Neutral Citation: [2015] IEHC 612

HIGH COURT

[2015 No.7396P]

BETWEEN

PETROCELTIC INTERNATIONAL P.L.C.

PLAINTIFF

AND

WORLDVIEW CAPITAL MANAGMENT SA AND VIDACOS NOMINEES LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Henry Abbott delivered on the 1st day of October 2015.

1. By notice of motion dated the 16th September, 2015, the plaintiff seeks the following reliefs:-

> "(1) An injunction restraining the defendants, whether by themselves, collectively or individually, their respective servants or agents or anyone acting in concert with them from convening; purporting to convene; or proceeding to hold the purported extraordinary general meeting of the members of the plaintiff of the 5th October, 2015 (*"the purported E.G.M."*) of which the defendants have purported to give notice to the plaintiffs' members in a circular to shareholders and notice of extraordinary general meeting dated the 7th September, 2015 (*"the circular"*);
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> (2) An injunction restraining the defendants, whether by themselves, collectively or individually, their respective servants or agents or anyone acting in concert with them from convening; purporting to convene; or proceeding to hold any extraordinary general meeting of the plaintiff's members for the purposes of the proposed ordinary resolutions which are listed in the schedule hereto and which the circular states will be considered at the purported E.G.M. *("the proposed resolutions"*);
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> (3) An order directing the defendants, or any one of them, to issue to the each of the plaintiffs' members a circular or other suitable form of notice confirming that they will not proceed to convene or hold the purported EGM;...."

2. The plaintiff company, Petroceltic International P.L.C., is incorporated in Ireland and is a publicly limited oil and gas exploration, and production company. The first named defendant company, Worldview Capital Management, incorporated in Switzerland, is a private investment and management company. It has been accepted between the parties that the plaintiff company and the affiliated company Worldview Capital Limited SEZC would be joined as co-defendants under the title of "Worldview". The second named defendant Vidacos Nominees Limited is a nominee shareholder on behalf of "Worldview".

3. Through its affiliated companies the first named defendant is the largest shareholder of the plaintiff company's shares, holding 29.44% of the share capital of the plaintiff company.

4. The relationship between the plaintiff company and the first named defendant has deteriorated over the past 15 months. The plaintiff has made allegations of defamatory remarks being made by the defendant in relation to the management and business strategies of the plaintiff company. The plaintiff also alleges that numerous E.G.Ms. have been requested by the first named defendant in the aim of obstructing the business of the plaintiff company. In the calendar year of 2015 three E.G.Ms. have taken place due to the requisition of the defendant company in addition to an A.G.M. The defendants have issued four requisitions for E.G.Ms. this year. The first of these was on the 7th January, 2015, the second 14th July, 2015, the third 23rd July, 2015 and the fourth 5th October, 2015.

5. The defendants proposed that at the E.G.M. of the 7th September, 2015, information objects and proposed resolutions would be put to the shareholders. It is submitted by counsel for the plaintiff that the proposed resolutions sought in the E.G.M. of the 7th September, 2015, would limit the exercise of the powers of the board that have been delegated to them by the company, and are therefore not capable of being legally implemented if passed. The board wrote to Worldview's solicitors on the 21st July, 2015, this letter informed them that as the proposed resolutions did not comply with the legal requirements set out in Petroceltics articles of association it would not be put to the shareholders for consideration at the E.G.M., on 7th September, 2015.

6. A circular to shareholders and notice of an E.G.M., on 5th October, 2015, was sent to the shareholders of Petroceltic International P.L.C. on 7th September, 2015. This notice purported to invoke s. 178 of the Companies Act of 2014, to notify the plaintiff company's shareholders of an E.G.M. that would consider the information objects and proposed resolutions it was proposed be dealt with in the earlier meeting of the 7th September, 2015. The two proposed resolutions are as follows:-

> (1) "That the members present (in person or by proxy) do not approve of the issuance of the senior secured callable bonds (as contemplated by the company's press announcement released at 7.00am on 29 June, 2015).
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> (2) That the members present (in present or by proxy) do not approve of incurring any new borrowing or issuing any debt securities by the company or its subsidiaries (the 'new borrowing') which contain any of the following provisions:
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> (a) bearing an annual interest rate above Libor + 8 percentage points; or
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> (b) granting security over any assets of the company or any of the company's subsidiaries; or
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> (c) giving rights over or related to any equity securities or equity-linked securities of the company; or
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> (d) incorporating any structured debt elements, including without limitation any contingent coupon and principal amount altering provisions

For the purpose of this resolution, the expression 'new borrowings' shall exclude (i) any borrowings which are in existence as at the date of the meeting at which this resolution is proposed, and (ii) any ordinary course finance leasing arrangements in an amount not less than US $10 million or equivalent in relevant currency, in aggregate."

7. Solicitors for the plaintiff wrote to the solicitors for the first named defendant on the 10th September, 2015, requesting the first named defendant withdraw the E.G.M. and notify the plaintiff company's shareholders of same. The first named defendant denied this request and by way of plenary summons and notice of motion the plaintiff brought this application.

8. The substantive issue that arises in the case is if the resolutions proposed by the defendants are valid and if the directors can justifiably refuse to put them to the members of the company.

Plaintiffs submissions
9. It is submitted by the plaintiff that the E.G.M. is unlawful because the defendants have no legal authority to convene such a meeting, the resolutions if passed, therefore, would not be capable of being legally implemented. It is submitted by counsel for the plaintiff, under s. 178(5) of the Companies Act of 2014, that the requisitioning shareholders may only convene an E.G.M. which they had requisitioned, if the directors do not duly convene a meeting to address the issue of the requisition where the company directors have failed to do so. It is submitted that the E.G.M. of the 7th September, 2015, was convened to address the issue of the information objects and the defendants do not, therefore, have authority to convene a meeting to address the issue of the information objects, as it was dealt with in the meeting of 7th September, 2015.

10. It is submitted that, considering the principles set out in *Campus Oil Limited v Minister for Industry and Energy* (No. 2) [1983] I.R. 88., in relation to the granting of an interlocutory injunction the defendants do not have a valid defence to this action. Considering these principles, it is set out by counsel for the plaintiff that damages are an adequate remedy for the defendants, as the only costs the they have incurred are the costs associated with adjourning the meeting. It is however submitted that damages are not an adequate remedy for the plaintiff and the balance of convenience favours granting the injunction for these reasons.

11. It is submitted on the part of the defence that there is no compelling urgency that the E.G.M. proceed on the 5th October, 2015, because it is claimed by the defence that the resolutions not have any legal effect if passed. It is submitted that if the meeting is purely intended as a means of providing shareholders with a mode of expressing their opinion there is no such urgency to the meeting.

12. It is submitted by the plaintiff that the proposed resolutions in this case, due to being advisory rather than declaratory, are similar to those that were the subject of the proposed resolutions in *Ryanair Ltd v Aer Lingus Group plc* [2011] 3 I.R. 69. It was held in this case by McGovern J. that the specific powers granted to the directors by the articles of association operated to prevent the shareholders being capable of interfering with these powers by mere ordinary resolution. Despite these resolutions being worded to act as advisory resolutions it was concluded that the proposed resolutions would interfere with the exercise of a power delegated to the company's board of directors.

13. In response to the defendants position, that they are precluded from postponing the E.G.M. following that which is set out in *Smith v. Paringa Mines Limited* [1906] 2 Ch. 193., it is submitted by counsel for the plaintiff that this case involved an E.G.M. that was validly convened and as the E.G.M. in this case has not been validly convened the defendants are not precluded for adjourning the E.G.M.

14. It is submitted by the plaintiff that if the purported resolution were to be passed this would obstruct the proper management of the plaintiff company. First it would cause confusion in relation to the relationship between the board and the shareholders as the result of the vote, and may lead to confusion as to the effect it had on the status of the directors. Secondly if the proposed resolution were passed it would cause obstacles to the boards ability to raise finance under the bonds, as the resolution would lead lenders to question if they should lend money to the plaintiff because the vote may give the impression that the board was not authorised to issue the bond and there may be concern about the company's ability to repay the loans. It is submitted by counsel for the plaintiff that Mr. Moskov concedes that the passing of the resolution would cause uncertainty and confusion for the plaintiffs plans to issue the bonds.

15. The plaintiff also submitted that the meeting should be prohibited because of procedural irregularities. These are dealt with in "conclusions" below.

Defendants submissions.
16. The defence submits that it is counterintuitive that shareholders of a company are prohibited from expressing opinions on issues relating to them. It is submitted that the plaintiff fears a majority share of shareholders will agree with the defendants and the resolutions will be passed; this action would affect the value of the shares of the company.

17. Counsel for the defendants submits that the proposed resolutions merely express a shareholder viewpoint and are not directive in nature, and for this reason they are valid. It is submitted by counsel for the defendants that shareholders delegate certain powers to the directors of a company and they cannot then, in disregard to this delegation, attempt to instruct the directors, as was held in *Rose v. McGivern* [1998] 2 BCLC 593. It is for this reason that the resolutions are phrased in such away as to not direct the board to act in a particular fashion. It is submitted that these resolutions are merely an expression of shareholders opinion and do not bind or constrain the directors in the operation of their powers under the articles of association.

18. It is submitted that the directors of the plaintiff company failed to put these resolutions before the shareholders during the September E.G.M, as a result of this failure, in accordance with s.178(5) of the Companies Act of 2014, the defendants are entitled to convene an E.G.M. to deal with the valid business the directors failed to put before the September E.G.M.

19. Counsel for the defendants submitted that the balance of convenience favours allowing the meeting to proceed and that it is clear that these resolutions will not bind the board. The defendants also submitted that if this injunction were to be granted this would result in the views of the shareholders being suppressed on a key strategic issue affecting the plaintiff company and if this were to be done the silencing of the views of the shareholders cannot be undone. Additionally the defendant has submitted that the plaintiff company cannot avert to any substantive adverse consequences that will result from the passing of the resolutions and that the company effectively concedes that these resolutions would not act as a *de jure* restraint.

20. Counsel for the defendants submits that as an E.G.M. was lawfully called the defendants have no authority to withdraw or cancel the notice of an E.G.M., as the power to convene the E.G.M. is a purely statutory one and no power is provided to withdraw the notice, adjourn or cancel the E.G.M. In *Smith v. Paringa* it was held that the directors of a company had no authority to adjourn a meeting once validly convened, unless this power was provided for in the articles of association. Acknowledging this it is submitted

that in accordance with *Stoughton v. Reynolds* (1762) 2 Strange 1044., the court possess the power to adjourn a meeting or declare it invalid. The decisive issue is therefore the validity of the resolutions.

21. In relation to *Ryanair Ltd v Aer Lingus Group plc* it is submitted by counsel for the defendants that the reliance on this case by the plaintiff would be misplaced as the resolutions involved in this case clearly conflicted with the express powers delegated to the directors and were not merely advisory resolutions.

22. It is submitted by counsel for the defendants, following the position in *Isle of White Railway Company v. Tahourdin* [1883] 23 Ch D 320, that it has long been the position of the courts to be reluctant to prevent the holding of a meeting. In *Isle of White Railway Company v. Tahourdin* the English Court of Appeal held that members of a company were entitled to convene their own meeting where a previous meeting had been held and had not addressed all the matters that were the subject of the requisition.

23. Counsel for the defendants concedes that there is a serious question to be tried in this case. However it was also submitted that following *Tola Capital Management v. Linders (No.1)* [2014] IEHC 316., (unreported 5th June, 2015), the court must assess weather the substance of the order sought is mandatory not merely assess what it is set out as in the notice of motion. It is also submitted, in relation to mandatory injunctions following *Okunade v. Minister for Justice* [2012] 3 I.R. 152, that it must be considered if the granting of the interlocutory injunction would "go a long way towards resolving the case it self." The defendants submitted initially in writing that the plaintiff has not reached the threshold of a fair question to be tried but later conceded the issue in oral submissions. It was also submitted that in this case the injunction requested would act as a mandatory injunction and the test that should then be applied is that of a strong case.

24. It is submitted by counsel for the defendants that the amount of damages, if the injunction is to be granted, is incalculable as their position would become moot. Counsel, however, submits that damages incurred by the defence, under s178(6) of the Companies Act of 2014, should be absorbed by the directors of the first named defendant company as these costs arose due to the failure of the directors to undertake a meeting.

Conclusion

25. There is clearly a strong disagreement between the plaintiff and the defendants in relation to the commercial merits of the proposed fundraising by the plaintiff by the issuing of the bond. The Court makes it clear that it is not necessary for it to decide between the two opposing views as to the ultimate commerciality of the bond. I accept that the defendants set out correctly in their submissions that the well established line of jurisprudence from *Campus Oil* deals with how the court should approach applications for interlocutory injunctions of the kind sought in this case. Based on the criteria set out in *Campus Oil* the applicant must establish:

- serious issue, or in the case of mandatory injunction, a strong case;

- that damages are an inadequate remedy;

and

- that the balance of convenience favours the granting of the injunction.

While senior counsel for the defendants in the opening of his oral submissions moved away from any ambiguity created by the written submissions on the issue by accepting that the plaintiff had established the ordinary test of a fair case to be tried in relation to the issue, this Court is of the view that the plaintiffs case goes much further than that and in fact is a strong case.

26. In *Lingam v. Health Service Executive* [2005] IESC 89 Fennelly J. held in the Supreme Court that

"[T]he implication of an application of the present sort is that in substance what the plaintiff/appellant is seeking is a mandatory interlocutory injunction and it is well established that the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of an interlocutory injunction where the injunction sought is in effect mandatory. In such a case it is necessary for the applicant to show at least that he has a strong case and that he is likely to succeed at the hearing of the action. So it is not sufficient to simply show a *prima facie* case, and in particular the Courts have been slow to grant interlocutory injunctions to enforce contracts of employment".

While this Court is of the view that there are legitimate avenues open to the defendants as significant shareholders to achieve their purposes to the extent that the relief (although having the appearance of being mandatory) does not ultimately prevent them from achieving their purposes in relation to the commercial argument, if they can muster enough votes and support to pass a resolution of 50% of the shareholders required to change directors or if necessary 75% required to alter the articles of association.

27. The basis for my conclusion that the plaintiff has a strong case relies primary upon the authority of the judgment of McGovern J. in *Ryanair Ltd. v. AerLingus Group Plc*. This is a decision which was not appealed by either of the two well resourced parties, and was made by an experienced judge of the commercial and chancery court. Counsel for the defendants have sought to distinguish *Ryanair* from the facts of the present case, by suggesting that it was made in the context of strongly restrictive conditions arising from the fact that the parties were two major competitors in the one market and were subject to the constraints of competition rules. Additionally counsel for the defendants outline that the second resolution in *Ryanair*, which sets up the authority was not "advisory" in the sense intended for the defendants resolution in this case. It is instructive to consider in this context the rational of the judgment of McGovern J., in refusing Ryanair's application to compel AerLingus to take the necessary steps to table the resolution in relation to pensions.

"…I also accept the submission of the defendant concerning the second proposed resolution on the pension scheme. In the first place, it is an unsatisfactory resolution because it appears to be merely aspirational. I reach this conclusion because of the use of the words '...shareholders believe that no further payments should be made without prior shareholder approval...'.

However, there is a more fundamental objection to the resolution. The Board has been given power to determine what (if any) pension benefits a company will provide and determine what payments are to be made to the company's pension scheme. Since this power is given to the directors under the article of association, the members, in general meeting, cannot, by ordinary resolution, seek to over-ride or fetter that exclusive power. If the directors cannot or will not exercise the power vested in them, then the general meeting may do so. But that has not happened here. The Court of Appeal in *Automatic Self-Cleansing Filter Syndicate Co. v. Cunningham* [1906] 2 Ch. 34, stated clearly that the division of powers between the board of directors and the company in general meeting dependent, in the case of registered companies, entirely under construction of the articles of association, and that, where powers have been vested in the board, the general meeting could not interfere with their exercise. The articles were held to

constitute a contract by which the members had agreed that the directors should manage certain aspects of the company's affairs. In *Scott v. Scott* [1943] [1 All E.R. 582], it was held that resolutions of a general meeting which might be interpreted either as directions to pay an interim dividend or as an instruction to make loans where nullities in circumstances where the relevant powers had been delegated to the director. The second resolution proposed by the plaintiff also offends against this principle, since it seeks to usurp or over-ride the powers of the directors, specifically given to them under the articles of association."

28. Counsel for the defendants have argued that to injunct the holding of the meeting at this stage would be to deny the shareholders the opportunity to express their opinion on the merits of the proposed bond. However, in discussion counsel conceded that if the support for such resolutions reached a level of 40% or more it would probably increasingly have the indirect effect or consequence of inhibiting both the promoters and the purchases of the bond. It was accepted by counsel for the defendant that successive resolutions seeking expressions of opinion could be abusive and could, therefore, be prevented by court orders as such abusive, if repeated. However, the practicality of such prevention of repeated resolutions for expression of opinion is questionable when it is considered that such meetings might seek expressions of opinion on various matters which would be sufficiently different. Any court application for the purpose of preventing abuse which might indirectly or coincidently collaterally support the general campaign of their promoters might not have a good chance of success if the logic for "discussion" was tactically changed every time. Likewise such expressions of opinion meetings might be called by various segments of the investment community – shareholder population depending upon their outlook – from high-risk to low-risk – or their commercial, ecological, or ethical viewpoints. It is clear from all the submissions and the authorities that a company is an artificial construct of contract between the members through the articles of association and the interaction of statutory provisions and the common law together (in the case of this public company such as the plaintiff) a public company subject to regulations as a "regulated company".

29. The importance of an artificial construct such as a company is realised when it is considered that the actors in the capital markets such as actual or potential shareholders and bondholders as well as other stakeholders such as creditors and traders dealing or intending to deal with the artificial construct of a company are doing so facing the myriad of commercial risks of the real world, but they are protected from the risk of change in the artificial construct of the company by the rules in the articles of association and the statutory and regulated provisions as described in this judgment. They are not fully protected from the risk of change by the artificial construct of a company because this artificial construct may be changed itself through the removal and replacement of directors, and/or the alteration of the articles of association. However, in relation to these two later changes the potential and actual shareholders and other stakeholders have a substantial protection from risks arising insofar as such changes require their promoters to marshal the support of 50% of the shareholders in the case of change of directors and the support of 75% of shareholders in respect of alteration of articles. To allow resolutions "for the expression of opinion" which in varying degrees would amount to a de facto restraint or impediment in market terms would be adding an intolerable risk to the jungle of risks faced by those working in the commercial world, so that the creation of value added such as employment, product, interest, and profit would, be greatly hampered. It was submitted by the defendants that to deny the possibility of such resolutions expressing opinions would amount to "disenfranchisement and marginalisation" of the members on key issues and the suppression of their freedom of expression and the damage which would result to the members from that course of events is self evidently inestimable; and further, that it was "counter intuitive" that shareholders cannot collectively express an opinion on the matter of concern in an era of increasing incorporate democracy and shareholder activism. However, the artificial construct of the company does, in fact, in an ordered way restrict the decision making powers of the shareholders. The articles of association of any company may in particular cases increase such involvement with decision making and therefore aid democracy of shareholders but it is difficult to envisage any changes however liberal which would not at least in some way seek to put order on the expression of shareholders views so that such expression did not have the direct or indirect effect of altering the way in which the company did business as it was intended by articles, statute and regulation, or (as in this case) to have to face *de facto* market impediments engendered by such "expressions of opinion".

30. While shareholder activism has attracted increasing public attention, especially since the unfortunate events leading to the recession following 2008, such activism is properly pursued within the structures of the company. In this case, a great deal of the evidence placed before the Court by way of affidavit dealt with the correspondence, public statements and twitter/social media comments promoted by the defendants. While these comments can be taken as evidence to explain the intent behind the resolutions presented by the defendants as seeking an expression of shareholder opinion, they must be accepted as part of the modern commercial environment of freedom of public and shareholder expression in relation to public companies outside of the artificial construct of the company and it is the formal recording of its transactions such as resolutions and minutes of resolutions which might be crucially examined by parties such as actual or potential bondholders before finalising a commercial relationship with the company.

31. The modern ever present and disparate cacophony of media comment including social media comment, leaves it all the more imperative for the formal records and instruments of a company to provide a clear guide and record of the performance and intentions of the company together with its powers, which would be entirely inconsistent with the ambivalent and unpredictable recorded resolution passed for "the expression of opinion", which might depending on the strength of support, therefore act as a market impediment, and indirectly fetter the decision of the directors acting within the areas of discretion giving to them as their sole responsibility under the article of association.

32. The emphasis placed in the submissions of the defendants on the warnings that the court should be most reluctant to interfere with the calling of company meetings as contained in the judgment in *The Isle of White Railway Company v. Tarourdin* is outdated insofar as the statutory framework for companies has changed since 1883 and in any event the case may be distinguished on the facts insofar as the resolutions against which the injunction were sought related to matters which the court held were or could be within the powers of the shareholders in general meeting to decide.

33. The evidence on behalf of the plaintiff provided in the affidavit of Mr. Neeve Billis puts the issue as to whether the plaintiff will suffer loss and damage in the event of the resolutions been passed beyond question, and this Court is satisfied that such loss and damage could be irreparable and incapable of been compensated by way of damages.

34. While the defendants submitted that the plaintiff missed the point in criticising the defendant for not sufficiently characterising the heads of loss which they will sustain by failing to appreciate that this is a situation which falls within the distinctive character identified by Finlay CJ. in *Curust Financial Service Ltd. v. Loewe – Lack – Werk* [1994] 1 I.R. 450., of assessing damages constituting a complete impossibility. The defendants submitted that one cannot quantify the loss involved in a denial of shareholder democracy and the only means opened to the majority to express their views as the strategy been pursued by the directors. The Court cannot accept this argument as the loss (if loss it may be) only arises through the lawfully regulated means of expression through resolutions of the company as expressed by the articles of association. This Court considers that it is not possible to quantify the loss because it is not possible to identify the wrong within the meaning of the law. This conclusion is subject to the qualification that the companies act itself provides for compensation for the promoters in the event of the court ultimately holding, in the plenary hearing of this case, that the holding of the meeting ought not to have been injuncted, to the repayment of costs of holding the meeting by the plaintiff, such costs to be recouped from the Directors.

35. If this Court incorrect in its view that the plaintiff has a strong case then the interlocutory application falls to be decided on the basis of the second test in *Campus Oil*, which is that of a serious issue arising. As it is conceded in the submissions that in any event a serious issue does arise, and as I have decided that damages are an inadequate remedy it remains to be decided whether the balance of convenience favours the granting of the injunction.

36. This Court is satisfied, on the basis of the evidence contained in the affidavit of Mr. Billis, that the balance of convenience favours the granting of the injunction.

37. The defendants made a further point, that in these circumstances, the court should refuse the granting of injunction on the basis of the inadequacy of the undertaking as to damages insofar as the directors of the plaintiff company did not give the undertaken. He pointed out that in the *Isle of White* case the directors actually made the application for the injunction. However, the statute provides that in the event of the directors improperly refusing the requisition for a special meeting and the meeting proceeding to a successful conclusion, that the directors should reimburse the company for the expenses of the meeting does not mean that the company's undertaking as to damages is not adequate, as the statutory provision clearly stipulates that the company is liable for the costs of such a meeting called by the shareholders after an unsuccessful requisition, and for the company to be reimbursed personally by the directors. This provision does not therefore damage the value, or effectiveness of the undertaking as to damages, given on behalf of the plaintiff, in this case.

38. Finally, the plaintiffs argued that the meeting ought to be restrained by reason of procedural deficiencies, firstly that the meeting should follow the same format as previous general meetings. Objection was taking on behalf of the plaintiff to the meeting moving from Dublin to London. However, in the days of free movement of goods and workers including professionals under E.U. laws, good transport and communication connections for both London and Dublin and the common travel area between Ireland and the U.K, it is difficult how objection could be taking to London as an alternative venue for a general meeting, this is especially so when it is realised that the company has a dual listing on the Dublin and London stock exchanges. The point might have considerably more force if the meeting had been held in some "one-horse town" without the high level transport and communications connections and hotel capacity of either of the capitals.

39. The second objection centred around the incapacity of the defendants to use the CREST system to facilitate proxy votes for the meeting. The defendants argued that they have taken reasonable steps to compensate for this deficiency and the Court held in discussion that there would at least be the possibility that well informed shareholders could vote by proxy although with greatly more inconvenience than that which would be experienced by using the CREST system.

40. Finally the plaintiff argued that the timing of the notification to the shareholders was not within the limits specified by the companies regulations to cater for the situation presented by the ascertainment of the shareholders on the voters register to be notified due to the ever changing nature of the register of shareholders through frequent trading on the stock exchange. The defendants stated that they were unable to meet this deadline through the difficulty of having obtained the electronic version of the shareholders register in a difficult format. While it was agreed during the hearing that the defendants never wrote to the plaintiffs complaining about the format the Court accepts that the defendants did the best they could in the circumstances to notify the shareholders endeavouring to substantially comply with notification requirements.

41. This Court is reluctant to accept these procedural difficulties and possible irregularities as grounds for granting the injunction for two reasons as follows:

> (1) Firstly, the business of transference of facilities for convening and administrating general meetings was not efficiently carried out by the plaintiff and defendants. There is no doubt that the whole business was a learning experience from which one may deduce that it is most desirable that in the event of a requisitioned meeting being proposed, that the company requisitioned should respond speedily and efficiently to the requirements of the requisitioners to ensure the regular holding of the meeting in accordance with modern complex requirements in relation to notification, proxy arrangements and cut-off notification arising from frequent trading under the company regulations. It was understandable that such prompt and efficient reaction might go against the instinct or inclinations of the requisitioned company, but the misgivings of the requisitioned company may be dealt with by the protection of a statement that their fulsome speedy and efficient cooperation with the requirements of the requisitioners is "without prejudice" to any contention of the company to the validity of the meeting.
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> (2) Secondly, the Companies Act of 2014 has an expressed provision relieving against mistakes in notification which might give the chairman presiding at the meeting requisitioned by the requisitioners a discretion to proceed with the meeting not withstanding some deficiencies and notification arising from genuine mistakes which could have arisen in this case. The position might not amount to such a egregious lack of notification such as occurred in the *Colthurst and Tenips Ltd. v. La Touche Colthurst* (Unreported, High Court 9th February 2000) case relied upon by the plaintiffs.

Decision

42. Having heard the evidence submitted by both parties on the hearing dates of 24th and 25th of September 2015, and having considered written an oral submission made by counsel for the plaintiff and counsel for the defendants the Court has decided to grant the plaintiff the reliefs sought in the notice of motion.

43. The solicitors for each party will agree on the circular that is to be issued to the shareholders adjourning the E.G.M.

44. Costs are reserved..