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Bank liability

Selling put options on Russian stocks, a costly fall

Par Laurent Hirsch le 6 November 2025

A client's legal action was dismissed on the grounds that she had failed to sufficiently allege the hypothetical scenario of how transactions would have unfolded if the bank had acted in accordance with its contractual obligations. She was suing her Swiss bank to claim reimbursement for a loss resulting from the sale of options on Russian shares (4A_657/2024 of September 1, 2025).

In November 2021, a Bahamian company had sold put options on American Depository Receipts (ADRs) of shares in a Russian company at an exercise price of USD 9 with a maturity date in mid-March 2022, receiving a sale price of approximately USD 60,000. While the price of these ADRs was above USD 9 in November 2021, it fell to USD 0.60 in March 2022 following military hostilities in Ukraine and European sanctions against Russia. As trading in these ADRs had been suspended, Eurex, the European exchange on which the options were traded, decided to settle the open options in cash, involving a payment of USD 842,000 to settle the client's put options.

The bank had sold these put options in its own name but on behalf of the client, in a fiduciary capacity. The bank therefore paid Eurex the amount claimed of USD 842,000, which it debited from the client's account. The client did not accept this transaction, considering that the bank should have checked more carefully that the cash settlement of these put options complied with the (option sale) contract and stock exchange regulations.

The client brought an action for damages against the bank. The Zurich Handelsgericht classified the banking relationship as a mandate and the contract relating to these options as a commission contract. The Zurich Handelsgericht dismissed the action, considering that neither the damage nor the causality had been sufficiently proven. The Federal Supreme Court dismissed the appeal, conducting a different analysis from that of the Zurich Handelsgericht.

With regard to the damage, the Zurich Handelsgericht had considered that the debit transaction of USD 842,000 merely formalized a debt that already existed virtually at the time of the sale of the put options, so that this debit did not correspond to damage. The Federal Supreme Court rejected this argument, given the client's objections to the manner in which the transaction was settled. The Handelsgericht had not yet ruled on the questions of the validity in principle of a cash settlement and the timing (prior to the expiration of the options ?) at which such a settlement could have been made. At this stage, it was therefore not possible to rule out that the debit of USD 842,000 could have constituted damage (compared to an indeterminate

hypothetical scenario).

With regard to causality, the Zurich Handelsgericht had considered that the loss had been caused by the fall in prices following the war in Ukraine, while the contractual breaches had occurred subsequently. Here again, the Federal Supreme Court considered that this reasoning was insufficient and that it was necessary to examine the hypothetical scenario that would have occurred if the bank had acted in a manner that the client considered to be in accordance with its contractual obligations. The Federal Supreme Court noted that the client had not alleged what would have happened if the bank had fulfilled its contractual obligations ; in the absence of such a hypothetical scenario, it is not possible to conclude that the alleged damage is causally related to the bank's (alleged) breach of its contractual obligations ; in the absence of proof of causality, the action can only be dismissed.

Neither the Zurich Handelsgericht nor the Federal Court examined whether the bank had acted in accordance with or contrary to its contractual obligations.

This Federal Court ruling demonstrates once again (see already Pedrazzini, cdbf.ch/1417/, Pittet, cdbf.ch/1297/, Hirsch, cdbf.ch/1061/) the importance of ensuring that all allegations that may be relevant to the basis of liability claims against a bank are formulated.

It should also be noted that the Zurich Handelsgericht had dismissed a private expert opinion, in accordance with the case law applicable until the recent amendment of Article 177 CPC. It will be interesting to see how the admissibility of private expert reports may lead to their systematic use and how such use could change the handling of this type of banking litigation.

Finally, the question arises as to whether the client could have sought enforcement rather than damages, i.e., requested that the bank recredit her account with the amount allegedly wrongfully debited. The advantage of an action for specific performance is that it should not be necessary to prove either damage or causation, as the customer can simply contest the legitimacy of the debit transaction and the bank must then prove the customer's obligation to cover the transaction. Knowing when an action for performance is possible in the case of an unjustified banking transaction is a delicate question (see Thévenoz/Hirsch, Le dommage d'investissement et sa preuve, RSDA 2023, pp. 167-172). In our opinion, in accordance with the general rule and following the opinion of the aforementioned authors, an action for enforcement by the customer should have been possible in this particular case, even if it is not certain that such an action would have been considered admissible by the courts.
