

Alberta Court Analyzes Public Policy Defence

In *Bad Ass Coffee Company of Hawaii Inc. v. Bad Ass Enterprises Inc.*, [2007] A.J. No. 1080 (Q.B.) (QL), available [here](#), an Alberta Master was asked to recognize and enforce a Utah judgment. The Master first analyzed the issue of whether the Utah court had jurisdiction, holding that the defendants had submitted to its jurisdiction by making arguments on the merits of the dispute. The Master also, correctly in my view, held that in light of the submission, there was no need for the Canadian court to consider whether there was a real and substantial connection between Utah and the dispute: the submission itself was conclusive on the jurisdiction issue.

Most of the decision deals with the defendants' argument that the Utah judgment was contrary to the public policy of Alberta, particularly that expressed in its legislation about franchise agreements. The Alberta legislation provided, in part, that the law of Alberta applied to franchise agreements. The agreement between the parties had been expressly governed by the law of Utah, and the court in Utah had used that law to resolve the dispute.

The Master, after a lengthy analysis, concluded that the defence of public policy must remain narrow in scope. In doing so the Master relied on the Supreme Court of Canada's decision in *Beals v. Saldanha*. As a result, the Master concluded that the application of Utah law to the agreement, while a violation of the local Alberta statute, was not contrary to the "fundamental morality" of the forum. Principles of international comity meant that the courts of Utah had to be given scope to apply Utah law to the contract.

Bad Ass Coffee Company of Hawaii Inc. is headquartered in Salt Lake City, Utah. For more, follow [this link](#). The company's name has to do with hard-working donkeys.