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Mortgage

No liability for the bank despite contractual inequality

Par Sébastien Pittet le 18 August 2025

A possible contractual imbalance in a credit relationship between a bank and its clients does not engage the bank's liability, even if the bank provides its clients with limited 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 (later 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 risk of variable LIBOR/SARON rates, 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 rate.

During the contract negotiations, the clients were assisted by a real estate professional.

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

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

In summary, 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 on this subject. The clients also argue that, in their situation, the bank should have offered them a fixed-rate loan. They estimate their loss at CHF 82,259. In parallel with the legal proceedings, the loan is repaid in early 2023.

The Federal Court begins by pointing out that, in a credit context, the bank is not the guardian of its client. Unlike wealth management services, banks have no duty to provide information or advice when granting loans. A duty to provide information may be required in exceptional cases

if the parties have built up a long-term relationship of trust or if the client is clearly inexperienced. This interpretation applies even in the case of a swap contract, provided that it is concluded in connection with the loan.

Following these theoretical developments, the Federal Court posed three questions to assess the bank's conduct in this case :

1. Was the bank obliged to present the fixed-rate loan option to its clients and explain how it worked ?
2. Were the clients 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 clients received sufficient information about a fixed-rate loan. This is clear from (i) an email sent to the clients before the contracts were signed, which mentioned indicative fixed rates, and (ii) a PowerPoint presentation that mentioned the option of fixed-rate loans. Plus, the clients 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 clients 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 clients in an email that LIBOR/SARON did not constitute a charge unless it became negative.

Finally, with regard to the third question, the Federal Supreme Court concluded that the clients 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 clients 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 clients also invoke section 8 of the LCD. 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 result in a significant and unjustified imbalance. As mentioned above, it has the advantage of maintaining the situation of clients 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 limited obligations of the bank towards its client when granting credit. Unlike other services (asset management or investment advice), the bank is not obliged to pursue solely the interests of its client, which is why its pre-contractual duty to provide

information and advice is limited. The bank’s interests (particularly its hedging interests) may also differ from those of the client.

These limited obligations of the bank also apply to the granting of a swap, which is perhaps the most salient point of this ruling. When the conclusion of a swap is part of a credit mechanism, the bank’s obligations must not be equated with those prevailing in the case of financial investment recommendations, but rather with those applicable to the granting of credit. The Federal Court’s strict stance towards the clients in this case may be explained by the fact that they had professional advice.

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