Ambiguous Termination Clause in a Commercial Lease: Does the Rule in dubio contra stipulatorem Also Apply to the Successor of the Original Drafter?

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The Federal Supreme Court applied the rule *in dubio contra stipulatorem* against a party that had not drafted the disputed termination clause in a commercial lease, on the sole ground that it had assumed the contractual position of the original drafter.

Judgment of the Federal Supreme Court of 24 June 2025
Case Reference: 4A_245/2024

Facts

On 27 November 2017, A. SA ("the **Tenant**") and C. SA entered into a lease agreement (the "**Contract**") for commercial premises at a gross monthly rent of CHF 42,333.

Art. 3 of the Contract ("the **Early Termination Clause**") provided for **early termination** as follows: "This lease is concluded for a term of five years, beginning on 12/01/2017 and ending on 11/30/2022. However, the tenant shall have the option to terminate the lease one year after the commencement date of this lease by giving six months' notice prior to its expiry."[1]

In 2018, D. SA ("the **Lessor**") became the new owner of the building where the premises were located. The Tenant was informed of the change of ownership and was expressly told that the contractual terms and conditions remained unchanged.

According to the Tenant, Art. 3 of the Contract entitled it to terminate the lease at any time after one year, subject to six months' notice (letter of 12 May 2020). By letter of 6 January 2020, the Tenant notified the Lessor of its intention to terminate the lease on 31 July 2020.

However, the Lessor interpreted Art. 3 of the Contract differently. According to the Lessor, this clause did not provide for termination at any time after one year, subject to six months' notice, but rather meant that the Tenant remained bound by its contractual obligations until the expiry of the lease on 30 November 2022, unless the premises were re-let in the meantime. The Lessor therefore refused to accept the Tenant's termination.

The Tenant paid rent up to 31 July 2020 but refused to pay thereafter.

On 3 December 2020, the Lessor initiated debt enforcement proceedings for CHF 171,228 corresponding to rent for the period from August to December 2020. The Tenant raised an objection.

After obtaining authorisation to proceed with the action, the Lessor initiated civil proceedings against the Tenant, claiming CHF 470,877 plus interest for rent due from August 2020 to June 2021. The cantonal court of first instance dismissed the claim, ruling that the Tenant's termination was valid and that the lease had ended on 31 July 2020.

Following an appeal by the Lessor, the cantonal court of second instance reversed that judgment and ordered the Tenant to pay CHF 470,877 plus interest.

The Tenant appealed to the Federal Supreme Court, seeking to reinstate the first-instance judgment. During the proceedings, in 2025, ownership of the building passed from the Lessor to B. as a result of a change in the Lessor's legal form.

Issue

The Federal Supreme Court was called upon to determine whether the Early Termination Clause entitled the Tenant to terminate the lease at any time after one year from the commencement date, subject to six months' notice (i.e. at any point from 30 November 2018 onwards), or whether it merely granted a single opportunity for early termination with effect on 30 November 2018, failing which the lease would continue until its expiry on 30 November 2022. The lower courts had

reached opposing conclusions on this issue.

Decision

The dispute concerned the interpretation of Art. 3 of the Contract. After recalling the methods of contract interpretation (1), the Federal Supreme Court reviewed the reasoning of the cantonal court of second instance before setting out its own interpretation (2).

1. **Art. 18 SCO and principles of interpretation**

In para. 3.1 of the judgment, the Federal Supreme Court reiterated the established interpretative framework[2]. Under Art. 18 para. 1 of the Swiss Code of Obligations ("**SCO**"), in order to assess the form and clauses of a contract, it is necessary to ascertain the true and common intention of the parties (**subjective interpretation**), without dwelling on any inaccurate expressions or terms that they may have used, either by mistake or to disguise the true nature of the agreement.

If the parties' true and common intention cannot be established, their statements and conduct must be interpreted according to the **principle of trust** (**objective interpretation**), i.e. according to how a reasonable person acting in good faith would understand them in the same circumstances[3].

If the ambiguity cannot be resolved through these methods, the ambiguous contractual clause must be interpreted against its drafter, in accordance with the **rule *in dubio contra stipulatorem***[4].

In this regard, the Federal Supreme Court specified, in para. 3.4, that "even if the interpretation of the objective intention of the parties is a matter of law and may be freely examined by the Federal Supreme Court, this does not mean that it may in every case substitute its own interpretation for that of the cantonal courts; **it exercises restraint and intervenes only where the lower courts have misapplied the rules of interpretation or where its assessment is incompatible with the understanding of the contract by reasonable parties acting in good faith**"[5], based on a single precedent[6].

2. **The lower courts' divergent interpretations**

The **cantonal court of first instance** initially held that the true and common intention of the parties at the time the Contract was concluded could not be established. It therefore proceeded to an objective interpretation, seeking to determine what each party could reasonably have understood, in good faith, from the other party's statements.

On that basis, it considered that the Early Termination Clause entitled the Tenant to terminate the lease at any time after one year, subject to six months' notice. In other words, termination was possible from 1 December 2018 onwards, provided the applicable notice period was observed.

The **cantonal court of second instance**, for its part, considered that such an interpretation could not be followed. It noted that, although the cantonal court of first instance had departed from the literal meaning of the expression "one year after", a purely literal interpretation could not determine the clause's true meaning. It therefore proceeded to an interpretation based on the principle of trust.

Considering the term of the lease (five years, a duration which was not incidental, as it was a prerequisite, under Art. 269b SCO, for the validity of the rent indexation clause agreed by the parties) and the awkward wording of the Early Termination Clause, the court held that a reasonable party acting in good faith would have understood the clause as granting the Tenant only one opportunity for early termination, namely at the end of the first year of the lease, subject to six months' notice. The Tenant should therefore have given notice of termination by 31 May 2018 at the latest for the termination to take effect on 30 November 2018. The Tenant's termination was accordingly late.

The **Federal Supreme Court** first confirmed that the parties' true and common intention could not be established and that the clause therefore had to be interpreted objectively. It observed that the Early Termination Clause could reasonably be understood in two different ways:

- as limiting the right of termination to a single date (one year after the start of the lease), or
- as authorising termination at any time after one year, subject to six months' notice.

The Federal Supreme Court ruled that both interpretations were tenable under the principle of trust. It further found that the cantonal court of second instance had failed to sufficiently explain why its preferred interpretation should prevail. As the ambiguity could not be resolved using the standard methods of interpretation, the rule *in dubio contra stipulatorem*

had to be applied.

Although the Lessor (B., formerly D. SA) had not drafted the Early Termination Clause, it had become the owner of the property in 2018 and had expressly informed the Tenant that the existing contractual terms remained unchanged. In this sense, the Lessor had to be considered as having taken over the Early Termination Clause and assumed the consequences.

Consequently, the Federal Supreme Court interpreted the clause in favour of the Tenant, holding that the Tenant could terminate the lease before the initial five-year term ended, provided at least one year had elapsed since the start of the contract, and with six months' notice (see Art. 266a para. 2 SCO). The lease agreement thus ended validly on 31 July 2020, a point which the parties did not dispute before the Federal Supreme Court.

The Federal Supreme Court upheld the appeal, confirming the cantonal court of first instance's decision on different grounds. B.'s claims were dismissed. The case was referred back to the cantonal court of second instance for a new decision on the costs of the cantonal proceedings.

Key Takeaways

In this judgment, the Federal Supreme Court confirmed and applied the established three-step interpretative framework (subjective interpretation, objective interpretation, and, subsidiarily, the rule *in dubio contra stipulatorem*). Two aspects of the Federal Supreme Court's reasoning warrant particular attention.

First, the Federal Supreme Court appeared deliberately to **limit the scope of its review of objective interpretation**, noting that it exercised restraint, even though objective interpretation is a question of law that it may, in principle, freely review. Second, the Federal Supreme Court applied **the rule *in dubio contra stipulatorem* against a party that had not drafted the Early Termination Clause**, on the sole ground that it had assumed the contractual position of the original drafter of the lease agreement.

Comments

Under Art. 18 para. 1 SCO, the interpretation of a contract must be based, first and foremost, on the true and common intention of the parties, regardless of any inaccurate expressions or terms they may have used (subjective interpretation). Where such intention cannot be established, the court must interpret the parties' statements and conduct according to the principle of trust, that is, according to how a reasonable party acting in good faith would have understood them in the circumstances (objective interpretation). Only where ambiguity persists after these methods have been exhausted do the rules applicable in cases of doubt come into play[7]. Among these, the rule *in dubio contra stipulatorem* provides that where one party (or someone acting on its behalf) has drafted an ambiguous clause open to at least two tenable interpretations, one of which is less favourable to that party, the clause must be construed against its drafter[8].

While this three-step framework is well established in the Federal Supreme Court's case law[9], two aspects of the Federal Supreme Court's reasoning in the present case merit further comment: (1) the application of the rule *in dubio contra stipulatorem* to a party that did not draft the Early Termination Clause; and (2) the scope of the Federal Supreme Court's review of objective interpretation. These two aspects are addressed in reverse order to that in which they were discussed by the Federal Supreme Court, for reasons that will become apparent below.

1. **Application of the rule *in dubio contra stipulatorem* to a successor party**

Remarkably, neither of the parties to the lease at the time of the dispute, the Tenant (A. SA) and the Lessor (B., formerly D. SA), had drafted the Early Termination Clause. The Contract, including Art. 3, had been drawn up by the original lessor, C. SA. This naturally raises the question whether the rule *in dubio contra stipulatorem* could be applied at all **against a party that did not draft the Early Termination Clause**.

The Federal Supreme Court, however, **dispensed with this question entirely**. After concluding, in a few sentences, that the ambiguity could not be resolved through objective interpretation, it simply stated, in a single sentence, that the rule *in dubio contra stipulatorem* had to be applied. It then referred to two factual circumstances, without stating how they related to the application of the rule: the Lessor had become the owner of the property in 2018 and had expressly informed the Tenant that the contractual terms remained unchanged. The Federal Supreme Court further observed that the Lessor had challenged the application of the rule only on the ground of its subsidiarity, i.e. by arguing that the rule could not come into play because objective interpretation was capable of resolving the dispute, and not on the ground that the Lessor itself had not drafted the clause.

Terse as it is, the Federal Supreme Court's reasoning raises questions about the broader implications of the judgment. Can it be understood as establishing a general principle that the rule *in dubio contra stipulatorem* applies **to any party that assumes the contractual position of the original drafter, without further conditions**? Or should this decision be read more narrowly? One possible reading, for instance, is that the rule only applies where the successor party has expressly confirmed the continuation of the existing contractual terms rather than merely taking over the existing contractual position by operation of law (Art. 261 para. 1 SCO). Alternatively, the rule's application might depend on the successor party's failure to challenge it specifically on the ground that it was not the drafter. A third reading would combine both requirements, making the rule applicable only where the successor party has expressly confirmed the existing contractual terms and has not challenged the rule on the ground that it was not the drafter. In the present case, all of these conditions were satisfied: the lease passed to the Lessor *ex lege*, the Lessor expressly confirmed that the contractual terms remained unchanged, and it challenged the application of the rule only on the ground of its subsidiarity. Any of these readings would therefore have led to the same outcome.

Since the outcome did not depend on choosing between these readings, the structure of the Federal Supreme Court's reasoning becomes the most telling indication of the rule's intended scope, and points to the broadest one. The Federal Supreme Court first concluded that the rule *in dubio contra stipulatorem* applied, and only then referred to two factual elements, namely the confirmation of the contractual terms and the limited scope of the Lessor's objection, without expressly linking them to its conclusion. The sequence of reasoning suggests that **these elements served merely to buttress the Federal Supreme Court's position that the rule applied, rather than to condition its application**.

The broadest reading is also the most compelling from a practical standpoint. If the rule *in dubio contra stipulatorem* could not be applied to a successor party, it is difficult to see how the ambiguity of a clause could ever be resolved once objective interpretation has proved inconclusive, in the absence of any alternative subsidiary rule providing that an ambiguous clause be construed against its drafter[10]. In this sense, the Federal Supreme Court's approach is to be welcomed.

Admittedly, this issue only arises where the original drafter no longer occupies the relevant contractual position. Where the drafter itself remains a party to the contract, the application of the rule does not raise the same difficulty. Yet the rule *in dubio contra stipulatorem* comes into play only if objective interpretation has proved inconclusive. This brings us to the second noteworthy aspect of this judgment: the scope of the Federal Supreme Court's review of objective interpretation.

2. **Scope of the Federal Supreme Court's review of objective interpretation**

In para. 3.4 of the judgment, the Federal Supreme Court noted that, even though objective interpretation is a question of law subject to its free review, this does not mean that it may in every case substitute its own interpretation for that of the cantonal courts: **it exercises restraint** and intervenes only where the cantonal court of second instance has misapplied the rules of interpretation or where its assessment is incompatible with the understanding of the contract by reasonable parties acting in good faith.

This observation is puzzling in the present context. The Federal Supreme Court invoked this self-imposed limitation only to set it aside, proceeding directly to the application of the rule *in dubio contra stipulatorem*. The principle of restraint appears **almost as an afterthought**, without further justification and, ultimately, without being applied or even discussed as such. It is unclear why the Federal Supreme Court considered it necessary to raise it at all.

The answer may lie in the structure of the interpretative framework itself. Subjective interpretation had already failed to establish the parties' common intention. By curtailing its own power to substitute its objective interpretation for that of the cantonal court of second instance, the Federal Supreme Court left itself with only one remaining means of reaching a different result: the rule *in dubio contra stipulatorem*. In other words, by narrowing the scope of its own review, **the Federal Supreme Court effectively channelled its reasoning towards the application of the subsidiary rule**. As discussed above, this then required the Federal Supreme Court to stretch that rule beyond its traditional boundaries.

The principle of restraint invoked by the Federal Supreme Court originates in judgment 4A_554/2024 of 10 March 2025, para. 4.6.8 ("**judgment 4A_554/2024**"), where it was arguably justified by the circumstances of the case. In that judgment, the appellant had essentially set its own objective interpretation against that of the lower court, without demonstrating why that court's objective interpretation was legally erroneous. In that context, the Federal Supreme Court's refusal to conduct the interpretative exercise a second time was understandable: it was not the Federal Supreme Court's task to revisit the objective contractual interpretation in the absence of a demonstrated violation of federal law. It is worth noting that this judgment appears to have served as the starting point for a line of case law through which the

Federal Supreme Court has gradually established its principle of restraint in matters of objective interpretation[11].

In this case, however, no such justification is apparent. The Federal Supreme Court itself found that the cantonal court of second instance had failed to explain sufficiently why its preferred objective interpretation should prevail, and that both readings of the clause were tenable under the principle of trust. The circumstances that warranted restraint in judgment 4A_554/2024 were therefore arguably absent here. Yet the Federal Supreme Court invoked the same limitation, **without explaining why deference was owed to a cantonal interpretation that it had just found to be insufficiently reasoned**.

More broadly, the desirability of this trend is open to debate. As this case illustrates, restricting the scope of objective interpretation does not make ambiguity disappear; it merely leads to the application of the rule *in dubio contra stipulatorem*, potentially extending that rule beyond its traditional scope, which is what happened in this case.

Other sources presenting the case

DJURDJEVAC HEINZER Natasa, Interprétation d'une clause contractuelle : rappel de la hiérarchie des règles d'interprétation et application du principe *in dubio contra stipulatorem*, Newsletter Bail.ch octobre 2025, pp. 20 ff., available at <https://bail.ch/bail/jurisprudence/analyse/647> (04.09.2026).

EBERHARD Philipp, *Vorzeitige Kündigung eines Mietvertrags*, ius.focus *Oktober* 10/2025, Nr. 248, p. 6.

GANDOY Aurélie, Le point sur le droit du bail (2/2) / *Entwicklungen im Mietrecht* (2/2), Revue Suisse de Jurisprudence 122/2026, pp. 42 ff.

DE SALIS Camille, *In dubio contra stipulatorem* et la formulation d'une clause de résiliation d'un contrat de bail, LawInside.ch, published on 13 September 2025, available at <https://lawinside.ch/1623/> (04.09.2026).

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[1] Unofficial translation from French to English by the author, original French version provided as follows: "*Le présent bail est conclu pour une durée de cinq ans, qui commence le 01/12/2017 pour finir le 30/11/2022. Toutefois le locataire aura la possibilité de résilier son bail un an après la date de début du présent bail avec un préavis de six mois avant l'échéance de celui-ci*".

[2] ATF 144 III 93, para. 5.2; judgment of the Federal Supreme Court, 4A_219/2024, of 2 April 2025, para. 4.1.

[3] ATF 148 III 57, para. 2.2.1; ATF 144 III 93, para. 5.2.3; ATF 133 III 61, para. 2.2.1.

[4] ATF 148 III 57, para. 2.2.2; ATF 146 III 339, para. 5.2.3.

[5] Unofficial translation from French to English by the author, original French version provided as follows: "*Même si l'interprétation de la volonté objective des parties est une question de droit et peut être examinée librement par le Tribunal fédéral, cela ne veut pas encore dire qu'il peut dans tous les cas substituer sa propre interprétation à celle opérée par les juges cantonaux;* ***il fait preuve de retenue et n'intervient que s'ils ont méconnu les règles d'interprétation ou si leur appréciation n'est pas compatible avec la compréhension du contrat par des parties raisonnables et de bonne foi***".

[6] Judgment of the Federal Supreme Court, 4A_554/2024, of 10 March 2025, para. 4.6.8.

[7] For a more detailed examination of the rules applicable in cases of ambiguity, see Peter JAGGI/Peter GAUCH/Stephan HARTMANN, Zürcher Kommentar, Art. 18 OR, Auslegung, Ergänzung und Anpassung der Verträge; Simulation, 4 ed., Zurich, Basel 2015 N 486 ff.

[8] The rule *in dubio contra stipulatorem* is not the only rule applicable in cases of ambiguity: Swiss law also recognises, in particular, the *favor negotii* principle, under which the reading that does not render the contract invalid or unreasonable prevails, and the contested *in dubio mitius* rule, which favours the interpretation less burdensome to the debtor. See Wolfgang WIEGAND/Christoph HURNI, Art. 18 N 39 and 40, *in* Basler Kommentar, Obligationenrecht I [Corinne WIDMER LUCHINGER/David OSER, eds.], 7 ed., Basel 2020; Bénédict WINIGER, art. 18 N 50-53, *in* Commentaire Romand, Code des obligations I [Luc THEVENOZ/Franz WERRO, eds.], 3 ed., Basel 2021.

[9] ATF 148 III 57, para. 2.2.1 and 2.2.2; ATF 146 III 339, para. 5.2.3; ATF 144 III 93, para. 5.2.1 to 5.2.3; ATF 138 III 659,

para. 4.2.1; ATF 121 III 118, para. 4.b)aa).

[10] See DJURDJEVAC HEINZER, p. 22.

[11] For example, see judgment of the Federal Supreme Court, 4A_204/2025, of 3 February 2026, para. 5.3; judgment of the Federal Supreme Court, 4A_346/2025, of 27 November 2025, para. 3.1; judgment of the Federal Supreme Court, 4A_606/2024, of 17 September 2025, para. 5.3.4.

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“Sole Distributorship and Agency Agreement”: Should Commissions on Sales Made Directly by the Supplier be Paid to the Distributor?

“Sole Distributorship and Agency Agreement” qualified as an exclusive distribution agreement and not as an agency agreement resulting in no sales commissions for the distributor