



JUDGMENTS OF THE SUPREME COURT OF CANADA

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Citation: Westar Mining Ltd. (Re), [1993] 2 S.C.R. 448

Date: June 8, 1993

Docket: 23395

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Westar Mining Ltd. (Re), [1993] 2 S.C.R. 448

Larry Bell, Robert Chase and Peter Dolezal

Appellants

and

**United Mine Workers of America International
Union and United Mine Workers of America,
Local 7292**

Appellants

v.

Greenhills Workers' Association

Respondent

and

Three Hundred Non-Union Employees

Respondents

Indexed as: Westar Mining Ltd. (Re)

File No.: 23395.

1993: June 8.

Present: Lamer C.J. and Sopinka, McLachlin, Iacobucci and Major JJ.

on appeal from the court of appeal for british columbia

Appeal -- Leave to appeal -- Court of Appeal -- Companies' Creditors Arrangement Act -- Panel of British Columbia Court of Appeal having jurisdiction to hear appeal from order of single justice on application for leave to appeal under Companies' Creditors Arrangement Act.

Appeal -- Leave to appeal -- Court of Appeal -- Companies' Creditors Arrangement Act -- Proceedings for obtaining leave to appeal taken within 21 days after rendering of order being appealed -- Provisions of Companies' Creditors Arrangement Act complied with.

Corporations -- Compromises and arrangements -- Order under Companies' Creditors Arrangement Act set aside -- No jurisdiction to make order in absence of notice to parties and hearing.

Statutes and Regulations Cited

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36.

APPEAL from a judgment of the British Columbia Court of Appeal (1993), 75 B.C.L.R. (2d) 16, dismissing an application to set aside an order of Southin J.A. (1992), 75 B.C.L.R. (2d) 14, 16 C.B.R. (3d) 55, refusing leave to appeal from an interlocutory order made by Macdonald J. (1992), 14 C.B.R. (3d) 101, during proceedings brought under the *Companies' Creditors Arrangement Act*. Appeal allowed.

Jack M. Giles, Q.C., for the appellants Bell et al.

Gwen K. Randall, Q.C., and *Cheryl Yingst-Bartel*, for the appellants United Mine Workers of America International Union et al.

Frank G. Potts and Tim Delaney, for the respondent Greenhills Workers' Association.

//Iacobucci J.//

The judgment of the Court was delivered orally by

IACOBUCCI J. -- We agree, for the reasons given by McEachern C.J.B.C., that the British Columbia Court of Appeal had jurisdiction to hear an appeal of the decision of Southin J.A. regarding the order of Macdonald J. made on August 26, 1992, and that the appellants properly complied with the applicable provisions of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, in bringing their appeal.

Under the circumstances, we think it appropriate to address the merits. In that respect, we are of the view that the order of August 26, 1992 was improper and should be set aside because there was no jurisdiction for Macdonald J. to make the order, absent notice to and hearing the affected parties.

The appeal from the order of Southin J.A. is quashed without costs.

The appeal from the decision of the British Columbia Court of Appeal is allowed, the judgment of the British Columbia Court of Appeal refusing leave to appeal is set aside, and the order of August 26, 1992 of Macdonald J. is set aside.

The appellants shall have their costs here and in both courts below.

Judgment accordingly.

Solicitors for the appellants Bell et al.: Farris, Vaughan, Wills & Murphy, Vancouver.

Solicitors for the appellants United Mine Workers of America International Union et al.: McCarthy Tétrault, Calgary.

Solicitors for the respondent Greenhills Workers' Association: Lindsay Kenney, Vancouver.

