

CIVIL PROCEDURE / LEGAL PROFESSION

Whether plaintiff given ample notice of defendant's preliminary objection – Conflict of interest – Whether advocate and solicitor can represent himself when a firm of solicitors have been appointed – Whether rule 27 of Legal Profession (Practice and Etiquette) Rules 1978 contravened

Bonifac Lobo Robert V Lobo v Wong Wooi Meng
[2015] 1 CLJ 544, High Court Malaya, Shah Alam

Facts Two interlocutory applications were made in relation to a defamation suit, whereby the plaintiff applied for leave to enter judgment in default of defence, and the defendant applied for leave to file his statement of defence out of time. Before the hearing, the defendant's counsel presented a notice of objection to the plaintiff from appearing as his own counsel in the proceedings. The preliminary objection was applied on several grounds, namely that the plaintiff had a personal interest in the outcome of the suit and he had pecuniary interest in the claim, so representing himself would contravene rule 27 of the Legal Profession (Practice and Etiquette) Rules 1978 ("the LPR").¹ The plaintiff resisted the preliminary objection.

Issues The issues before the High Court were (1) whether ample notice of the preliminary objection was afforded to the plaintiff; (2) whether an advocate and solicitor can represent himself when a firm of solicitors have been appointed; and (3) whether rule 27 of the LPR was contravened.

Held The High Court allowed the preliminary objection. The judge exercised his discretion to adjourn the proceedings to afford both parties sufficient time to prepare and ensure that no parties were at a disadvantage. It was held that the plaintiff was barred from representing himself during proceedings as he had already appointed a firm of solicitors to represent him. If the plaintiff chooses to act for himself, he will first have to discharge his counsel and file a notice to act in person under order 64 rule 3 of the Rules of Court 2012. Furthermore, the right of a litigant to appoint an advocate and solicitor of his choice is not absolute, as the court retains ultimate right to make that determination.

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{FEBRUARY 2015 \ 01168514}

¹ Rule 27 of the Legal Profession (Practice and Etiquette) Rules 1978 states that an advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.