

No purchase right of the lessee after expiry of the leasing contract

Topic: **Consumer credit and leasing** Case number: **2020/16**

The customer purchased an upmarket vehicle from a garage and concluded a leasing contract with the bank to finance it. The seller of the vehicle advised him to set a low residual value in this contract and to pay high leasing instalments for it so that he could acquire the vehicle at a correspondingly low price when the leasing contract expired. Shortly before expiry, he contacted the bank and wanted to purchase the vehicle at the contractually defined residual value. The bank explained to him that according to the provisions of the leasing contract he was obliged to return the vehicle after its expiry and that no purchase option had been agreed. Under a separate contract with the garage, the bank was obliged to sell the vehicle back to the garage at the agreed residual value. The customer then turned to the Ombudsman. The Ombudsman was unable to help him because, in his view, the provisions of the leasing contract protected the bank's position. He recommended that he settle the problem with the garage.

In the year under review, the Ombudsman was confronted twice with the situation of leasing customers who, when concluding the leasing contract, had assumed that they would be able to purchase the leased vehicle after its expiry. Trusting in this, they agreed on high leasing instalments and wanted to purchase the vehicle at the agreed residual value, which, according to their expectations, would be below the market value of the vehicle at that time. They saw the leasing contract as a kind of instalment agreement that would allow them to pay off the purchase price in monthly instalments and then buy the vehicle at the correspondingly reduced residual value if they so wished. In both cases, however, the contracts did not contain a purchase option. Instead, the customers were obliged by an unambiguous contractual provision to return the vehicle to the bank at the end of the leasing contract. For their part, the banks concerned were obliged, under separate contracts to which the lessee was not a party, to sell the vehicle back to the garages from which they had acquired it on behalf of the lessees at the agreed residual value. The disappointment of the customers was accordingly great. The Ombudsman could well understand that they felt the situation provided for in the contract was unfair.

However, according to the Ombudsman's understanding, this approach corresponds to the prevailing model of leasing transactions for vehicles in Switzerland. The bank or lessor acquires the vehicle from the garage according to the lessee's instructions and, as the owner of the vehicle, undertakes to make it available to the lessee for use under the agreed conditions. The latter is obliged to pay the agreed leasing instalments and to return the vehicle to the lessor at the end of the leasing period. Usually, the lessor does not deal with the disposal of the returned vehicles himself, but concludes a repurchase agreement with the garage owner, in which the latter is obliged to repurchase the vehicle at the residual value stipulated in the leasing agreement. The garage owner decides whether and for what value he will sell the vehicle to the lessee if the latter wishes to purchase it. The leasing business is also explained in this form on the relevant information pages of the consumer organisations. Corresponding information is also posted on the website of the bank involved in this case as the lessor.

The customer was of the opinion that in the section of the leasing contract in which the purchase

price of the vehicle, the leasing instalments and the residual value were specified, the term "surrender value" was used instead of "residual value". Since this term thus did not correspond to that of the general part of the leasing contract, the customer derived from it a purchase option in his favour. In his view, the fact that this surrender value was significantly lower than the market value of the vehicle at the end of the leasing contract further supported this argument. However, in the Ombudsman's view, this was not a sufficient basis for disregarding the relatively detailed provision of the contract, which stipulated that the vehicle was to be returned upon its expiry and even explicitly excluded an option to purchase.

Ultimately, the client relied on a verbal statement by the garage for the existence of the purchase option. There was no indication in the file that the garage had acted on behalf of the bank as lessor. In the leasing contract, which as usual was drafted as a pre-formulated standard contract, it was also expressly stated that any individual agreements to the contrary had to be in writing, which is mandatory under the Consumer Credit Act.

In the Ombudsman's view, there was no evidence of misconduct on the part of the bank. He recommended that the customer confront the garage owner, who had obviously benefited economically from the situation, with the statement that he had been promised a right to buy. The customer was dissatisfied with the Ombudsman's notice and did not want to follow this recommendation.