 525, in reversing the trial court's grant of summary judgment in favor of the lender, the court held: "Because neither party submitted extrinsic evidence bearing on the meaning of the loan documents and the pertinent historical facts regarding the loan are undisputed, the interpretation of the loan's provisions and its status as a shared appreciation loan are questions of law that we resolve de novo." (Id. at p. 532.) The court pointed out: "Under the interest contingency rule, courts 'look to the substance rather than to the form' of the transaction to determine whether the lender's profits are exposed to the requisite risk" and "Moreover, courts have looked beyond the face of the agreement to assess whether the lender's profits are subject to risk." (Id. at p. 535.) In holding that the transaction was not exempt from the usury prohibitions, the court held: "Accordingly, the statutory definition of a shared appreciation loan must be understood to permit a lender to obtain guaranteed interest payments up to the maximum rate permitted under the usury law, and additionally, payments of contingent deferred interest that are subject to risk." (Id. at p. 540.) The court in WRI held that the loan did not "meet the statutory requirements for a shared appreciation loan" because the loan's terms "manifest[ed] an intent to avoid risks" regarding the payment of the contingent deferred interest. (Id. at p. 541.)

The court in WRI discussed its holding in Jones that the loan in Jones "fell within an exemption to the usury law for specified bank loans (Fin. Code, § 1504)." (Id. at p. 536.) The court in WRI explained: "In so concluding, we rejected the partner's contention that the transaction constituted a " 'sham' " shared appreciation loan because the property's rapid appreciation ensured that "the lender's profits were never at risk." (Jones, supra, 112 Cal.App.4th at p. 1538, 5 Cal.Rptr.3d

835.) Noting that the transaction 'involve[d] a classic shared appreciation loan arrangement,' we concluded that the lender's contingent interest was at risk because the lender could not force a sale or 'lock in' its profits. (Id. at pp. 1534, 1538-1539, 5 Cal.Rptr.3d 835.) Moreover, in discussing case authority on the interest contingency rule, we explained that when a loan meets the requirements for a statutory exemption to the usury law, courts will not look beyond those requirements to determine whether the underlying transaction exposes the lender's profits to significant risk or betrays an intent to evade the usury law. We stated: 'The question of whether loaned money or interest [was] at risk figured into the determination of intent to evade the usury law, and the good faith shared appreciation loan was an early common law exception to the usury law. [Citation.] These cases do not apply to loans . . . covered by modern statutory exemptions that remove the need for evasion.' (Id. at p. 1539, 5 Cal.Rptr.3d 835.)" (WRI, supra, 154 Cal.App.4th at p. 536.)[1]

Here, the terms of the transaction with the borrower are not at issue as they were in Jones and WRI nor is there a shared appreciation agreement to be scrutinized. In Jones and WRI, the focus was on the transactions to determine whether the lender's additional contingent deferred interest was actually at risk for purposes of the shared appreciation loan exemption. The identity of the real lender was not in issue. Thus, there was no doubt in Jones that Wells Fargo was the actual lender and that Wells Fargo qualified for an exemption from the usury restrictions. In WRI, the shared appreciation exemption did not apply because the lender's contingent deferred interest was not at risk. Here, a different question is presented: who actually assumed the risk and made the loans the loans in light of the Commissioner's allegations that all was structured with OppFi as the lender. According to the cross-complaint, OppFi created an arrangement in which it assumed all the risk and performed all the functions of the lender. FinWise took no risk and made its profit solely through fees based on the principal amount of loans created by OppFi; not the manner in which a lender customarily earns its profit. According to the cross-complaint, OppFi was in reality the lender. As alleged, the Commissioner is not attempting to regulate the transfer of loans in a secondary market. Rather, the focus here is on the identity of the lender in the primary market. Based on Jones and WRI, on demurrer, OppFi fails to persuade that the loans as a matter of law are immune from scrutiny under California law. OppFi's demurrer does not present a question about a modern statutory exemption; just a question regarding the identity of the actual lender under the usury laws that cannot be resolved on demurrer.

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[1] The court does not find the two federal unreported cases (Sims v. Opportunity Financial, LLC (N.D. Cal. 2021) 2021 WL 1391565 and Beechum v. Navient Solutions, Inc. (2016) 2016 WL 5340454) to be persuasive. Without much analysis or discussion, the court in Sims relied on Beechum. (Sims, supra, at *4.)

In light of long-standing California law, at this early stage, the court cannot rule as a matter of law that FinWise is the lender of the loans at issue. (See Miller and Starr, California Real Estate (4th Ed. Sept. 2022) § 37.39, footnote omitted ["The exemption should not pass with the note if the public purpose is not served and the transaction is structured with the intent to evade the Usury Law. For example, if the nonexempt assignee negotiates to make a loan at a usurious rate and thereafter arranges for the loan to be made by an exempt lender with the prior agreement that it will be assigned to the assignee, the exempt lender is merely acting as the agent for the nonexempt lender. In such cases, the court should examine the substance of the transaction, consider the assignee as the true lender, and not permit the assignee to hide behind the assignor's exemption."]; Ubaldi v. SLM Corp. (N.D. Cal. 2012) 852 F.Supp.2d 1190, 1203 ["At this early pleading stage, where Plaintiff contends that the national bank may have retained no significant interest in her student loan, presenting a factual dispute over the identity of the actual lender, the Court will permit Plaintiff to conduct discovery on this limited issue to determine whether her de facto lender theory has factual support. Defendant's motion to dismiss is therefore DENIED."]; see generally Thompson v. 10,000 RV Sales, Inc. (2005) 130 Cal.App.4th 950, 966 ["Moreover, in determining whether consumer protection laws such as the ASFA apply to a particular transaction, we look to the substance of the transaction and do not allow mere form to dictate the result."].)

Accordingly, OppFi's demurrer is overruled.

The following entry made is for the purpose of disposition of the motion in the Court's case management system:
The Demurrer - without Motion to Strike (Res ID: 5767) filed by Opportunity Financial, LLC on 05/10/2022 is Overruled.

Clerk is to give notice. Certificate of Mailing is attached.