Events of Default: Occurrence Alone May Not Be Sufficient for Acceleration

In an interesting decision rendered a few months ago (4A_599/2024 of 26 May 2025), the Swiss Supreme Court clarified that a bank cannot rely on an extraordinary termination clause triggered "in the event of a default" if the default has already been remedied at the time of termination.

In August 2021, Bank B. granted Company A. a CHF 4,553,500 mortgage loan requiring annual amortization payments of CHF 52,500. The first installment, due 30 September 2022, was paid late and only recorded as settled on 9 March 2023. Shortly thereafter, on 20 March 2023, the bank extraordinarily terminated the financing agreement, relying on a contractual clause allowing termination "in the event of a default of more than 30 days" ("*[b]ei Verzug von mehr als 30 Tagen*").

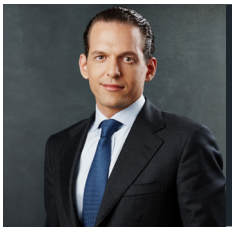
The bank later initiated debt enforcement proceedings against A. in late 2023, seeking provisional release for both the mortgage and the underlying claim. A. filed an objection.

The Zurich courts had sided with the bank, holding that the clause allowed termination even after the debtor had cured the default. However, the Swiss Supreme Court disagreed. It held that the wording of the relevant contractual clause clearly indicates that the debtor's default must still exist at the time of termination.

In other words, the extraordinary termination right required an existing and continuing default at the time the bank exercises it. Since the default had been cured by payment of the outstanding amount, acknowledged by the bank on 6 March 2023 without any indication of pending termination, the debtor could, in good faith, assume that the matter was resolved. The termination was therefore invalid.

This decision may have broader consequences beyond mortgage financings. For other types of financing structures, it could reignite debate over whether the mere "occurrence of an Event of Default" alone suffices to accelerate a facility or whether the default must still be continuing at the time acceleration is declared by the lender. Care should therefore be taken when negotiating and drafting acceleration clauses in credit agreements, as their precise wording will define the scope of the lenders' rights and directly affect their ability to validly exercise them.

Should you require any further information on this subject, please do not hesitate to contact the authors or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.



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