

Bank Partnership Wins Victory in Putative Class Action

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LendingClub Corporation scored a significant victory in a lawsuit brought by a putative class of consumers who asserted that the marketplace platform partnered with a Utah bank to avoid application of state interest rate limitations.

In *Bethune v. LendingClub Corporation*, Bethune claimed that LendingClub "improperly attempted to circumvent the application of relevant state usury laws ... by contracting with ... WebBank, a bank with a Utah state charter, to act as a 'pass through' for LendingClub's loans." Bethune argued that this structure, pejoratively referred to by consumer advocates as a "rent a bank scheme," circumvented New York usury laws because Utah has no usury limitations and WebBank, as a Utah bank, could export Utah interest rates into all other states, including New York, pursuant to federal law. Bethune claimed that this "scheme" allowed LendingClub to offer him a loan in New York that exceeded New York's criminal usury cap of 25% per year. He thus sued LendingClub and WebBank in a putative class action for usury law violations as well as UDAP and RICO claims.

LendingClub and WebBank countered that Bethune's loan agreement included an arbitration provision, which bound him to arbitrate all disputes as an individual, and not on behalf of a class. Importantly, the arbitration provision included an opt-out provision that Bethune did not exercise. That is, he could have written LendingClub to state that the arbitration provision would not apply to the agreement, but he did not exercise this right. The loan agreement also provided that federal law and Utah law governed the agreement, and that the arbitrator would be the decider of all disputes arising from the loan agreement, including whether a dispute could be arbitrated. The court sided with LendingClub and WebBank and concluded that the loan agreement contained "clear and unmistakable evidence" that the parties to the agreement delegated the question of arbitrability of disputes under the loan agreement to the arbitrator. In an effort to derail arbitration, Bethune asserted that the loan agreement was "unconscionable" and the court should thus set aside the arbitration provision. The court was not moved by this argument, however, because Bethune did not address how the arbitration provision itself was specifically unconscionable. Rather, he attempted to bootstrap his desire to avoid arbitration to his bald assertion that the usury rate was "unconscionable." Therefore, the court granted the motion to compel arbitration on an individual basis, effectively undercutting Bethune's lawsuit.

Memorandum and Order

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