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Mortgage

No liability for the bank despite contractual inequality

Par Sébastien Pittet le 18 August 2025

A possible contractual inequality in a credit relationship between a bank and its customers does not give rise to liability on the part of the bank, provided that the bank has validly fulfilled its duty to provide information. These are the main findings of judgment 4A_567/2024 of 27 May 2025.

In 2013, clients entered into a mortgage loan agreement with a bank for approximately CHF 1.5 million. The interest rate was variable and corresponded to the three-month LIBOR (and subsequently SARON), plus a margin. The agreement provided that if the LIBOR (or SARON) was negative, the interest rate would be equal to the margin. The loan was renewed several times, most recently in 2020.

To hedge against the LIBOR/SARON variable interest rate risk, the clients also entered into a 30-year swap agreement with the bank, under which the clients will pay the bank a fixed interest rate of 2.31 % in exchange for the LIBOR/SARON rate (calculated on the same mortgage loan amount of CHF 1.5 million). However, the swap agreement does not provide for a floor rate in the event of a negative LIBOR/SARON.

The total interest payable by the clients under the two agreements is as follows :

- If LIBOR/SARON ? 0 ? Interest rate = margin + 2.31 %
- If LIBOR/SARON < 0 ? Interest rate = margin + 2.31 % + |LIBOR/SARON|

In summary, the protection against variable interest rates disappears if LIBOR/SARON becomes negative, with the negative interest being added to the interest payable.

In 2022, the clients complained to the bank and then to the courts about the imbalance resulting from the combination of the two contracts and the lack of information about this. The clients also argued that, in their situation, the bank should have offered them a fixed-rate loan. They estimated their loss at CHF 82,259. In parallel with the legal proceedings, the loan was repaid in early 2023.

After some general legal developments on the scope of the bank’s information and advisory obligations, the Federal Court asked three questions to assess the bank’s conduct :

1. Was the bank obliged to present the option of a fixed-rate loan to the clients and explain how it worked ?

2. Were the customers properly informed of the effects of the two contracts ?
3. In view of all the circumstances, was the bank obliged to recommend a fixed-rate mortgage or, at the very least, to advise against the solution implemented ?

With regard to the first question, the Federal Court considers that the customers received sufficient information about a fixed-rate loan. This is clear from (i) an email sent to the customers before the contracts were signed, which mentioned indicative fixed rates, and (ii) a PowerPoint presentation that mentioned the option of fixed-rate loans. Also, the customers didn't show how extra info from the bank would have made them take out a fixed-rate loan.

With regard to the second question, the Federal Supreme Court considers that if the customers had not really understood how the combination of the two contracts worked, they would have reacted as soon as the LIBOR/SARON rates turned negative. However, they paid the interest increased by the negative rate on several occasions without complaining about the contractual imbalance. Furthermore, the bank had specified to the customers in an email that LIBOR/SARON did not constitute a charge unless it became negative.

Finally, with regard to the third question, the Federal Court concluded that the customers had failed to demonstrate that a fixed-rate loan would have been more advantageous in this case than the solution proposed by the bank. The contractual structure used in this case has the particular advantage of guaranteeing customers a fixed rate for 30 years (in the event of a positive LIBOR/SARON), whereas a fixed-rate loan cannot reasonably be concluded for such a term. Furthermore, the bank could not reasonably have expected, at the time the swap was concluded, that LIBOR would become negative during the term of the contract.

The customers also invoke section 8 of the UCA. According to this provision, 'a person acts unfairly if, in particular, they use *general terms and conditions* which, contrary to the rules of good faith, provide for a *significant and unjustified imbalance* between the rights and obligations arising from the contract to the detriment of the consumer' (emphasis added).

Taking up the arguments of the lower court, the Federal Court notes that the relevant contractual clauses are not included in the general terms and conditions of the contract, as required by Art. 8 UCA. Furthermore, the contractual solution does not lead to a significant and unjustified imbalance. As mentioned above, it has the advantage of maintaining the customers' situation for a period of thirty years, which is generally not possible with a fixed-rate loan. Section 8 LCD is not intended to indirectly require the bank to offer fixed-rate loans for thirty years.

This decision highlights the importance of the bank's duty to provide information. It must ensure that the customer understands the mechanisms and legal and economic effects of a credit agreement. From the customer's point of view, this ruling once again demonstrates the importance of reacting quickly. In this situation, as in others, the customer's indifference is never to their advantage if legal proceedings are subsequently initiated.

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