ONTARIO

SUPERIOR COURT OF JUSTICE

Judges' Administration
Court House
361 University Avenue
TORONTO, ONTARIO M5G 1T3
Tel: 327-5284 Fax: 327-5417

# FAX COVER SHEET

**DATE:** April 26, 2011

**TO:** John W. McDonald
Fax No. (519) 740-6368

John W. Findlay
Fax No. (905) 526-8696

Howard A. Gorman
Steven H. Leitl
Fax No. (403) 264-5973

**FROM:** Justice Paul Perell

**TOTAL PAGES (INCLUDING COVER PAGE):** 14

**RE:** **Wanda Bond and Brookfield Asset Management Inc. et al**
**Court File No.: 10-CV-410910**

---

**Note: Please contact Fleurette Lee at (416) 327-5230 if transmission not complete.**

**CITATION:** Bond v. Brookfield Asset Management Inc., 2011 ONSC 2529
**COURT FILE NO.:** 10-CV-410910
**DATE:** April 26, 2011

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Wanda Bond**

Plaintiff

**- and -**

**Brookfield Asset Management Inc., Brookfield Special Situations Partners Ltd. and 1439442 Alberta Ltd.**

Defendants

**COUNSEL:**

- John W. McDonald and John W. Findlay for the Plaintiff
- Howard A. Gorman and Steven H. Leitl for the Defendants

**HEARING DATE:** April 20, 2011

**PERELL, J.**

## REASONS FOR DECISION

### *A. INTRODUCTION*

[1] Pursuant to s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and rules 17.06 (1) and 21.01 (3)(a) of the *Rules of Civil Procedure*, the Defendants Brookfield Asset Management Inc. ["Brookfield Management"], Brookfield Special Situations Partners Ltd. [formerly known as Tricap Partners Ltd. ("Tricap")], and 1439442 Alberta Ltd. [now known as Hammerstone Corporation ("Hammerstone")] bring a motion to have this proposed class proceeding stayed on the grounds that Ontario does not have jurisdiction *simpliciter* or that Ontario is *forum non conveniens*.

[2] The action that the Defendants seek to stay is brought by Wanda Bond. She advances an oppression remedy claim under the Ontario *Business Corporations Act* R.S.O. 1990, c. B.16. She alleges that certain conduct, including a court-appointed receiver's sale of the assets of an Alberta corporation known as Birch Mountain Resources Limited ("Birch Mountain"), which was incorporated under the Alberta

*Business Corporations Act*, R.S.A. 2000, B-9 was oppressive conduct under the Ontario Act.

[3] For the Reasons that follow, I stay the action on the grounds that it is has no real and substantial connection to Ontario, and I hold that Ontario is *forum non* conveniens, Alberta being the proper forum for the action.

## ***B. EVIDENTIARY BACKGROUND***

[4] In support of their motion, the Defendants filed an affidavit from Rick Eng, who is a Vice-President of Tricap who worked at Tricap's Calgary office.

[5] The Plaintiff, Wanda Bond, who is an American citizen living in Marysville, Washington, did not file an affidavit for this motion. She is an Internet blogger and shareholder advocate. It is not clear whether she ever held shares in Birch Mountain.

[6] To resist the Defendants' motion, Ms. Bond relies on an affidavit from David Johnson, who is a computer research consultant, who is being paid a contingent fee depending on the success of the action.

## ***C. FACTUAL BACKGROUND***

[7] Birch Mountain Resources Limited ("Birch Mountain") was an Alberta corporation based in Calgary, Alberta. It was incorporated in 1995, and it owned and operated a limestone mine in northern Alberta. It was incorporated under the Alberta *Business Corporations Act* .

[8] Birch Mountain shares were publically traded in six provinces including Ontario through the Toronto Stock Exchange, and during the course of its business, it made public disclosure statements. In her Statement of Claim, Ms. Bond pleads that these statements informed the reasonable expectations of the company's shareholders.

[9] Ms. Bond has commenced a proposed class action on behalf of all primary and secondary purchasers of common shares of Birch Mountain who held shares between April 1, 2005 and November 5, 2008.

[10] Tricap and its parent corporation, Brookfield Management are Ontario corporations. Brookfield Management's registered office is in Toronto, Ontario. Tricap's registered office is the same. Tricap has an office in Calgary, Alberta.

[11] In 2007-2008, pursuant to a debenture and loan agreement dated December 21, 2007, governed by Alberta law, Tricap advanced a loan to Birch Mountain. This loan was a private placement by Birch Mountain of a convertible secured senior debenture in the amount of $31.5 million. The debenture provided Tricap with the right to convert

the debenture into common shares at the lower of $0.40 per common share or the current market price at the time of the conversion.

[12] The Birch Mountain's shareholders approved the Debenture on May 30, 2008, at a shareholders' meeting held in Calgary. Birch Mountain drew down the full amount of $31.5 million under the Debenture.

[13] None of the Defendants were shareholders of Birch Mountain. The Defendants have never exercised the right to convert the Debenture into common voting shares.

[14] In June and July 2008, Birch Mountain defaulted under the Debenture, and Tricap and the parties met to discuss the situation.

[15] In August 2008, Birch Mountain and Tricap agreed to amend the Debenture. Tricap waived the defaults and increased the principal amount of the indebtedness to $34.5 million. The Toronto Stock Exchange waived the requirement for shareholder approval of the amending agreement under its *Financial Hardship Exemption* provisions.

[16] Birch Mountain undertook to find a purchaser of the company or its assets. Birch Mountain's public disclosure stated: "The amendments to the Debenture will accommodate the continuous pursuit of an immediate sale of the company or its assets or additional equity financing to unlock the maximum value for its shareholders as previously announced ...."

[17] Birch Mountain's efforts to sell, however, failed, and in October 2008, Tricap made demand under the Debenture, and on November 4, 2008, Tricap commenced enforcement proceedings in the Alberta Court of the Queen's Bench.

[18] On November 5, 2008, by consent order, Justice LoVecchio appointed PricewaterhouseCoopers Inc. as interim receiver and manager of Birch Mountain.

[19] On December 10, 2008, Tricap in a public report announced that:

> Given [Birch Mountain's] current receivership proceedings, neither Tricap nor [Hammerstone] currently intends to exercise any conversion rights under the Debenture or the Unsecured Debentures. .... The Unsecured Debentures were acquired to provide Tricap, as a creditor in the Corporation's current receivership proceedings, with greater flexibility.

[20] The Statement of Claim alleges at paragraph 68(g) that: "Tricap designed the receivership proceedings to insure that the Birch Mountain common shareholders would not share in the maximization of shareholder value versus the maximization of debenture holder value."

[21] The Statement of Claim goes on to allege that the entire Alberta receivership was "contrived"; and, that Ms. Bond reasonably expected that Tricap "would not implement a receivership proceedings without independent valuations and Birch

Mountain common shareholder approval", nor "implement receivership proceedings unless the proceedings were reasonable in the circumstances."

[22] On January 5, 2009, PricewaterhouseCoopers Inc. filed a report with the Alberta Court which, among other things, detailed the sales processes that Birch Mountain and then the Alberta Receiver had undertaken.

[23] The report indicated that in January and February 2008, RBC Dominion Securities Limited, which had been retained to sell the assets, had contacted 98 possible purchasers, but none had expressed an expression of interest. In July 2008, RBC Dominion Securities Limited commenced a second effort to sell Birch Mountain's assets. This time, 48 potential purchasers were contacted, and again there were no expressions of interest.

[24] PricewaterhouseCoopers Inc. reported that Tricap had made the only offer to purchase Birch Mountain's assets. PricewaterhouseCoopers Inc. recommended that it be authorized to accept Tricap's offer.

[25] On January 8, 2009, Justice LoVecchio approved the sale and granted a vesting order transferring Birch Mountain's assets to Hammerstone, an Alberta corporation based in Calgary.

[26] Hammerstone was incorporated under the Alberta *Business Corporations Act*. It has three directors, two of whom are resident in Calgary and one of whom is resident in Vancouver. It is a private wholly-owned subsidiary of Tricap.

[27] Ms. Bond commenced her action on September 22, 2010. There are no allegations against Brookfield Management in the Statement of Claim. There are no claims advanced against Birch Mountain or PricewaterhouseCoopers Inc.

[28] In her action, Ms. Bond seeks an order under s. 248 (2) of the Ontario *Business Corporations Act* declaring that the Defendants acted in a manner that was oppressive, unfairly prejudicial to and unfairly disregarded the interests of the Birch Mountain common shareholders, She also seeks an order pursuant to s. 248(3)(j) of the Act compensating the plaintiff and all the other members of the Class for their damages.

[29] In her Statement of Claim, Ms. Bond pleads that:

> The death spiral stock trading of the Birch Mountain common shares during the period from May 25, 2006 to November 05, 2008 caused the share price of the Birch Mountain common shares on TSX to collapse from $7.99 on May 25, 2006 to $0.01 on November 05, 2008.

[30] She alleges that the defendants, as affiliates of Birch Mountain and the controlling shareholders of Birch Mountain, acted in a manner that was oppressive,

unfairly prejudicial to or unfairly disregarded the interests of the Birch Mountain common shareholders.

[31] She alleges that Tricap utilized its control of the Birch Mountain debentures to favour the financial and business interests of Brookfield Management and/or Tricap to the detriment of Birch Mountain common shareholders.

[32] In paragraph 103 of her Statement of Claim, Ms. Bond sets out the particulars of the Defendants' conduct alleged to be oppressive or unfairly prejudicial or that unfairly disregarded Ms. Bond's relevant interests. Paragraph 103 states:

> 103. The conduct of the defendants was unfair conduct and resulted in prejudicial consequences based on the following particulars:
>
> (a) a young developing public company, Birch Mountain, with assets worth an estimated $1.6 billion dollars were transferred to a private company, 1439442, wholly owned by Brookfield and Tricap for a cash outlay of less than $50.0 million dollars;
>
> (b) the various methods used to accomplish this transfer of ownership have been employed numerous times by Brookfield and/or Tricap with devastating results for the Birch Mountain common shareholders and include the use of convertible debentures, death spiral stock trading and avoidance of shareholder approvals;
>
> (c) the death spiral stock trading of the Birch Mountain common shares during the period from May 25, 2006 to November 05, 2008 caused the share price of the Birch Mountain common shares on TSX to collapse from $7.99 on May 25, 2006 to $0.01 on November 05, 2008;
>
> (d) after the death spiral stock trading was completed Brookfield and/or Tricap owned, if the various convertible debentures were exercised, approximately 97.6% of the outstanding Birch Mountain common shares leaving the original Birch Mountain common shareholders with approximately 2.4% of the outstanding Birch Mountain common shares;
>
> (e) the various public disclosures were selective and confusing and often filed so late as to be of no assistance to the Birch Mountain common shareholders;
>
> (f) on November 05, 2008, Tricap initiated through the Alberta Superior Court of Justice the appointment of PriceWaterhouseCoopers Inc. as the receiver of Birch Mountain, in order to transfer the assets of Birch Mountain to 1439442, a private wholly-owned subsidiary of Tricap;
>
> (g) Birch Mountain common shareholder approvals were completely avoided by suspending the operation of the Shareholders Rights Plan and relying on the financial hardship exemption pursuant to section 604(e) of the TSX Company Manual; and

> (h) the end result of the above conduct is that the original Birch Mountain common shareholders who worked so long and hard to develop an asset worth an estimated $1.6 billion received nothing and the hedge fund that made numerous written representations received everything and the hedge fund will now develop the resource in a private company.

[33] Birch Mountain is still in receivership, and its affairs continue to be managed by PricewaterhouseCoopers Inc. in Alberta.

[34] It is worth noting that notwithstanding the conditional assertion in the Statement of Claim that Tricap would own 97.6% of Birch Mountain's common shares "if the various convertible debentures were exercised," it was conceded during argument that there had never been a conversion and had there been a conversion Tricap could not have enforced its security through the appointment of a receiver since it would no longer be a debt holder.

## ***D. DISCUSSION – JURISDICTION SIMPLICITER***

[35] When an Ontario court has jurisdiction over a foreign defendant, this is described as having jurisdiction *simpliciter*. In the case at bar, the Defendants have not attorned to the Ontario court's jurisdiction and they content that the court does not have jurisdiction *simpliciter*.

[36] In the alternative, the Defendants submit that if the Ontario court has jurisdiction *simpliciter*, then it is not the convenient forum for the trial of the dispute. Rather, Alberta is the proper forum and Ontario is *forum non conveniens*.

[37] Jurisdiction *simpliciter* is a matter of law. In contrast, whether an Ontario court with jurisdiction *simpliciter* should decline its jurisdiction for another forum is a matter of judicial discretion.

[38] In *Van Breda v. Village Resorts Ltd.*, [2010] O.J. No. 402 (C.A.), leave to appeal granted, [2010] SCCA No. 174 (S.C.C.), the Court of Appeal recalibrated the law on the court's jurisdiction over foreign defendants as it had been described in *Muscutt v. Courcelles* (2002), 60 O.R. (3d) 20 (C.A.) and four companion cases: *Lemmex v. Bernard* (2002),, 60 O.R. (3d) 54 (C.A.); *Gajraj v. DeBernardo* (2002), 60 O.R. (3d) 68 (C.A.); *Sinclair v. Cracker Barrel Old Country Store Inc.* (2002),, 60 O.R. (3d) 76 (C.A.); *Leufkens v. Alba Tours International Inc.* (2002), 60 O.R. (3d) 84 (C.A.).

[39] The test for whether an Ontario court has jurisdiction *simpliciter* is whether there is a real and substantial connection between the matter and the parties and Ontario: *Muscutt v. Courcelles, supra*; *Van Breda v. Village Resorts Ltd., supra*. The test is not rigid but rather is a flexible test that captures the ideas that there are limits to the jurisdiction of a domestic court, which should not overreach, and that the decision not to

exercise jurisdiction must ultimately be guided by the requirements of order, efficiency and fairness, not a mechanical counting of contacts or connections: *Van Breda v. Village Resorts Ltd., supra*, at paras. 43-46 (Ont. C.A.).

[40] A variety of factors, none of which are in and of themselves determinative, are weighed to determine whether Ontario has jurisdiction *simpliciter*. The weight to be given to any of the factors will depend upon the circumstances of the particular case. As outlined in *Muscutt v. Courcelles* but as later explained, refined and modestly simplified in *Van Breda v. Village Resorts Ltd.*, the factors include:

- the connection, if any, between Ontario and the plaintiff's claim;
- the connection, if any, between Ontario and the defendant;
- unfairness, if any, to the defendant if the Ontario court assumes jurisdiction;
- unfairness, if any, to the plaintiff if the Ontario court does not assume jurisdiction;
- the involvement of others, if any, in the suit;
- the Ontario court's willingness to recognize and enforce an extra-provincial judgment made on the same jurisdictional basis;
- whether the case is interprovincial or international in nature; and,
- comity and standards of jurisdiction, recognition and enforcement prevailing elsewhere.

[41] In *Van Breda v. Village Resorts Ltd.*, for the determination of jurisdiction *simpliciter*, the Court introduced a category-based presumption based on the rules for service *ex juris* under the *Rules of Civil Procedure*; namely rule 17.02.

[42] With the exceptions of subrules 17.02(h) ("damages sustained in Ontario") and (o) ("a necessary or proper party"), if a case falls within one of the connections listed in rule 17.02, a real and substantial connection for the purposes of assuming jurisdiction against the defendant shall be presumed to exist: *Van Breda v. Village Resorts Ltd., supra*, at paras. 71-80.

[43] In the case at bar, Ms. Bond relies on rules 17.02 (n), (o) and (p), which state:

> SERVICE OUTSIDE ONTARIO WITHOUT LEAVE
>
> 17.02 A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims, ...

> *Authorized by Statute*
>
> (n) authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario;
>
> *Necessary or Proper Party*
>
> (o) against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario;
>
> *Person Resident or Carrying on Business in Ontario*
>
> (p) against a person ordinarily resident or carrying on business in Ontario;

[44] In the case at bar, Ms. Bond's reliance on rules 17.02 (n) and (p) is mistaken insofar as she purportedly relies on these rules to serve Hammerstone, which is a corporation outside of Ontario. With respect to rule 17.02 (n), Ms. Bond's claim is based on the oppression remedy of the Ontario *Business Corporations Act*. That Act, however, does not authorize a claim to be made against a person outside Ontario, and thus rule 17.02 (n) does not apply to Hammerstone. Hammerstone was never ordinarily resident in Ontario and has never carried on business in Ontario, and thus rule 17.02 (p) does not apply to Hammerstone. During argument, Ms. Bond submitted that Hammerstone was added essentially to control Birch Mountain's former assets and the prime target of the proposed class action were the other defendants who are Ontario corporations and, who it was submitted, made their decisions in Toronto.

[45] In any event, there is no presumption that Ontario has a real and substantial connection with Hammerstone.

[46] In the case at bar, pursuant to rule 17.02 (p), there is a presumption that the court has jurisdiction over the Defendants Brookfield Management and Tricap because they are resident or carrying on business in Ontario. The presumption, however, does not preclude these Defendants from demonstrating that, notwithstanding the fact that the case falls under rules 17.02 (n) or (p), in the particular circumstances of the case, the real and substantial connection test is not met: *Van Breda v. Village Resorts Ltd.* at para. 72.

[47] In *Van Breda v. Village Resorts Ltd.* at para. 84, Justice Sharpe stated that: (a) the core of the real and substantial connection test was the connection that the plaintiff's claim had to the forum and the connection of the defendant to the forum, respectively; and (b) the remaining factors were analytic tools to assist the court in assessing the significance of the connections between the forum, the claim and the defendant.

[48] When assessing the connection between the forum and the defendant, the primary focus is on things done by the defendant within the jurisdiction, and if the

defendant confines its activities to its home jurisdiction, it will not ordinarily be subject to the jurisdiction of the forum: *Van Breda v. Village Resorts Ltd.* at para. 89.

[49] The *Van Breda* test is designed to simplify the real and substantial connection test. While framed as a two-stage test, the fundamental question is whether there is a sufficient real and substantial connection which justifies the assumption of jurisdiction: *Cannon v. Funds for Canada Foundation*, [2010] O.J. No. 3486 (S.C.J.) at para. 47, aff'd [2011] O.J. No. 990 (C.A.).

[50] In *Van Breda*, Justice Sharpe stated that the two *Muscutt* factors about fairness should be collapsed into one, and the fairness of assuming or refusing jurisdiction should be considered together. He rejected arguments that fairness was too vague a criteria to be considered, but he stated that consideration of fairness should not be seen as a separate inquiry unrelated to the core of the test, but rather should serve as an analytic tool to assess the relevance, quality and strength of connections, whether they amount to a real and substantial connection, and whether assuming jurisdiction accords with the principles of order and fairness.

[51] Putting the matter of any presumptions aside, the following factors or circumstances are relevant to determining whether there is a real and substantial connection between the matter and the parties and Ontario. Ms. Bond is a resident of the United States; she and many of the putative class members have no personal connection to Ontario. All of the events took place in Alberta. The critical event involved a court order made in Alberta about a contract governed by the law of Alberta made with an Alberta corporation carrying on business in Alberta and forced by the court order to sell its assets, also located in Alberta. None of these factors support that Ontario has a real and substantial connection with the matter and the parties.

[52] The alleged connections with Ontario are based on: trading of Birch Mountain shares on the Toronto Stock Exchange; two of the three defendants being Ontario residents; the two Ontario defendants making their decisions in Toronto; and the application of the oppression remedy provisions of Ontario's *Business Corporations Act*.

[53] Ms. Bond's main argument is that the parties and the matter are connected to Ontario through the oppression remedy provisions of the Ontario *Business Corporations Act*. The problem, however, with this supposed connection is that her theory for the application of the Ontario *Business Corporations Act* is untenable.

[54] I will assume that Ms. Bond would qualify as a "complainant" under the Ontario Act as a shareholder in Birch Mountain. However, for her to have a tenable claim under the Ontario Act for the oppressive conduct of Birch Mountain, she would have to establish both that: (a) Birch Mountain was a "corporation" under the Ontario Act; and

also (b) that one of Hammerstone, Tricap, or Brookfield Management would qualify as an "affiliate" of Birch Mountain. Ms. Bond, however, cannot establish either prerequisite and both must be established.

[55] A corporation under the Ontario Act is a corporation incorporated under the laws of Ontario. See subsection 2 (1) of the Ontario Act. Birch Mountain is an Alberta corporation and subject to the oppression remedy provisions of the Alberta *Business Corporations Act*. See ss. 1(l)(m) and 242(1) of the Alberta Act.

[56] Since Birch Mountain is not a "corporation" for the purposes of the Ontario Act, the Defendants cannot be "affiliates" of that corporation for the purposes of the Ontario Act. That the Ontario Defendants made decisions in Ontario, alleged to be oppressive and unfair to Birch Mountain shareholders, does not make Birch Mountain an Ontario corporation subject to the Ontario Act.

[57] If, however, Birch Mountain were a corporation under the Ontario Act, then for Ms. Bond to have an oppression remedy claim against Hammerstone, Tricap, and Brookfield Management she would have to establish that one of them was an "affiliate" under s. 1(4) the Ontario Act, which states:

> *Affiliated Body Corporate*
>
> 1. (4) For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

[58] There is no suggestion that any of the Defendants were subsidiaries of Birch Mountain. As such, the only remaining question is whether Birch Mountain and the defendants were under common control; i.e "controlled by the same person."

[59] In regards to the legal nature of "controlled by the same persons", s. 1(5) of the Ontario Act provides, with emphasis added:

> *Control*
>
> For the purposes of this Act, a body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if, but only if,
>
> (a) **voting securities** of the first-mentioned body corporate carrying more than 50 per cent of the votes for the election of directors are held, **other than by way of security only**, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and
>
> (b) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate.

[60] In this case, it is conceded that none of the Defendants held any voting shares of Birch Mountain. Only Tricap had a conversion right to obtain such shares under its

Debenture; however, the right was never exercised and thus the deemed control provision of the Act have never been triggered and none of the Defendants became an affiliate of Birch Mountain.

[61] As an operative fact, Tricap's Debenture was not "held other than by way of security only." Ms. Bond would have it, however, that because the Debenture could potentially become a voting security because of the conversion right, it cannot be held by way of security only. This reading of s. 1 (5) reads out the exception and makes it impossible to have a convertible debenture be other than a voting security. In my opinion, this is not a correct interpretation of s. 1 (5).

[62] In my opinion, it is not the case that Birch Mountain is an Ontario corporation and the Defendants are not affiliates of Birch Mountain. The Ontario *Business Corporations Act* does not apply and the Ontario court does not have jurisdiction *simpliciter*

## ***E. DISCUSSION – FORUM NON CONVENIENS***

[63] Assuming I am incorrect in concluding that Ontario does not have a real and substantial connection with the action and the parties, the question becomes whether the Ontario Superior Court should exercise its jurisdiction if there is another forum that also has jurisdiction over the matter.

[64] In his *Muscutt v. Courcelles* judgment, Justice Sharpe noted that the courts have developed a list of factors that may be considered in determining the most appropriate forum for the action, including:

- the location of the majority of the parties;
- the location of the key witnesses and evidence;
- contractual provisions that specify applicable law or accord jurisdiction;
- the avoidance of multiplicity of proceedings;
- the applicable law and its weight in comparison to the factual questions to be decided;
- geographical factors suggesting the natural forum; and
- whether declining jurisdiction would deprive the plaintiff of a legitimate juridical advantage in the domestic court.

[65] Ms. Bond provided no evidence with respect to *forum conveniens*.

[66] The above factors overwhelming favour Alberta as the convenient forum. Other than the Defendants' directors who reside in Ontario, the witnesses are located

predominately in Alberta. Birch Mountain's management was based in Alberta. The issues raised in the action concern an Alberta corporation, its Alberta property, and events that happened in Alberta. The Debenture was made and administered in Alberta. It is governed by Alberta law and was approved by Birch Mountain's board and shareholders in Alberta. There are outstanding proceedings in Alberta. The Alberta Act's oppression remedy is similar to Ontario's.

[67] The Defendants also argue that Alberta has a closer connection to the action because the action is in effect a collateral attack on the decision of the Alberta court that approved the sale to the Defendants. There is considerable merit to this point because Ms. Bond makes much of the fact that her complaint includes the assertion that the Alberta court was ill-informed and misinformed when it approved the sale of Birch Mountain's assets to Hammerstone.

[68] I, however, cannot and do not need to decide the collateral attack argument, but the arguments of both sides about this point do show that Alberta is the natural and proper forum for Ms. Bond's claims.

[69] I conclude that Ontario is *forum non conveniens*.

## ***F. CONCLUSION***

[70] For the above Reasons, I grant the Defendants' motion.

[71] If the parties cannot agree about costs, they may make submissions in writing beginning with the Defendants' submissions within 20 days of the release of these Reasons for Decision, followed by Ms. Bond's submissions within a further 20 days.

Perell, J.

**Released:** April 26, 2011

**CITATION:** Bond v. Brookfield Asset Management Inc., 2011 ONSC 2529
**COURT FILE NO.:** 10-CV-410910
**DATE:** April 26, 2011

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Wanda Bond**

Plaintiff

**- and -**

**Brookfield Asset Management Inc., Brookfield Special Situations Partners Ltd. and 1439442 Alberta Ltd.**

Defendants

---

**REASONS FOR DECISION**

---

**Perell, J.**

**Released:** April 26, 2011