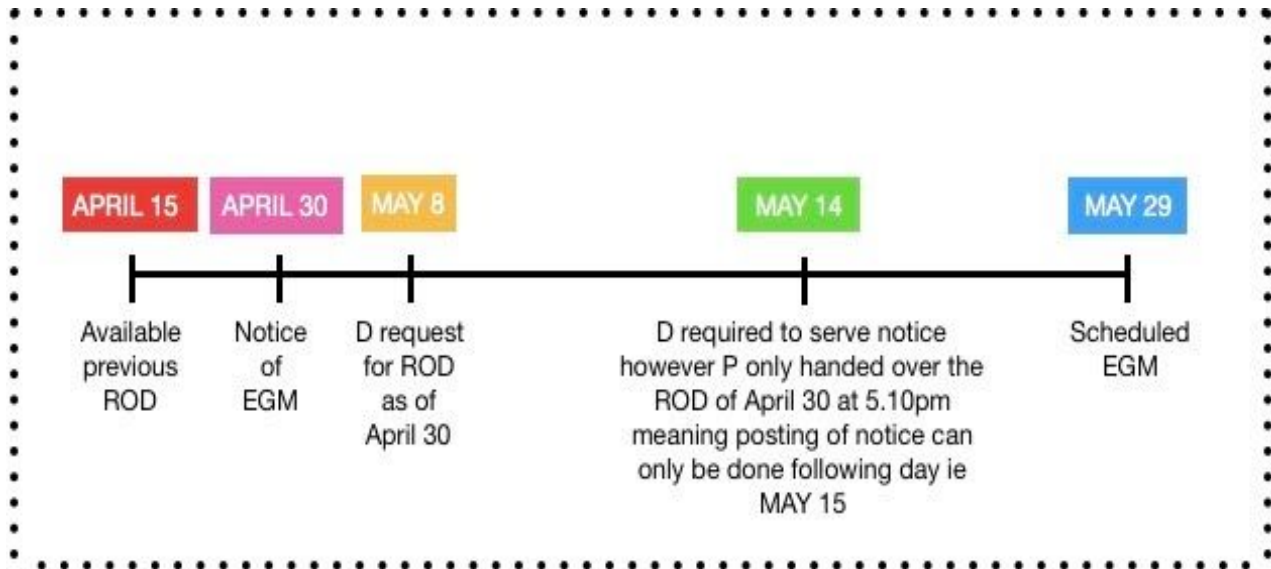




NOTICE OF EGM

Background:

1. Defendant had sought to convene an extraordinary general meeting (EGM) on May 29, 2019. Hence, they issued a notice of intention and notice of EGM both dated April 30, 2019.
2. The defendants on May 8, 2019 requested from the plaintiff's company secretary the record of depository (ROD) as at April 30, 2019
3. The plaintiff's constitution specifically provided that notice is to be given '**at least 14 days before the meeting**'. To meet the 14 days' notice requirement for the EGM, there had to be a minimum of 14 clear days between the EGM and the date of posting. This means that the defendant was required to serve the notice by the close of business on May 14, 2019
4. The plaintiffs however only handed over the ROD on May 14, 2019
5. Therefore, any posting of the said notices could only be done on the next day (May 15, 2019) which meant that there would have been short notice thus rendering the EGM invalid
6. Because of the plaintiff's conduct to frustrate the EGM, the defendants had to rely on the ROD of April 15, 2019 to post the notices to the members. The ROD of April 15, 2019 was the most recent record of depositors that was available to the defendants to use at that time to avoid short notice.



Plaintiff's claim:

1. Applied pursuant to [O.29 r.1\(1\) of the Rules of Court 2012 \(ROC 2012\)](#) for an interim injunction to prevent the defendant from taking any further actions to implement or put into effect the notice of EGM.
2. Plaintiff also sought to restrain the first defendant (D1) from exercising any voting rights or other rights in relation to his interests in any shares of the plaintiff

Defendant's argument:

1. Contended that they had in fact posted the notices of the EGM before noon on May 14, 2019 even before receiving the ROD of April 30, 2019 and they had used the ROD dated April 15th for that purpose

Plaintiff's argument in reply to Defence:

1. The EGM is nevertheless invalid and that the defendants had breached [s.321\(1\) of the Companies Act 2016 \(CA 2016\)](#) as the said notices **ought to have be given to the members named in the ROD of April 30, 2019 instead of those named in the ROD of April 15, 2019**

Issue:

Whether the EGM had been rendered invalid by the defendants posting of the notices to the members of the company based on the ROD of April 15, 2019 instead of April 30, 2019

Held:

1. The most logical and indeed the legal position must be that the members who are entitled to be given notice of the general meeting are those whose names appear in the ROD as at the date the notice issued for the general meeting to be convened is deposited with the company i.e. the requisition date
2. The requirement under s.321(1) CA 2016 for the members to be given notice of the general meeting is a distinct and separate right of the members from the right of a member to attend, speak and vote at the general meeting
3. The omission if any by the defendants to give notice of the EGM to certain members of the plaintiff by their use of the ROD of April 15, 2019 instead of ROD of April 30, 2019 qualifies as an 'accidental omission' under s.316(6) CA 2016 which shall not invalidate the proceedings of the EGM
4. The court ought not to act on mere theoretical injustice as a basis to grant an injunction to restrain a general meeting. In the premises, the plaintiff has failed to show that there is a serious question to be tried based on the higher threshold of a 'strong prima facie case' or an 'unusually sharp and clear case' test as regards the validity of the EGM
5. The plaintiff has no locus standi (no standing) to restrain D1 from exercising his voting rights or any rights attached to the shares in which D1 has an interest

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Prepared by: DEANNA TERNISHA
Reference: themalaysianlawyer.com