



No. S-243389  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
ECOASIS DEVELOPMENTS LLP AND OTHERS

BETWEEN:

**SANOVEST HOLDINGS LTD.**

PETITIONER

AND:

**ECOASIS DEVELOPMENTS LLP, ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD., ECOASIS RESORT AND GOLF LLP, 0884185 B.C. LTD., 0884188 B.C. LTD., 0884190 B.C. LTD., 0884194 B.C. LTD., BM 81/82 LANDS LTD., BM 83 LANDS LTD., BM 84 LANDS LTD., BM CAPELLA LANDS LTD., BM HIGHLANDS GOLF COURSE LTD., BM HIGHLANDS LANDS LTD., BM MOUNTAIN GOLF COURSE LTD., and BEAR MOUNTAIN ADVENTURES LTD.**

RESPONDENTS

### NOTICE OF APPLICATION

**Name of applicant:** Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver (the "**Receiver**") of Ecoasis Developments LLP, Ecoasis Bear Mountain Developments Ltd., 0884185 B.C. Ltd., 0884188 B.C. Ltd., 0884190 B.C. Ltd., 0884194 B.C. Ltd., BM 81/82 Lands Ltd., BM 83 Lands Ltd., BM 84 Lands Ltd., BM Capella Lands Ltd., BM Highlands Golf Course Ltd., BM Highlands Lands Ltd., BM Mountain Golf Course Ltd., certain lands of Bear Mountain Adventures Ltd., and any interests in real property of Ecoasis Resort and Golf LLP.

To: The Service List

TAKE NOTICE that an application will be made by the Receiver to the Court at the courthouse at 800 Smithe Street, Vancouver, BC on January 30, 2025 at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 2.5 hours.

This matter is not within the jurisdiction of an associate judge. Mr. Justice Walker is seized of this matter.

### Part 1: ORDERS SOUGHT

1. This is an application pursuant to paragraph 40 of the "**Receivership Order**" of this Court granted on September 18, 2024 for advice and directions with respect to the reports of the Receiver that have been delivered under paragraphs 4 and 6 of the Receivership Order, such

reports dated October 25, 2024 (the "**First Report**"), December 2, 2024 (the "**Second Report**"), and December 20, 2024 (the "**Third Report**") including advice and directions:

- (a) on whether the First Report, the Second Report, and/or the Third Report (collectively, the "**Reports**"), or any of them, ought to be filed with this Court at this time; and
- (b) if the Reports, or any of them, are directed by this Court to be filed with this Court at this time, whether any of the Reports, or portions thereof, ought to be filed under seal.

2. The Receiver further seeks such directions as counsel may advise and this Court deems to be just and convenient in the circumstances.

## Part 2: FACTUAL BASIS

### *Background*

3. On September 18, 2024, upon the application of Sanovest Holdings Ltd. ("**Sanovest**"), this Court granted the Receivership Order appointing Alvarez & Marsal Canada Inc. as Receiver of:

- (a) certain lands owned by Bear Mountain Adventures Ltd. ("**BMA**");
- (b) any interests in real property owned by Ecoasis Resort and Golf LLP ("**Resorts**"); and
- (c) all of the assets, undertakings and property of Ecoasis Developments LLP ("**EDL**"), Ecoasis Bear Mountain Developments Ltd. ("**EBMD**"), 0884185 B.C. Ltd., 0884188 B.C. Ltd., 0884190 B.C. Ltd., 0884194 B.C. Ltd., BM 81/82 Lands Ltd., BM 83 Lands Ltd., BM 84 Lands Ltd., BM Capella Lands Ltd., BM Highlands Golf Course Ltd., BM Highlands Lands Ltd. and BM Mountain Golf Course Ltd. (collectively, "**Developments**" and, together with BMA and Resorts, the "**Ecoasis Entities**").

4. The Ecoasis Entities collectively own 28 parcels of land, ranging from undeveloped to fully developed, and operate two golf courses and a golf practice facility, a tennis club, a Pro Shop as well as food and beverage services in a semi-private urban resort community (the "**Bear Mountain Resort**") which straddles the City of Langford and the District of Highlands on Vancouver Island.

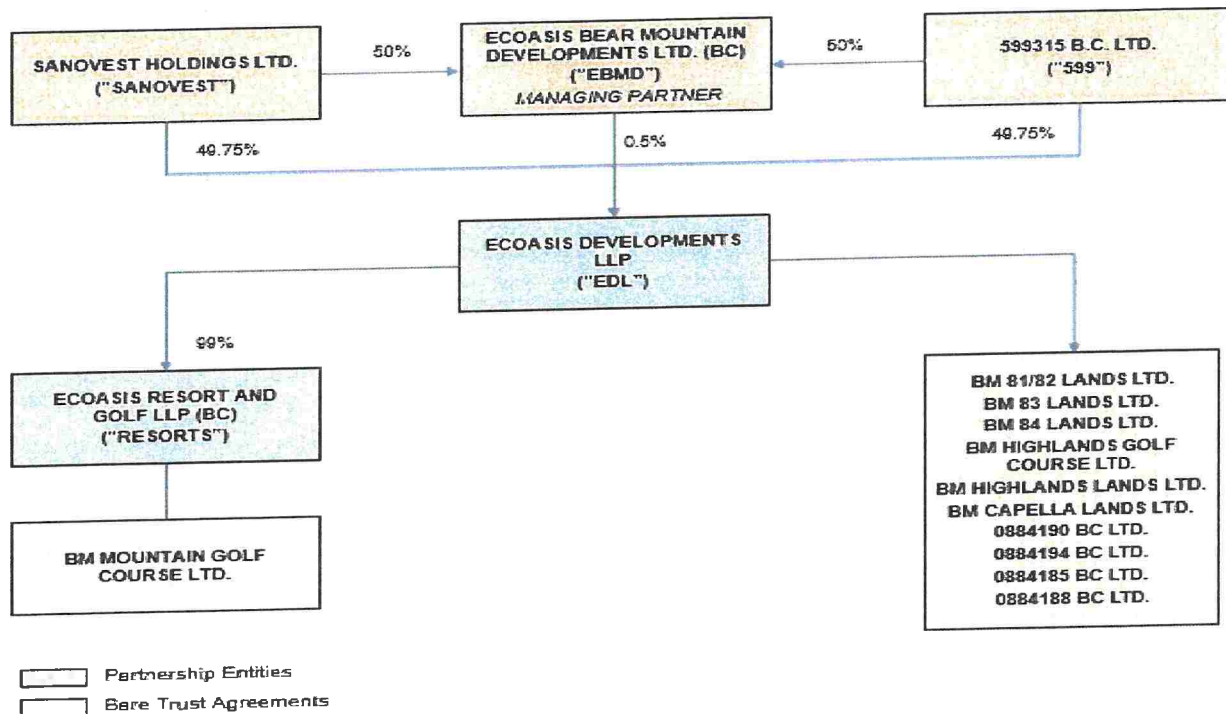
5. Bear Mountain Resort consists of 1,100 acres of land, of which approximately 350 acres of land have been sold to developers over the years and range from undeveloped to fully developed. The remaining approximately 750 acres of land, owned by Developments and Resorts, are used for the Resorts Business (defined below) or are undeveloped to partially developed and have undergone varying stages of sales and marketing over the past 20 years. Approximately 3,000 residents reside at Bear Mountain Resort's approximately 1,600 single-family residences, townhomes and condominiums.

6. The Ecoasis Entities have two primary operations:

- (a) the **"Resorts Business"**, which operates the two golf courses, a driving range and 10,000 sq.ft. of putting greens, indoor/outdoor tennis courts, food and beverage outlets and the Pro Shop and golf club storage. The Pro Shop, club storage and limited food and beverage offerings are operated out of the Bear Mountain activity center (the **"BMAC"**) facility. The BMAC, which includes a gym and heated outdoor pool and hot tub, is not subject to these Receivership Proceedings and is owned by BMA; and
- (b) the **"Developments Business"**, which is the real estate sales and development arm of the Ecoasis Entities. The Developments Business's assets include the land (the **"Development Lands"**) from which the Resorts Business operates and all the developable land.

7. Since 2013, the Bear Mountain Resort has been owned and operated by Sanovest, also the secured lender and petitioner in these proceedings, 599315 B.C. Ltd. ("**599**"), and EBMD, through a limited liability partnership known as Ecoasis Developments LLP. Collectively, Sanovest, 599 and EBMD are referred to as the **"Partnership"**. The ownership interests in the Partnership are as follows: Sanovest (49.75%), 599 (49.75%) and EBMD (0.5%). Sanovest and 599 each own 50% of the issued and outstanding shares of EBMD. Mr. Tian Kusumoto is a director of Sanovest and EBMD, as well as the CFO of EBMD. Mr. Daniel Matthews is the director and president of 599 as well as the President, CEO and director of EBMD. Both Mr. Kusumoto and Mr. Matthew are directors of Developments and BMA.

8. An organizational chart identifying the relationships of the parties references herein is as follows:



Note: BMA is excluded from the above and EBMD has the remaining 1% ownership interest in Resorts.

### ***Events Leading to these Receivership Proceedings***

9. It is the Receiver's understanding that since 2021 or thereabouts, Sanovest and 599 have had conflicting views on the strategic direction of the Resorts Business and Developments Business, among other disagreements.

10. With the exception of select lot closings, the Developments Business has not conducted any real estate transactions since 2021 due to several shareholder disputes and a lack of shared vision between the shareholders resulting in subsequent and ongoing litigation proceedings (the "**Litigation Proceedings**"). Certain of the Litigation Proceedings, hereinafter referred to as the "**Oppression Litigation**", between 599 and Sanovest in respect of, among other things, loan balances and allegations of undervalue transactions, are excluded from these receivership proceedings pursuant to paragraphs 1 and 2(a) of the Receivership Order.

11. In May 2024, 599 filed an application with the Court seeking, among other matters, approval to appoint a marketing agent to have exclusive conduct of sale over certain of the Development Lands, with the objective of repaying certain secured debt due to Sanovest from the sale proceeds and retaining a portion of sale proceeds for the Resorts Business and Developments Business.

12. On May 23, 2024, Sanovest filed a petition to Court seeking appointment of a receiver, which ultimately led to the granting of the Receivership Order.

13. Pursuant to paragraph 2(b) of the Receivership Order, the Resorts Business, subject to further order of this Court, is to continue to be managed by EBMD, provided that EBMD and Resorts are required to provide access and cooperation to the Receiver pursuant to paragraphs 7 to 10 of the Receivership Order, including in respect of Resorts and the Resorts Business. For greater clarity, the Resorts Business does not include the ownership, disposition or encumbrance of any interests in real property.

### ***The Delivery of the Receiver's First Report***

14. Pursuant to paragraph 4 of the Receivership Order, granted on September 18, 2024, the Receiver was to deliver, on or before October 25, 2024, a report and recommendation regarding Resorts, including the inclusion of other assets, undertakings and properties of Resorts in these receivership proceedings, management by EBMD of the Resorts Business, and whether EBMD ought to continue to manage the Resorts Business and, if so, on what terms, if any.

15. On October 25, 2024, as required by the Receivership Order, the Receiver delivered the First Report to 599, Mr. Matthews, Sanovest, and their respective legal counsel.

16. The contents of the First Report included, among other things, the following information:

- (a) certain background information with respect to the Ecoasis Entities including their corporate and operating structure and the events leading up to these receivership proceedings;
- (b) the Receiver's comments and recommendations regarding the properties of Resorts, management by EBMD of the Resorts Business, and whether EBMD

ought to continue to manage the Resorts Business and, if so, on what terms, if any;

- (c) a summary of the composition of the assets and the creditor profile of Developments;
- (d) a summary of the initial activities of the Receiver since being appointed by this Court;
- (e) the Receiver's interim statement of cash receipts and disbursements as it relates to Developments' operations;
- (f) the first cash flow statement for the period from October 19, 2024, to January 31, 2025; and
- (g) the Receiver's concluding comments and recommendations relating to the above.

17. The First Report was delivered to 599, Mr. Matthews, Sanovest, and their respective legal counsel on the Receiver's understanding that these parties may consider the contents of the First Report to be confidential. Accordingly, in delivering the First Report, the Receiver requested that the recipients of the First Report consider the contents of the document and whether they propose that any redactions be made to the First Report.

18. Pursuant to paragraph 5 of the Receivership Order, a tentative hearing with respect to issues that may arise in connection with the delivery of the First Report was scheduled for November 6, 2024, or such other date as this Court may order. As no applications or ancillary relief were sought with respect to the First Report, on November 4, 2024, the Receiver filed a requisition with this Court adjourning the November 6, 2024 hearing.

### ***The Delivery of the Receiver's Second Report***

19. Pursuant to paragraph 6 of the Receivership Order, the Receiver was to deliver, on or before December 2, 2024, or such other date as this Court may order, a report in respect of a potential Court-supervised marketing and sales process.

20. On December 2, 2024, as required by the Receivership Order, the Receiver delivered the Second Report to 599, Mr. Matthews, Sanovest, and their respective legal counsel.

21. The contents of the Second Report included, among other things, the following information:

- (a) a summary of the activities of the Receiver since October 25, 2024;
- (b) the Receiver's comments and recommendations regarding a marketing and sales process (including attaching as an Appendix a project development assessment of an expert retained to help inform the Receiver's assessment of the assets underlying the Bear Mountain Resort and to assist in the development of a sales and marketing process);

- (c) an interim statement of the cash receipts and disbursements for the period from September 18 to November 22, 2024;
- (d) the second cash flow forecast for the period from November 23, 2024, to April 4, 2025; and
- (e) the Receiver's concluding comments and recommendations relating to the above.

22. Like the First Report, the Second Report was delivered to 599, Mr. Matthews, Sanovest, and their respective legal counsel, on the Receiver's understanding that these parties may consider the contents of the Second Report to be confidential. Accordingly, in delivering the Second Report, the Receiver again requested that the recipients of the Second Report consider the contents of the document and whether they propose that any redactions be made to the Second Report.

### ***The Delivery of the Receiver's Third Report***

23. On December 9, 2024, pursuant to the recommendations made in the First Report, management of Resorts provided to the Receiver their response (the "**Resorts Response**") to certain matters reported on in the First Report.

24. On December 20, 2024, the Receiver delivered the Third Report to 599, Mr. Matthews, Sanovest, and their respective legal counsel. The Third Report is an interim report that was been prepared to provide a summary of the Resorts Response and the Receiver's preliminary comments with respect to same.

25. Like the First Report and the Second Report, the Third Report was delivered to 599, Mr. Matthews, Sanovest, and their respective legal counsel, on the Receiver's understanding that these parties may consider the contents of the Third Report to be confidential. Accordingly, in delivering the Third Report, the Receiver again requested that the recipients of the Third Report advise the Receiver whether they propose that any redactions be made to the Third Report.

### ***The Need for Advice and Directions with Respect to the Reports***

26. As previously disclosed to the Court, and as referenced in the Receivership Order, Resorts is a party to an arbitration proceeding (the "**Arbitration Proceedings**") with the purchaser of the hotel property that was previously owned by the Ecoasis Entities. The counter-parties to the arbitration include Bear Mountain Resort & Spa Ltd., BM Management Holdings Ltd. and BM Resort Assets Ltd. (collectively, the "**Hotel**"). Paragraph 13 of the Receivership Order carves out the Arbitration Proceedings from the order.

27. The Arbitration Proceedings have continued for many years, having been commenced in 2020. Details related to the Arbitration Proceedings are set out in Mr. Matthews Affidavit dated June 13, 2024 (paras 21 – 34) and filed in this proceeding.

28. Counsel to the Hotel has requested disclosure of the First Report and the Second Report and, presumably seek disclosure of the Third Report.

29. The Receiver understands the Hotel's position to be that the filing and public dissemination of the reports is required by paragraphs 4 – 6 and 34 – 35 of the Receivership Order.

30. The Receiver has consulted with the recipients of the Reports, being Sanovest, 599, and Matthews.

31. There are differing views as to the confidentiality of the Reports, or parts thereof. An additional issue has arisen as to whether the Reports are required to be filed at all.

32. The Receiver requests the advice and directions of this Court on (a) whether the Reports, or any of them, ought to be filed with this Court, distributed to the Service List, and published on the Receiver's Website; and (b) whether any of the Reports, or portions of thereof, that are to be filed with this Court and otherwise made available in accordance with the Receivership Order ought to be filed under seal.

### **Part 3: LEGAL BASIS**

#### ***The Receivership Order Provisions on the Preparation and Dissemination of Reports***

33. The Receivership Order sets out the Receiver's powers and obligations with respect to the preparation and dissemination of any reports that the Receiver may prepare while discharging its duties.

34. Paragraph 3(n) of the Receivership Order, which is based on the B.C. Model Receivership Order, provides that the Receiver is empowered and authorized, but not obligated, where it considers it to be necessary or desirable, to report to, meet with and discuss with such affected Persons (as defined in the Receivership Order) as the Receiver considers appropriate on all matters relating to the Property (as defined in the Receivership Order) and the Receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate.

35. Paragraph 4 of the Receivership Order, which is not based on the B.C. Model Receivership Order, provides as follows:

On or before Friday, October 25, 2024, the Receiver shall deliver a report and recommendation regarding Resorts, including the inclusion of other assets, undertakings and properties of Resorts, management by EBMD of the Resorts Business and whether EBMD ought to continue to manage the Resorts Business and, if so, on what terms, if any (the "Report").

36. Paragraph 5 of the Receivership Order, which is not based on the B.C. Model Receivership Order, provides as follows:

A hearing for the Receiver's counsel to speak to the Report, and for any applications resulting from the Report or any ancillary relief, shall be held at the Courthouse at 800 Smithe Street, Vancouver BC at 10:00am on the 6th day of November 2024, or such other date as this Court may order.

37. Paragraph 6 of the Receivership Order, which is not based on the B.C. Model Receivership Order, provides as follows:

On or before Monday, December 2, 2024, or such other date as this Court may order, the Receiver shall deliver a report in respect of a marketing and sale process, to be approved by the Court, and shall only market or sell the Property or business in accordance with that marketing and sale process, except for the sale of Property within the limits in paragraph 3(l)(i).

38. Paragraph 34 of the Receivership Order, which is based on the B.C. Model Receivership Order, provides as follows:

The Receiver shall establish and maintain a website in respect of these proceedings at: [www.alvarezandmarsal.com/ecoasisdevelopments](http://www.alvarezandmarsal.com/ecoasisdevelopments) (the "Website") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the Supreme Court Civil Rules', and,
- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

39. Paragraph 35 of the Receivership Order, which is based on the B.C. Model Receivership Order, provides as follows:

Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for the Receiver a demand for notice in the form attached as Schedule "C" (the "Demand for Notice"). The Receiver need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "Service List"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.

***The Test Applicable to the Redactions and/or Sealing of Court Materials***

40. If the Reports, or any of them, are to be filed with the Court and distributed pursuant to the Receivership Order, the Receiver understands that Sanovest, 599, and/or Matthews may request that such Reports, or portions thereof, as are required to be filed and distributed should be made subject to a sealing order.



41. In the leading case of *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

***Sierra Club of Canada v. Canada (Minister of Finance)*, 2002  
SCC 41 at para. 53 [*Sierra Club*].**

42. The SCC reaffirmed its decision in *Sierra Club* in *Sherman Estates v. Donovan*. In that decision, the Court confirmed that the “test laid out in *Sierra Club* continues to be an appropriate guide for judicial discretion” and that the structure provided by *Sierra Club* “remains appropriate and should be affirmed.” The Court in *Sherman Estates* did, however, break down the two-part test from *Sierra Club* into three parts to help clarify the prerequisites “without altering its essence”. As clarified, the applicant must establish that (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estates v. Donovan*, 2021 SCC 25 at paras. 38 and  
43 [*Sherman Estates*].**

43. The Receiver requests the advice and directions of this Court on whether Reports, or any of portions thereof, that are required to be filed with this Court and distributed pursuant to the Receivership Order ought to be made subject to a sealing order.

44. The Receiver understands that that 599/Matthews and Sanovest will be making submissions to the court on these issues.

**Part 4: MATERIAL TO BE RELIED ON**

45. The Receiver relies upon the Receivership Order, the affidavits and other material filed in this proceeding, and such further and other materials as counsel may advise.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 24, 2025

  
Signature of Peter Rubin  
Counsel for the Receiver

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of this notice of application

☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of ☐ Judge ☐ Associate Judge

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts