

Date: 19980602

Docket: C.A. 146559

NOVA SCOTIA COURT OF APPEAL
Cite as: Fraser v. Westminer Canada Ltd., 1998 NSCA 141
Freeman, Hallett and Cromwell, JJ.A.

BETWEEN:

SUMNER M. FRASER, WILLIAM KITCHEN,) WILLIAM MUNDLE and DR. JAMES COLLINS) in their personal capacities and as) representatives of certain investors in Cavalier) Energy Limited (successor to Cavalier) Capital Corporation) being all those investors) provided irrevocable unconditional letters of) credit or letters of guarantee prior to August 2,) 1988 to support a 15 million dollar borrowing) by Cavalier Capital Corporation))) Appellants))) - and -))) WESTMINER CANADA LIMITED, WESTMINER) June 2, 1998) HOLDINGS LIMITED, WESTERN MINING) CORPORATION HOLDINGS LIMITED, JAMES) H. LALOR, PETER MALONEY, WILLIAM B.) BRAITHWAITE and COLIN WISE))) Respondents)))))))))	Douglas A. Caldwell, Q.C. for the Appellant Thomas . Donovan, Q.C.)Richard Niedermayer & Peter L. Roy for the Respondents Appeal Heard:))Judgment Delivered: June 2, 1998)))))))))
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THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.' Hallett and Freeman, JJ.A. concurring.

CROMWELL, J.A.: (Orally)

The appellants, who are plaintiffs in this action, applied to Gruchy, J. in Chambers for an order under **Rule 28.04** that certain issues be tried before all other issues in the action and that discoveries of witnesses and further document production be limited to those issues until after they are tried. Justice Gruchy, who was also the case management judge, dismissed the application, without prejudice to the plaintiffs being able to renew the application at some future time. The appellants seek leave and, if granted, appeal this dismissal of their application.

The order sought on this interlocutory application was discretionary and required the Chambers judge to weigh and balance a number of considerations concerning the just and efficient conduct of this litigation. On appeals from such orders, this Court will not intervene unless persuaded that the Chambers judge applied wrong principles of law or the result of the order is a patent injustice. Where, as here, the application relates to the orderly progress of the litigation and the judge is the case management judge, these limitations on appellate intervention are particularly apt.

Having considered the material filed and the submissions of counsel,
we

are not persuaded that the learned Chambers judge erred in principle or that his order gives rise to an injustice. The application for leave to appeal is dismissed with costs fixed at \$2,000.00 inclusive of disbursements.

Cromwell, J.A.

Concurred in:

Hallett, J.A.

Freeman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

SUMNER FRASER, WILLIAM KITCHEN,
WILLIAM MUNDLE and DR. JAMES)
COLLINS, in their personal capacity and as)
representatives of certain investors in)
Cavalier Energy Limited (successor to)
Cavalier Capital Corporation) being all)
those investors who provided irrevocable)
unconditional letters of credit or letters of)
guarantee prior to August 2, 1988 to)
support a 15 million dollar borrowing by)
Cavalier Capital Corporation)
Appellants)

- and -)

WESTMINER CANADA LIMITED,)
WESTMINER HOLDINGS LIMITED,)
WESTERN MINING CORPORATION)
HOLDINGS LIMITED, JAMES H. LALOR)
PETER MALONEY, WILLIAM B.)
BRAITHWAITE and COLIN WISE)
Respondents)

REASONS FOR
JUDGMENT BY:

CROMWELL, J.A.
(Orally)