

Foreign Couple Buying Home In Malaysia Wins Case Against Bank, Now Eyes Legal Tussle With Developer

• December 31, 2019



After winning their case against a bank, whose action led to the loss of the off-plan home in Kuala Lumpur they were buying from a developer, a couple from the UK has filed a legal case against the home builder

"We are seeking a refund from the developer for whatever is due under the sale and purchase agreement (SPA)." But the home build is entitled to claim the 10 percent deposit paid, said the couple's lawyer Ong Yu Jian in an interview with Free Malaysia Today.

According to the couple's counsel, the High Court is scheduled to hear the case in 2019, after the Federal Court gave its final judgment on the plaintiff's suit against the lender, CIMB Bank.

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Last week, the court sided with Alison Deborah Essex Bourke and her husband Anthony Lawrence Bourke, invalidating CIMB's legal defence that it can't be sued due to an exemption clause in the signed housing loan agreement.

In the case, the couple sought special damages amounting to RM273,996.24, the overall amount they paid to the bank for its loan facility. In addition, they asked RM747,481.42 for total losses arising from the axing of the SPA and RM10,975.30 for miscellaneous expenses due to lender's breach of contract. They also asked for other damages – exemplary, aggravated and general – to be calculated by the court.

Previously, the plaintiffs sued CIMB in 2015, but the High Court dismissed the case due to an exemption provision in the loan contract. Then in 2016, the Court of Appeal reversed that decision, and last week, the Federal Court affirmed the decision in a landmark ruling for bank clients and home buyers.

Ong explained that the British couple wanted to purchase a house via the Malaysia My Second Home programme (MM2H), whereby foreigners can buy dwellings and legally reside in the country thanks to long-stay visa of up to 10 years.

Then in 2008, CIMB provided them with a RM715,000 term loan facility to buy a residential property along Jalan Sultan Ismail from a real estate developer. The property was still being built and payment must be made progressively by the lender depending on work progress as certified by an architect.

In 2014, the developer billed the bank RM25,557.12, but CIMB didn't disburse the money as it wanted to inspect the property. Then in 2015, the developer scrapped the SPA with the home buyers as CIMB failed to pay the money.

Consequently, the couple filed a claim against the lender for negligence, contravening the loan contract and breach of fiduciary duty. They also sought damages arising from the axing of the SPA.

The Federal Court ruled the exemption provision in the loan agreement is contrary to public policy. This is because the Contracts Act of 1950 bans clauses that prevent people from suing.

One of the three judges, Justice Balia Yusof Wahi, said the right to access the courts has always been vigilantly protected by common law, and there is a general principle that agreement that aims to interfere on the jurisdiction of the courts are non-binding.

Image source: Free Malaysia Today

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