

CA016105, CA016103, and CA016126

Vancouver Registry

Court of Appeal for British Columbia

ORAL REASONS FOR JUDGMENT:

BEFORE THE HONOURABLE

December 4, 1992

MADAM JUSTICE SOUTHIN

IN CHAMBERS

Vancouver, B.C.

BETWEEN:

IN THE MATTER OF WESTAR MINING LTD.

AND:

UNITED MINE WORKERS OF AMERICA INTERNATIONAL UNION

and UNITED MINE WORKERS OF AMERICA, LOCAL 7292

APPELLANTS

AND:

OFFICE AND TECHNICAL EMPLOYEES UNION LOCAL 378

APPELLANTS

AND:

LARRY BELL, ROBERT CHASE and PETER DOLEZAL

APPELLANTS

G. Randall

appearing for the Appellant,

United Mine Workers of America

A. Macdonell

appearing for the Appellant,

Office and Technical Employees

P. Butler

appearing for the Appellants,

Larry Bell, Robert Chase and Peter Dolezal

F. Potts

appearing for the Respondent,

Greenhill Workers' Association

M. Blaxland

appearing for 300 non-union employees

L. Donaldson

appearing for Arthur Anderson Inc.

K. Johnston

appearing for the Director of
Employment Standards

(application for leave to appeal)

1 **SOUTHIN, J.A.:** There are before me three applications for
leave to appeal from the order of the Honourable Mr. Justice Macdonald,
pronounced below on the 26th or 27th August, 1992.

2 The applications for leave to appeal were brought by the
United Mine Workers and the former directors of Westar on the 16th September,
1992, and by the Office and Technical Employees Union on the 25th September,
1992.

3 Mr. Potts for the Greenhill Workers' Association objects *in*
limine that these applications are out of time. He relies upon sections 13 and
14 of the **Companies Creditors Arrangement Act**, R.S.C. 1985, C-36, which read as
follows:

13. Except in the Yukon Territory, any person dissatisfied with an
order or a decision made under this Act may appeal therefrom on obtaining leave
of the judge appealed from or of the court or a judge of the court to which
the appeal lies and on such terms as to security and in other respects as the
judge or court directs.

14. (1) An appeal under section 13 lies to the highest court of
final resort in or for the province in which the proceeding originated.

(2) All appeals under section 13 shall be regulated as far as possible
according to the practice in other cases of the court appealed to, but no
appeal shall be entertained unless, within twenty-one days after the rendering
of the order of decision being appealed, or within such further time as the
court appealed from, or, in the Yukon Territory, a judge of the supreme Court
of Canada, allows, the appellant has taken proceedings therein to perfect his
appeal, and within that time he has made a deposit or given sufficient security
according to the practice of the court appealed to that he will duly prosecute
the appeal and pay such costs as may be awarded to the respondent and comply
with any terms as to security or otherwise imposed by the judge giving leave
to appeal.

4 This point having been raised, counsel or some of them who
appeared before me today, sought from Mr. Justice Macdonald during an
adjournment the extension of time contemplated by s.14(2). Mr. Justice
Macdonald refused to grant that extension of time.

5 Thus, as matters now stand the question becomes, and to this
question Mr. Butler addressed his argument, whether the launching of an
application for leave to appeal constitutes proceedings, in the words of the
statute, "to perfect his appeal". In my view, the giving of a notice of
application for leave to appeal under s.13 does not constitute perfecting an
appeal. In my opinion, an appeal under these sections is perfected when
leave has been granted and a notice of appeal filed and delivered.

6 I regret very much considering myself obliged to give effect
to this argument but as I read the statute I have no other choice. The
applications for leave to appeal are dismissed.

7 As to the costs of this matter I will not grant costs to the
respondent because I think there are some points the taking of which is not
very attractive. This is one such point as it is perfectly obvious to me that

the question of time was not thought of moment by anybody until it was raised here today.

"The Honourable Madam Justice Southin"