CENTRE DE DROIT
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Mortgage

Late payment, termination invalidated

Par Besart Buci le 9 September 2025

Unless expressly stated in the contract, a bank may not terminate a mortgage loan early if, at the time of termination, there are no outstanding payments (4A_599/2024 of May 26, 2025).

In August 2021, a bank entered into a mortgage financing agreement with a company and offered a credit line of up to CHF 4,552,500. Article 7 of the agreement stipulates that the debt must be reduced by annual repayments of CHF 52,500, the first of which is due on September 30, 2022. As collateral, the company transfers two registered mortgage notes totaling CHF 4,552,500 to the bank.

Article 9 of the contract provides for the possibility of extraordinary termination with immediate effect, in particular “in the event of a delay of more than 30 days in the payment of interest, amortizations, commissions, indemnities, or other incidental costs” (“Bei Verzug von mehr als 30 Tagen in der Zahlung von Zinsen, Amortisationen, Kommissionen, Entschädigungen oder sonstigen Nebenkosten”).

The company fails to meet the first amortization deadline and receives several reminders (October 17, 2022, December 14, 2022, and February 1, 2023), the last of which sets a final deadline of February 10, 2023. On February 27, 2023, the company informs the bank that it has made the payment. The bank thanked it for the payment in an email dated March 6, 2023, and recorded it as of March 9, 2023.

Despite this payment, the bank terminated the contract extraordinarily by letter dated March 20, 2023, based on Article 9 of the contract and citing the company’s delay since September 30, 2022. It demanded full repayment of the loan and terminated the two mortgage notes with six months’ notice.

In proceedings for the enforcement of a real estate pledge, the District Court of Dielsdorf (ZH) provisionally lifted the opposition filed by the company. This decision was upheld by the Zurich High Court.

The company appealed to the Federal Supreme Court, claiming a violation of Article 9 of the contract. It argued that the possibility of terminating the contract under this article presupposes that the delay in payment still exists at the time of termination. This right therefore expired when the company made the amortization payment on March 9, 2023.

In its analysis, the Federal Supreme Court interpreted Article 9 of the contract according to the principle of good faith and held that the wording of this clause clearly indicated that the debtor's delay must still exist at the time of termination ("in the event of a delay of more than 30 days"). This wording therefore presupposes the existence of a delay in payment.

The Federal Court also rejected the analogy made by the lower court with Article 257*d*(2) of the Swiss Code of Obligations (CO), according to which the lessor retains its right to terminate the lease agreement extraordinarily even if the lessee only pays after the expiry of the additional period set. It noted that the wording of this provision differs from that of Article 9 of the contract.

Finally, the Federal Court notes that, even assuming that extraordinary termination is valid despite late payment, it would not be possible, contrary to the opinion of the lower courts, to deny without further ado the existence of an abuse of rights (Art. 2 para. 2 CC). Such an abuse would indeed have been found, since the company could consider, in good faith, on the basis of the bank's email of March 6, 2023 (in which no extraordinary termination was mentioned), that the matter had been settled and that the financing would be maintained. In these circumstances, the subsequent termination would thus have been perceived as contradictory behavior, constituting an abuse of rights.

The appeal is upheld, as the extraordinary termination of the mortgage loan is not valid.

This ruling, which reiterates the basic principles of contract interpretation, does not, in our opinion, give rise to any particular comments. One might be tempted to see it as an expression of more extensive protection in banking law than in tenancy law. Unlike Art. 257*d* para. 2 CO, which allows the lessor to terminate the lease even if the tenant pays their debt after the expiry of the warning period, this decision could imply that the validity of early termination of a loan is conditional on the continuation of the delay in payment. However, this interpretation would be incorrect. In our view, the Federal Supreme Court is not granting special protection to the borrower, who is considered the "weaker" party to the contract. Rather, the decision is based on a *strict* interpretation of the mortgage loan agreement in accordance with the principle of trust and good faith (Art. 2 para. 1 CC).

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