

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

Wanda Bond

Plaintiff/Appellant

- and -

Brookfield Asset Management Inc.  
Brookfield Special Situations Partners Ltd.  
1439442 Alberta Ltd.

Defendants/Respondents

*Proceeding under the Class Proceeding Act, 1992*

**NOTICE OF APPEAL**

WANDA BOND APPEALS to the Court of Appeal from the order of the Honourable Mr. Justice Perell made April 26, 2011 at Toronto, Ontario.

THE APPELLANTS ASK that the order be set aside and an order be granted as follows:

- a. The stay of the proceedings be vacated;
- b. The appellant be granted their costs of the motion and of this appeal; and
- c. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF THIS APPEAL are as follows:

1. The learned trial judge failed to properly consider in the Reasons for Decision that the appropriate definition to determine the affiliated body corporate issue was “body corporate” and not “corporation” and that the definition of "body corporate" means any body corporate with or without share capital and whether or not it is a corporation to which the *Ontario Business Corporations Act* applies.
2. The learned trial judge made an error in law in paragraph 56 of the Reasons for Decision that the Alberta Corporation, Birch Mountain Resources Ltd., is not an affiliate of the Ontario corporation, Tricap Partners Ltd., for the purposes of the oppression remedy under the *Ontario Business Corporations Act*.
3. The learned trial judge made an error in law in paragraph 44 of the Reasons for Decision that the Alberta Corporation, 1439442 Alberta Ltd., is not an affiliate of the Ontario corporation, Tricap Partners Ltd., for the purposes of the oppression remedy under the *Ontario Business Corporations Act*.
4. The learned trial judge failed to properly consider that in paragraphs 19 and 61 of the Reasons for Decision the respondents had admitted in writing that they had made an investment in Birch Mountain Resources Ltd. and that the Convertible Debentures were made as an investments and therefore other than by way of security only.
5. The learned trial judge failed to properly consider that in paragraphs 19 and 61 that Tricap Partners Ltd. and 1439442 Alberta Ltd. had described themselves as “offerors” in the early warning reports filed pursuant to National Instrument 62-103 which instrument is generally described as the “Early Warning System and Related Take-Over Bid and Insider Reporting Issues” filing.

6. The learned trial judge failed to properly consider the purpose of deeming provisions in the *Ontario Business Corporations Act* and to then use the principle of statutory interpretation that all statutory provisions, such as the words “shall be deemed to be”, “if but only if” and “if exercised”, must be interpreted in a way that is compatible with the purpose of the section.
7. The learned trial judge failed to consider the application of section 245 (c) of the *Ontario Business Corporations Act* or the basket provision to this fact situation and that a complainant, such as Ms Bond, can also mean any other person who, in the discretion of the court, is a proper person to make an application the oppression remedy.
8. The learned trial judge failed to properly consider the evidence of jurisdiction *simpliciter* presented by the appellant and in paragraph 51 of the Reasons for Decision the statement that “All of the events took place in Alberta” is evidence that Justice Perell did not consider the real and substantial connection with Ontario.
9. The learned trial judge failed to properly consider the evidence of *forum non conveniens* presented by the appellant and in paragraph 65 of the Reasons for Decision the statement that “Ms. Bond provided no evidence with respect to *forum conveniens*” indicates that Justice Perell did not consider the *forum conveniens* evidence related to Ontario.
10. The learned trial judge failed to properly consider an appropriate cost order and the appellant therefore request leave to appeal the cost order when issued pursuant to Rule 61.03.1 (17) of the *Rules of Civil Procedure*.
11. THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS: confirmed by Section 6 (1) (b) of the *Courts of Justice Act* and Rule 61.04 (3) (c) (ii) of the *Rules of Civil Procedure*. The order of the Honourable Mr. Justice Perell made April 26, 2011 is final and therefore the Ontario Court of Appeal has jurisdiction. Leave to appeal is not

required.

All of which is respectfully submitted.

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