CENTRE DE DROIT BANCAIRE ET FINANCIER

**Lombard loan**

# First consequences of the COVID-19 crisis

Par Sébastien Pittet le 2 July 2025

When the bank makes a margin call, the client may have very little time to react and provide new funds. In its ruling 4A_389/2024 of May 8, 2025, the Federal Supreme Court reiterated its strict case law on Lombard loans, particularly with regard to clients with extensive financial knowledge and experience.

In early April 2019, a client entered into a relationship with a bank. During the account opening process, the client stated that he was an investment expert, had a high risk appetite and wanted to maximize the return on his investments. Based on these statements, the bank classified the client as a “professional” and granted him direct access to its trading room.

On January 23, 2020, the parties entered into a Lombard loan agreement for EUR 3,000,000. A provision in the agreement allowed the bank to realize the pledged assets at any time and regardless of any maturity date, particularly during periods of market turbulence.

In March 2020, the markets began to collapse due to the COVID-19 pandemic. On March 6, 2020, the bank noted that the loan was no longer covered by the pledged assets. On the same day, the bank informed the client (probably by mail) and asked him to provide new funds by March 10, 2020, at 10 a.m. If he didn’t, or if the value of the pledged assets dropped again, the bank reserved the right to sell the client’s assets. On March 9, 2020, at 9:09 a.m., the client received the same notification by email.

Between March 9 and 10, 2020, i.e. partially before the expiry of the deadline granted by the bank, the latter proceeds with the liquidation of the client’s portfolio. The realization of the assets does not fully cover the loan and a balance of EUR 600,000 remains. The bank files a claim for payment of this amount and wins its case before the cantonal authorities.

In several considerations, the Federal Court issued procedural reminders on the issue of evidence. Still through the prism of evidence, our High Court then turned its attention to the legality of the realization of the client’s assets.

The client accused the bank of having realized his assets without legal authority.

According to the Federal Supreme Court, the deadline set by the bank did not appear to be too short, particularly given the client’s level of sophistication. Furthermore, the bank was entitled to realize the assets even before the deadline expired, as this was clear from both the credit agreement and the notification of March 6, 2020.

The client also argued that the bank should have clearly explained to the courts why it had proceeded with the realization of the assets. The Federal Supreme Court rejected the client's argument. Not only did the contract not impose any rules on the grounds for such a decision, but, more importantly, the conditions on the financial markets during the period in question were such as to justify the immediate realization of the client's portfolio in accordance with the credit agreement.

In broad terms, the decision reiterates the significant leeway available to banks granting Lombard loans. Although this decision – much of which concerns procedural aspects – does not, at first glance, revolutionize previous case law in this area, one element deserves closer attention.

In a parenthetical remark at the end of section 5.2.5.2, the Federal Court specifies that, in view of the circumstances, the bank could probably even have proceeded with an emergency sale due to financial market disruptions ("*una vendita di emergenza in caso di Market Disruption Events*"). This seemingly innocuous clarification is perhaps the only truly interesting and new element of this ruling. To support its argument, the Federal Court cites Bahar/Peyer. In the reference cited in the decision (BSK Wertpapierrecht-Bahar/Peyer, Art. 32 BEG, N 26 ff.), Bahar/Peyer argue that, contrary to the wording of Art. 32 para. 1 LTI, realization without prior notice based on the general principles of security law is possible in emergency situations, provided that the sale is in the interest of both parties (even if the investor is not qualified). In an old ruling prior to the LTI, the Federal Supreme Court deliberately left this question open (TF 4C.243/2006 of July 10, 2007, c. 3.2).

While this decision is likely part of a new wave of lawsuits related to Lombard loans that went sour in the wake of the financial turmoil of March 2020, the Federal Court may be opening the door to other similar situations that arose around March 16, 2020 (which the Federal Court describes, using the terms of the cantonal authorities, as "*Black Monday*"). Based on this decision, we could imagine that, in the future, the realization of pledged assets without prior notice could be possible in the event of "*Market Disruption Events*" (such as the period of uncertainty in March 2020), even if the client is not qualified.

However, it cannot be ruled out that our interpretation of this parenthetical remark at the end of section 5.2.5.2 is more a case of overzealousness in an otherwise rather mundane decision than a genuine intention on the part of the Federal Supreme Court to introduce a new principle of case law.

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