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When will no notice constitute reasonable notice of a directors' meeting?:
Summerdowns Rail Ltd v Stevens [2015] NSWSC 321

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In this case, the Supreme Court of New South Wales held that subject to any contrary provisions in the constitution, a meeting of a company (including its board of directors) may sometimes be valid even where the required notice has not been given to a person entitled to attend the meeting. However, this is only the case in exceptional cases in which, having regard to modern means of rapid communication, due notice cannot be given to the person without the necessary business at the proposed meeting seriously being hampered. In circumstances where a director was overseas, but there was insufficient evidence of the urgency of the matters discussed or how long it would be before the absent director could be in a position to attend a meeting, the other directors' failure to give the absent director notice amounted to failure to give him reasonable notice of the meeting to which he was entitled by section 248C of the Corporations Act 2001 (Cth).

This case arose out of payment of \$38,500 (**Payment**) made by Summerdowns Pty Ltd (**Summerdowns**) to Management Skills Alliance Pty Limited (**MSA**) in connection with services provided by MSA to assist in Summerdowns' incorporation, the establishment of its governance structure and the raising of funds to implement its business plans.

The Payment was made following a meeting attended by 3 of the 4 directors of Summerdowns. The meeting was initially called to discuss another urgent issue, but then proceeded to discuss other issues relevant to the business of Summerdowns including the Payment. The fourth director was overseas at the time and was not given notice of the meeting. Following the meeting, one of the directors who attended the meeting and the company secretary signed the banking documents to effect the Payment.

Robb J in the Supreme Court of New South Wales held that:

- subject to any contrary provisions in the constitution, a meeting of a company (including its board of directors) may sometimes be valid even where the required notice has not been given to a person entitled to attend the meeting. However this is only the case in exceptional cases in which, having regard to modern means of rapid communication, due notice cannot be given to the person without the necessary business at the proposed meeting seriously being hampered;
- the above is consistent with the replaceable rule in section 248C of the *Corporations Act 2001*(Cth) (**Act**) which requires that reasonable notice be given to directors because the term “reasonable” is capable of encompassing the situation where circumstances are such that it is reasonable that no notice be given;

- in this case, the circumstances did not justify it being reasonable that no notice being given to the fourth director. The evidence did not disclose how urgent the matters discussed at the meeting were, how long it would take for the fourth director to be in a position to participate or whether resolution of the issue could simply wait until a properly constituted meeting at which he was present;
- on that basis, the other Summerdowns directors failed to give the fourth director the reasonable notice of the meeting to which he was entitled by section 248C. As such the meeting was not a duly constituted meeting of the Summerdowns board and the resolution to make the Payment was not validly passed; and
- given the perceived urgency of the matters and the fact that the meeting attendees believed that they could secure a subsequent ratification so that any shortcoming would be technical and short-lived, the meeting attendees did not act in breach of their statutory or common law duties.

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