

# Lawyer: Ruling a triumph against banks' exclusion clause

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## NATION

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PUTRAJAYA: Banks cannot use their exclusion of liability clauses as a defence from being sued for negligence, ruled the Federal Court, calling these "patently unfair and an injustice".

Justice Balia Yusof Wahi found that it merited public policy for the court to interfere as the clause was patently unfair and an injustice to bank customers.

"In today's commercial world, the customer has to accept the contract as prepared by the other party," said Justice Balia Yusof, adding that customers were left at the mercy of unequal bargaining.

The ruling was delivered yesterday in a suit brought by British couple Anthony Lawrence Bourke and Alison Deborah Essex Bourke against CIMB Bank Bhd over a banking error that cost them a piece of property along Jalan Sultan Ismail in Kuala Lumpur.

The Bourkes had taken a loan from CIMB Bank in 2008 to service their monthly instalments.

However, the bank failed to make payment on one of the invoices, resulting in the developer terminating the entire Sale and Purchase with the couple.

The three-man Federal Court panel – made up of Chief Judge of Malaya Zaharah Ibrahim, Justices Azahar Mohamed and Balia Yusof – dismissed CIMB's appeal.

In doing so, they upheld a Court of Appeal's landmark judgement in that the bank's exclusion liability clause went against public policy and was in contravention of Section 29 of the Contracts Act 1950, which was to protect public interest.

The case was heard on Jan 3 before a five-man Federal Court panel that also included then-Court of Appeal president Zulkefli Ahmad Makinudin and Justice Zainun Ali.

However, Zulkefli resigned in July while Zainun Ali retired last month.

CIMB was represented by Messrs Azim, Tunku Farik and Wong while Messrs Raj, Ong and Yudistra acted for the Bourkes.

The British couple's lawyer, Ong Yu Jian told *The Star* that the ruling would ensure that no other customer suffered the same fate of being "stonewalled by banks' once all-mighty exclusion clause".

The Bourkes filed the suit at the KL High Court in 2015 for damages of around RM1.1mil over the loss of the purchased luxury condominium.

The damages were for the RM273,996.24 they had paid to the bank and RM747,481.42 for losses caused by the termination of their property contract.

**TAGS / KEYWORDS:**

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