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Debt-Refinancing Mortgage Loans and Restitution Claims: Italian Supreme Court Limits on Nullity

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ABSTRACT
In Order No. 27684 of 23 October 2026, the Italian Supreme Court of Cassation addresses the boundary between contractual nullity and restitution claims in debt-refinancing mortgage loans (mutuo solutorio). Dismissing the borrower and guarantors' opposition to enforcement, the Court rules that a final judgment establishing unlawful charges on the settled current account does not invalidate the separate land-mortgage agreement under Article 1344 of the Civil Code, where the disbursed principal exceeds the undue charges and discharges an actual liability. Following Joint Divisions Judgment No. 5841/2025, crediting the borrower's account completes legal delivery (datio rei), placing debt repayment on a distinct dispositive plane and preserving enforceability under Article 474 of the Code of Civil Procedure. The analysis also examines procedural forfeitures regarding bulk assignments under Article 58 of the Consolidated Banking Act, the purely informative function of ISC/TAEG rates, and open limits concerning variable-rate Euribor clauses and wholly non-existent overdrafts.

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Debt-Refinancing Mortgage Loans and Restitution Claims: Italian Supreme Court Limits on Nullity

Contractual cause validity, enforcement title adequacy, evidentiary burdens in bulk debt assignments, and the scope of ISC/TAEG and French-style amortisation under Italian Supreme Court of Cassation, Civil Division, Order No. 27684 of 23 October 2026.

RL Rosa Larosa Civil Law & Banking & Financial Law 23 October 2026 Reading time 14 min

Current Legal Framework as of 17 November 2026: Italian Supreme Court of Cassation, Civil Division, Order No. 27684 of 23 October 2026 consolidates settled Supreme Court case law on debt-refinancing mortgage loans, enforcement titles, and French-style amortisation, ruling out the nullity of a land-mortgage loan even where partial unlawful charges are subsequently established on the settled current account.

ABSTRACT

In Order No. 27684 of 23 October 2026, the Italian Supreme Court of Cassation, Civil Division, examines the boundary between contractual nullity and restitution claims in **debt-refinancing mortgage loans** (*mutuo solutorio*). Dismissing the opposition to enforcement brought by the corporate borrower and its guarantors, the Court clarifies that a final judgment establishing **unlawful charges** on the settled current account does not invalidate the separate land-mortgage agreement for evasion of law under Article 1344 of the Italian Civil Code, provided the disbursed principal exceeds the undue entries and discharges an actual liability. Following Joint Divisions Judgment No. 5841/2025, crediting the borrower's account completes **legal delivery** (*datio rei*) and preserves the loan's enforceability as an **enforcement title** under Article 474 of the Code of Civil Procedure. The study also analyses procedural forfeitures on bulk debt assignments under Article 58 of the Consolidated Banking Act, the purely informative nature of ISC/TAEG indicators, and unresolved limits concerning variable-rate Euribor clauses and wholly non-existent overdrafts.

Key Takeaways

- **Autonomy of the debt-refinancing loan:** Crediting the loan proceeds to the borrower's current account completes legal delivery under Article 1813 of the Civil Code, preventing nullity for evasion of law under Article 1344 even where part of the settled debit balance proves undue.
- **Forfeitures under Article 58 of the Consolidated Banking Act:** An objection challenging the assignee's standing raised for the first time in closing briefs is untimely and entitles the assignee to file supporting proof on appeal.
- **Transparency and amortisation:** Omitting or misstating the synthetic cost indicator (ISC/TAEG) outside consumer credit does not trigger statutory nullity under Article 117 of the Consolidated Banking Act, and a French-style amortisation schedule stating principal, duration, nominal rate (TAN), and instalment frequency meets the determinability requirement.
- **Remaining critical boundaries:** Variable-rate Euribor claims remain outside substantive review owing to procedural inadmissibility, as does the borderline hypothesis of an overdraft that is wholly non-existent from inception.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Banking & Financial Law

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order No. 27684 of 23 October 2026 — Confirms the causal validity and enforce

Legal Principle / Editorial Headnote

A land-mortgage loan granted to extinguish a prior current-account balance is perfected upon crediting the account and retains enforceability even where the settled debit balance included partial unlawful charges.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: Within the Italian Civil Code, a loan agreement (*mutuo*) is structured as a real contract requiring delivery of the funds (*traditio*), while the Consolidated Banking Act governs transparency and bulk credit securitisation assignments alongside EU competition enforcement, notably the European Commission Decision of 4 December 2013 on the Euribor interest-rate derivatives cartel. **Comparative Common Law Lens:** Whereas English and US banking law evaluate debt-refinancing facilities through contractual consideration, set-off, and security perfection without requiring delivery to constitute the loan obligation, Italian Civil Law separates legal availability created by account crediting from subsequent debt discharge. Likewise, where Common Law systems treat pre-contractual APR discrepancies through statutory misrepresentation or consumer-credit remedies, Italian courts separate purely informative cost indicators from contractual determinability and limit enforcement-stage challenges strictly to timely pleaded restitution or avoidance remedies.

01. INTRODUCTION: ITALIAN SUPREME COURT OF CASSATION, CIVIL DIVISION, ORDER NO. 27684/2026

The enforceability of a land-mortgage title against prior undue charges accumulated on a current account returns before the **Italian Supreme Court of Cassation, Civil Division** in Order No. 27684 of 23 October 2026[1]. Whenever a mortgage loan extinguishes an earlier debit balance, the dispute between the assignee bank and the borrower directly engages the legal structure of **debt-refinancing mortgage loans**. At stake is the survival of the enforcement title itself.

In opposing an order to pay (*atto di precetto*), borrowers and guarantors frequently seek to strike down the entire loan agreement by arguing that the extinguished balance stemmed from unlawful charges. Their defence aims to convert a restitution claim on the current account into contractual nullity for **evasion of law** under Article 1344 of the Civil Code. The Order rejects that conflation and keeps the two contractual planes strictly apart.

This note examines the ruling along the boundary between **contractual cause validity**, procedural forfeitures on bulk debt assignments, and banking transparency requirements. One must test whether the legal separation between loan proceeds and account balance still holds beyond the facts decided, up to the threshold of a wholly non-existent overdraft. The Court's reasoning sets strict standards for the **evidentiary durability** of enforcement-stage objections.

02. THE ENFORCEMENT DISPUTE AND THE GROUNDS OF APPEAL ACROSS ASSIGNMENT, CAUSE, AND EURIBOR

2.1 — From the Renegotiated Land Mortgage to the Oppositions to Enforcement on the Current Account

The dispute originated in a land-mortgage loan (*mutuo fondiario*) executed on 8 May 2002 with Banca dell'Umbria 1462 and renegotiated on 21 March 2008. In 2018, the corporate borrower Casa del Lampadario-Perugia and its sureties were served with notices to pay (*atti di precetto*) for **EUR 361,290.89**. Enforcement was initiated by Fino 1 Securitisation, which had acquired the receivable in 2017 through a bulk securitisation assignment under Law No. 130/1999 and Article 58 of the Consolidated Banking Act. The litigation thus pitted securitised debt recovery against prior accounting irregularities.

Before the District Court of Perugia, the principal debtor and four guarantors brought two separate **oppositions to enforcement**, later consolidated into a single action. They pleaded the nullity of the loan for evasion of law, contending that the facility had served to clear a current-account overdraft that no longer existed. In support, they relied on a parallel action for **restitution of undue payments** that had ended in a final judgment ordering UniCredit to repay **EUR 197,944.36**. The claimants also challenged the omission of the synthetic cost indicator (ISC/TAEG), the failure to attach the amortisation schedule, the manipulation of the Euribor index, and the assignee's lack of standing. Both the District Court and the Court of Appeal of Perugia dismissed every claim.

On appeal to the Supreme Court of Cassation, Civil Division[1], the debtors raised **four grounds** against the appellate judgment filed on 16 February 2024. Their challenges targeted the assignee's standing, the alleged failure to rule on Euribor, the purported **unlawful cause of the debt-refinancing loan**, and the indeterminacy of economic terms and amortisation. The lower courts had upheld the loan and separated principal repayment from the undue charges established on the current account. Against that framework, the Supreme Court applied strict **procedural and substantive filters**.

2.2 — Untimely Challenge to Bulk Assignment under Article 58 T.U.B. and Inadmissibility on Euribor

The first procedural barrier strikes down the challenge to the assignee's substantive standing raised after the evidentiary cut-offs at first instance. While confirming that **ownership of the claim** is a constitutive element examinable *ex officio*, the Court conditions the plaintiff's burden of proof upon a **specific and timely objection** by the debtor. In the Perugia litigation, the challengers had first disputed standing only in their closing brief (*comparsa conclusionale*) under Article 190 of the Code of Civil Procedure. That filing merely argues claims already pleaded and cannot introduce new factual issues. Accordingly, filing the 8 August 2017 Official Gazette notice and UniCredit's confirmation bearing NDG and CE.RI codes on appeal does not violate Article 345 of the Code of Civil Procedure. Submitting documents at the appellate stage is the natural response to an untimely defence.

A comparable formal bar halts the second ground of appeal, concerning the alleged failure to adjudicate the manipulation of the **variable Euribor rate**. The appellants had invoked the European Commission decision of 4 December 2013 on the anti-competitive cartel covering May 2005 to May 2008 to assert the indeterminacy of interest clauses. The Order declares this ground inadmissible for lack of **pleading specificity**, noting the omission of any verbatim transcription of the earlier pleadings and the exact terms in which the issue had been raised. Without **self-contained documentary proof** in the petition, the Supreme Court cannot verify whether the defence was validly introduced below.

03. DEBT-REFINANCING MORTGAGE LOANS BETWEEN THE JOINT DIVISIONS AND ENFORCEMENT PRACTICE

3.1 — Genealogy of the Split: From Cassazione Civile No. 1517/2021 to Joint Divisions No. 5841/2025

Once past the procedural thresholds, the core dispute turns on the mechanism by which a bank converts an unsecured debit into a secured claim. When a lender credits fresh funds to an overdrawn current account so as to clear the debit balance immediately, no physical cash passes into the borrower's hands. That accounting sequence fuelled a deep division in Supreme Court case law over whether legal delivery occurs at all in a loan agreement. On that legal qualification depends the enforceability of the bank's claim in individual execution and insolvency proceedings.

The restrictive line found full expression in Italian Supreme Court of Cassation, Civil Division, Judgment No. 1517 of 25 January 2021[2], which denied any genuine **delivery of the funds** (*traditio*). Under that view, posting a credit entry to an already overdrawn account generated a mere debit-and-credit bookkeeping adjustment under Article 1852 of the Civil Code. Automatic reduction of the negative balance prevented the customer from acquiring ownership and **free disposal of the money** under Articles 1814 and 832 of the Civil Code. Excluding delivery except for any surplus exceeding the prior debt, that line reclassified the transaction as a simple **temporary forbearance agreement** (*pactum de non petendo ad tempus*) under Article 1231 of the Civil Code. Lacking novative effect, the deed alone could not support admission to an insolvency creditor schedule.

The split was resolved by the Italian Supreme Court of Cassation, Civil Division, Joint Divisions (*Sezioni Unite*), in Judgment No. 5841 of 5 March 2025[3], which overturned the empirical premises of the minority view. Adopting a logical-legal method ordered along the fact–rule–effect sequence, the Joint Divisions hold that crediting a current account creates genuine **legal availability** of the funds. Entering the credit item alters the account holder's patrimonial position and completes delivery under Article 1813 of the Civil Code, enabling the borrower to clear an existing liability from its estate. Even in scriptural money, the patrimonial transfer occurs through an effective accounting variation.

Subsequent or simultaneous application of those funds to extinguish pre-existing debts by internal transfer (*giroconto*) therefore stands on a separate dispositive plane, outside the **cause of the debt-refinancing loan**. The Joint Divisions reject both the statutory **purpose-specific loan** category and mere payment deferral, since the borrower's debt-clearing aim remains a subjective motive. Even where the internal transfer takes place without a formal payment order from the customer, any improper debiting triggers **separate restitution remedies** without undoing the formation of the loan. Where the formal requisites of Article 474 of the Code of Civil Procedure are met, the contract retains full standing as an **extrajudicial enforcement title**. Contractual validity thus remains distinct from any subsequent enforcement abuse.

Causal Separation Between Account Crediting and Internal Debt Transfer

The minority line merged account crediting and set-off into a single bookkeeping entry devoid of proprietary transfer; the Joint Divisions instead separate making funds legally available on the account, which perfects the loan under Article 1813 of the Civil Code, from the subsequent debt-extinguishing transfer, preserving enforceability under Article 474 of the Code of Civil Procedure.

3.2 — The 2026 Consolidation Across Enforcement Titles, Insolvency Claims, and Creditor Fraud

Italian Supreme Court of Cassation, Civil Division, Order No. 27684/2026[1] applies that settled doctrine to **debt-refinancing mortgage loans** tainted by partial unlawful charges on the underlying account. The third ground of appeal alleged evasion of law under Article 1344 of the Civil Code because unsecured debts had been replaced by a mortgage loan. As a threshold matter, the Court rules the complaint inadmissible insofar as it seeks a reassessment of the **court-appointed accounting expert report** conducted below. The Perugia courts had in fact established that the EUR 361,290.89 principal disbursed far exceeded the undue items and covered an **actual and lawful debt**. Partial unlawfulness on the current account therefore does not extinguish the borrower's repayment obligation.

> Crediting the current account severs any invalidating link with the extinguished liabilities, confining borrower and third-party creditor protection to the separate tracks of restitution and clawback actions.

The same dividing line governs Italian Supreme Court of Cassation, Civil Division, Order No. 889 of 16 January 2026[4], issued on a syndicated facility aimed at refinancing prior debts. Discharging pre-existing liabilities does not breach mandatory rules, save where specific **criminal conduct** is established that translates into an independent ground of contractual nullity. When upgrading unsecured claims to real security harms the **equal treatment of creditors** (*par condicio creditorum*), the legal order neither voids the loan nor strips its enforcement power. Relief lies solely through **ordinary or insolvency clawback actions** and tortious damages for abusive lending. Any abuse affects third-party enforceability, not contractual cause.

The binding reach of this doctrine also appears in Italian Supreme Court of Cassation, Civil Division, Order No. 25522 of 18 September 2026[5] in an insolvency claim-verification dispute. There, the insolvency court had rejected the bank's proof of debt by invoking the 2021 minority line and downgrading the refinancing facility to a **non-novative deferral**. The Supreme Court quashes the lower decree with remand, reiterating that account crediting independently grounds the repayment claim in the insolvency schedule. A symmetrical separation between disbursement and accounting holds has

been examined in this journal regarding security-deposit loans and enforcement titles[D1]. In both non-interest-bearing escrow deposits and debt-clearing transfers, any subsequent restriction presupposes the borrower's prior **legal availability** of the sum. Proof of delivery thus stops at verifying the initial account credit.

Judgment / Authority	Line	Core Legal Principle
Italian Supreme Court of Cassation, Civil Division, Order No. 27684/2026	Confirmed	A debt-refinancing loan remains valid and enforceable even where the settled account included partial undue charges already subject to a separate restitution order.
Italian Supreme Court of Cassation, Civil Division, Joint Divisions, Judgment No. 5841/2025	Nomophylactic	Crediting the account completes legal delivery (*datio rei*) and debt discharge constitutes a separate dispositive act; the loan is a valid enforcement title under Article 474 c.p.c.
Italian Supreme Court of Cassation, Civil Division, Judgment No. 1517/2021	Overruled	Denied delivery (*traditio*) on an overdrawn account (except for any surplus) and reclassified the contract as a temporary forbearance agreement (*pactum de non petendo ad tempus*) under Article 1231 c.c.
Italian Supreme Court of Cassation, Civil Division, Order No. 889/2026	Consistent	Debt-refinancing destination does not entail nullity (absent criminal conduct); acts prejudicial to creditors are policed solely via clawback actions or damages claims.
Italian Supreme Court of Cassation, Civil Division, Order No. 25522/2026	Consistent	Quashes exclusion from an insolvency creditor schedule based on the 2021 minority precedent, reaffirming the autonomous enforceability of debt-refinancing loan claims.

3.3 — ISC/TAEG Transparency and French-Style Amortisation Between No. 4597/2023 and Joint Divisions No. 15130/2024

Under their fourth ground, the appellants attacked the loan's economic terms, alleging omission of the ISC/TAEG indicator, non-attachment of the schedule, and compound-interest amortisation. First, the challenge targeting the 21 March 2008 renegotiation hits inadmissibility under Article 366, paragraph 1, no. 6 of the Code of Civil Procedure for **lack of specificity**. The petitioners had failed to transcribe Article 2 of the modifying deed, which set out the revised rate, an **ISC of 6.19%**, and a cross-reference to the schedule. On the merits, citing Italian Supreme Court of Cassation, Civil Division, Order No. 4597 of 14 February 2023[6], the panel reiterates that the ISC performs a **purely informative and advertising function**. Excluded from the interest rates and prices sanctioned with statutory substitution by government-bond rates under Article 117, paragraph 6 of the Consolidated Banking Act, an inaccurate indicator grounds at most **pre-contractual liability**. Outside consumer credit under Article 125-bis of the Consolidated Banking Act, the borrower bears the burden of proving concrete loss.

The challenge alleging indeterminacy of the financial regime and unlawful compounding falls likewise under Italian Supreme Court of Cassation, Civil Division, Joint Divisions (*Sezioni Unite*), Judgment No. 15130 of 29 May 2024[7]. In a standard level-instalment **French-style amortisation** plan, stating principal, duration, nominal annual rate (TAN), and

payment intervals fully satisfies Article 1346 of the Civil Code. The contract need not spell out the compound mathematical formula, because interest in each instalment accrues solely on the **remaining unpaid principal**. The heavier share of interest in early instalments does not represent prohibited compounding (*anatocismo*) under Article 1283 of the Civil Code, but an arithmetic consequence. Constant instalments simply reflect an agreed choice to defer principal repayment over time.

04. CRITICAL REVIEW OF THE ACCOUNTING EXPERT FINDINGS, VARIABLE EURIBOR RATE, AND NON-EXISTENT OVERDRAFT

Beneath the apparent uniformity of Supreme Court headnotes, close scrutiny of the case record exposes three delicate pressure points. On the third ground decided in Italian Supreme Court of Cassation, Civil Division, Order No. 27684/2026[1], the abstract rule of law coexists with a decisive **factual finding of the accounting expert report**. The Perugia courts had verified that the EUR 361,290.89 loan substantially exceeded the EUR 197,944.36 ordered to be repaid as undue charges on the current account. The ruling's premise therefore rests on the existence of a **genuine and lawful residual liability**.

That very split between current account and mortgage loan produces an **enforcement asymmetry** whenever the secured receivable has been transferred in bulk to a securitisation vehicle. In the Perugia setting, the final restitution order for unlawful charges bound UniCredit, whereas the notice to pay for the full principal was served by the assignee Fino 1. Unless the debtor timely pleads set-off or extinguishing defences opposable against the assignee, separating the two titles exposes the borrower to execution for the entire loan sum. An **autonomous restitution claim** thus risks arriving only after judicial foreclosure.

A second critical concern involves extending the principles of Italian Supreme Court of Cassation, Civil Division, Joint Divisions, Judgment No. 15130/2024[7] beyond their **original perimeter** on fixed-rate loans. At paragraph 8 of that judgment, the Joint Divisions expressly excluded both **variable-rate contracts** and the consequences of omitting the amortisation schedule from the deed. In the 2026 Order, however, both the second ground on Euribor manipulation and the renegotiation complaint were dismissed on procedural inadmissibility for lack of specificity. Applying the fixed-rate precedent therefore leaves unresolved the legal treatment of **variable-rate indexing**.

Finally, the borderline scenario remains open in which a debt-refinancing loan addresses an overdraft **wholly non-existent** from the outset. Joint Divisions Judgment No. 5841/2025[3] anchors the transaction's causal utility in the fact that account crediting purges the borrower's estate of an actual liability. For its part, Italian Supreme Court of Cassation, Civil Division, Order No. 889/2026[4] preserves contractual nullity where specific **criminal conduct** taints the bargain. Were the entire settled balance void or fictitious, the economic rationale invoked beyond the debt threshold of Judgment No. 1517/2021[2] would collapse. In such an extreme case, the causal validity of the loan would require a fresh merits review.

05. PROCEDURAL STRATEGIES AND PRACTICAL LIMITS IN BANKING LITIGATION

5.1 — How to Prove Objections on Bulk Assignment, Current Account, and ISC in Enforcement Oppositions

In opposing an enforcement notice, defence counsel must challenge the assignee's **ownership of the assigned receivable** under Article 58 of the Consolidated Banking Act in the initial pleading. Counsel must also itemise undue

current-account debits specifically and prove concrete financial loss resulting from any ISC misstatement on the credit market.

On active standing, Italian Supreme Court of Cassation, Civil Division, Order No. 27684/2026[1] penalises an untimely defence kept silent until the **closing stage**. Raising lack of standing for the first time in a closing brief under Article 190 of the Code of Civil Procedure enables the assignee to file supporting proof on appeal. Equal rigour governs Supreme Court petitions: alleging failure to rule on the May 2005–May 2008 Euribor cartel requires **verbatim transcription** of the arguments pleaded at first instance. Omitting the text of the renegotiation deed likewise forecloses substantive review.

On the substantive plane, a challenger cannot rely solely on contractual invalidity when contesting discrepancies in the **Synthetic Cost Indicator (ISC)**. As clarified by Italian Supreme Court of Cassation, Civil Division, Order No. 4597/2023[6], damages recovery requires proof of **causation** and of more favourable credit alternatives available at the time. As for unlawfully capitalised charges on the closed current account, counsel must timely pursue a **restitution action** or plead set-off. Merely asserting nullity of the mortgage loan will not stay **forced execution** on the deed.

5.2 — Practical Distinguishing: Clawback Actions, Purpose-Specific Loans, and Escrow Deposits

The broad validity of a debt-refinancing facility does not extend to banking transactions subject to internal funding holds or statutory purpose constraints. Immediate enforceability **does not apply** where actual disbursement is subordinated to a genuine **condition precedent**. As explained by Joint Divisions Judgment No. 5841/2025[3] and discussed regarding security-deposit loans and enforcement titles[D1], the dividing line turns on whether a present payment obligation exists. Where funds remain blocked without conferring independent disposal power on the customer, the notarial deed does not yet record a liquid and due debt. Lack of **present legal availability** thus bars forced execution on the notarial deed alone.

A further **practical distinguishing** separates an ordinary land-mortgage loan from a **statutory or contractual purpose-specific loan**, where intended use forms part of the contractual structure. As also stated in Judgment No. 1517/2021[2], departing from a mandatory statutory purpose triggers nullity, whereas breaching an agreed purpose grounds termination for non-performance. Different again is the position of third-party creditors when a debt-refinancing deed replaces an unsecured claim with a mortgage preference. In that situation, as reaffirmed by Order No. 889/2026[4], remedies lie in an **insolvency or ordinary clawback action** for abnormal means of payment and damages for abusive lending. Selecting the **proper remedy** thus determines the outcome of opposition or insolvency proceedings.

06. CONCLUSIONS

The framework laid down in Italian Supreme Court of Cassation, Civil Division, Order No. 27684/2026[1] confirms the doctrinal stability governing debt-refinancing mortgage loans. Consistent with Joint Divisions Judgment No. 5841/2025[3], a debt-extinguishing purpose undermines neither the **contractual cause** nor the enforceability of the land-mortgage title. On transparency, reliance on Joint Divisions Judgment No. 15130/2024[7] consolidates the rejection of formal nullity claims tied to the ISC and French-style amortisation. Invalidity sanctions thus recede before the legal autonomy between separate banking relationships.

For borrower's counsel, the viability of an enforcement opposition now hinges on timely objections and precise **evidentiary pleading**. Challenging bulk assignment standing in the opening brief, reproducing renegotiation clauses verbatim, and actively pursuing restitution of undue charges become indispensable steps against procedural forfeiture. Yet critical questions persist concerning the **variable Euribor rate** and the borderline discovery of a wholly non-existent account overdraft. Those residual margins will define the next wave of Italian banking litigation.

References & Authorities Cited

Statutory Provisions

- Italian Civil Code, Articles 1344, 1346, 1418, 1813, and 2033 — Evasion of law, determinability of contractual subject matter, general nullity, real contract of loan, and restitution of undue payments.
- Italian Code of Civil Procedure, Articles 190, 345, 366, and 474 — Preclusions in closing briefs, bar on new issues on appeal, petition specificity, and enforcement titles.
- Legislative Decree No. 385 of 1 September 1993 (Consolidated Banking Act), Articles 38, 58, 117, and 125-bis — Land credit, bulk assignment of receivables, banking transparency, and consumer credit.
- Law No. 130 of 30 April 1999, Articles 4 and 7 — Credit securitisation transactions and assignment regime.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order No. 27684 of 23 October 2026** — Confirms the causal validity and enforceability of a debt-refinancing mortgage loan despite partial undue charges on the current account, procedural forfeiture on late standing objections under Article 58 T.U.B., the informative role of ISC, and the determinability of French-style amortisation. Outcome: dismissed. Para.: grounds 1, 2, 3, and 4.
2. **Italian Supreme Court of Cassation, Civil Division, Judgment No. 1517 of 25 January 2021** — Expressed the minority view excluding delivery when crediting an overdrawn account save for any surplus, reclassifying the transaction as a temporary forbearance agreement (*pactum de non petendo ad tempus*), and delimiting contractual purpose-specific loans. Outcome: cross-appeal partially upheld, main appeal dismissed, quashed and remanded. Para.: first main ground and first cross-ground.
3. **Italian Supreme Court of Cassation, Civil Division, Joint Divisions (*Sezioni Unite*), Judgment No. 5841 of 5 March 2025** — Resolves the split by holding that account crediting completes legal delivery (*datio rei*) and that a debt-refinancing loan constitutes a valid enforcement title under Article 474 c.p.c. Outcome: appeal partially dismissed and cause remitted on remaining grounds. Para.: questions I, II, and III and grounds 1, 2, 7, and 8.
4. **Italian Supreme Court of Cassation, Civil Division, Order No. 889 of 16 January 2026** — Confirms the absence of contractual nullity in debt-refinancing loans absent specific criminal conduct, confining creditor-prejudice claims to clawback actions and tortious damages. Outcome: dismissed. Para.: ground 1.

5. **Italian Supreme Court of Cassation, Civil Division, Order No. 25522 of 18 September 2026** — Quashes an insolvency-schedule exclusion decree that relied on the 2021 minority precedent, reaffirming the valid loan nature of debt-refinancing operations. Outcome: first ground upheld, second ground absorbed, quashed and remanded. Para.: ground 1.

6. **Italian Supreme Court of Cassation, Civil Division, Order No. 4597 of 14 February 2023** — Classifies ISC/TAEG as a purely informative indicator outside Article 117, paragraph 6, T.U.B. beyond consumer credit, allowing at most pre-contractual damages upon proof of concrete loss. Outcome: dismissed. Para.: ground 3.

7. **Italian Supreme Court of Cassation, Civil Division, Joint Divisions (*Sezioni Unite*), Judgment No. 15130 of 29 May 2024** — Rules out indeterminacy and prohibited compounding under Article 1283 c.c. in fixed-rate French-style amortisation loans with an attached schedule, leaving variable-rate contracts outside its holding. Outcome: nullity rejected on preliminary reference and case file returned. Para.: paras. 8 and 13–16.

Legal Scholarship Cited

D1. Metodo Giuridico, *Il mutuo con deposito cauzionale e titolo esecutivo* [Security-Deposit Loans and Enforcement Titles]. Analysis of legal delivery through account crediting, enforceability of notarial loan deeds, and the boundary between genetic nullity under Article 117 T.U.B. and restitution under Article 2033 c.c.

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