

## THE LAW SOCIETY OF SINGAPORE

### PRACTICE DIRECTION 7.2.6

[Formerly PDR 2013, para 30; PDR 1989, chap 1, para 25(c)]

#### **COUNCIL RULING: CONFLICT OF INTEREST – MORTGAGOR / MORTGAGEE**

A member acting for a bank (the ‘Plaintiff’) posed the following problem, namely his client had granted banking facilities to *A* and *B* previously. The banking facilities were secured by a mortgage of a property. The subject property had since been disposed of long ago by *A* and *B*. Notwithstanding the discharge of the mortgage of the aforesaid property, there was still an outstanding sum of money due from *A* and *B* under their general balance of account with the Plaintiff.

The Plaintiff had instructed him to commence legal action against *A* only and accordingly the sum of \$2,577.86 together with interest was claimed.

The Plaintiff then obtained judgment by way of summary judgment under Order 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) against *A* up to the date of judgement obtained, no objection was made by another firm of legal practitioners (‘*C*’) on grounds of conflict of interest in respect of him acting on behalf of the Plaintiff in the matter. There had been no stay of execution of the judgment obtained by the Plaintiff. Accordingly, on behalf of the Plaintiff he had filed bankruptcy proceedings against *A*. He had now received a fax letter from *C* drawing his attention to the Practice Circular No 17 of the Law Society dated 30 July 1988 under the heading “Conflict of Interest” which stated *inter alia*:

“A [legal practitioner] previously acting for the mortgagor and mortgagee should refrain from acting for either parties in litigation pertaining to the same transaction irrespective of whether the loan has been fully disbursed.”

The member had replied to *C* explaining that the aforesaid Practice Circular was qualified in the sense that a legal practitioner acting previously for the mortgagor and mortgagee is disqualified from acting for either of them in litigation pertaining to the mortgage transaction and not in his case where the claim is based on the outstanding balance of the current account between the Plaintiff and *A*. Albeit that the current account had been secured by a mortgage of a property in which the member acted for *A*, *B* and the Plaintiff. *C* on behalf of *A* filed an appeal against the judgment.

The Council had replied stating that in the circumstances described in his said letter, the Council was satisfied that it was entirely proper for the member to act for the Plaintiff in the recovery proceedings, notwithstanding the fact that he had previously acted for the mortgagor and mortgagee in the securing of the banking facilities by a mortgage of the mortgagor’s property. There was no general rule that a legal practitioner who had acted for some person either before or after litigation began could not in any case act for the opposite party. In each case, the court has to be satisfied that mischief was result from the legal practitioner so acting.

Date: 1 June 2018

**THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE**