



This is the 1st affidavit
of Zhao (Vivienne) Zhang
in this case and was made on
July 3, 2025

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

AFFIDAVIT

I, Zhao (Vivienne) Zhang, of 2900 – 733 Seymour Street, Vancouver, BC, V6B 0S6, legal
administrative assistant, AFFIRM THAT:

1. I am a legal administrative assistant of the law firm of Owen Bird Law Corporation,
counsel for 599315 B.C. Ltd. (“599”) and Daniel Matthews (“**Matthews**”) in this legal

proceeding, and as such have personal knowledge of the facts and matters hereinafter deposed to.


2. Attached hereto as Exhibit “A” is a copy of emails exchanged between Scott H. Stephens, counsel for 599 and Matthews, and Kibben Jackson, counsel for Sanovest Holdings Ltd. (“**Sanovest**”) on June 30, 2025 and July 2, 2025.
3. Attached hereto as Exhibit “B” is the Reasons for Judgment of Associate Judge Nielsen dated April 18, 2024.
4. Attached hereto as Exhibit “C” is the Oral Reasons for Judgment of Madam Justice Morellato dated May 16, 2025.
5. 599 and Matthews commenced a petition proceeding on June 1, 2023 in Supreme Court of British Columbia and converted to an action later with an Action Number of S-234048 (the “**Oppression Action**”):
 - a) Attached hereto as Exhibit “D” is a copy of the Petition to Court filed on June 1, 2023 in the Oppression Action; and
 - b) Attached hereto as Exhibit “E” is a copy of the Response to Petition filed by the respondents Tian Kusumoto and Sanovest on August 25, 2023 in the Oppression Action.
6. Sanovest commenced an action on May 13, 2022 in Supreme Court of British Columbia with an Action Number of S-223937 (the “**Sanovest Action**”):
 - a) Attached hereto as Exhibit “F” is a copy of the Amended Notice of Civil Claim filed on March 20, 2023 in the Sanovest Action;
 - b) Attached hereto as Exhibit “G” is a copy of the Response to Amended Notice of Civil Claim filed by Matthews on May 5, 2023 in the Sanovest Action;
 - c) Attached hereto as Exhibit “H” is a copy of the Third Party Notice filed by Matthews on May 5, 2023 in the Sanovest Action;

- d) Attached hereto as Exhibit “**I**” is a copy of the Counterclaim filed by Matthews on May 5, 2023 in the Sanovest Action;
 - e) Attached hereto as Exhibit “**J**” is a copy of the Response to Civil Claim filed by Tomoson Kusumoto on May 12, 2023 in the Sanovest Action;
 - f) Attached hereto as Exhibit “**K**” is a copy of the Response to Counterclaim filed by Sanovest and Tian Kusumoto on June 22, 2023 in the Sanovest Action;
 - g) Attached hereto as Exhibit “**L**” is a copy of the Reply filed by Sanovest on June 22, 2023 in the Sanovest Action;
 - h) Attached hereto as Exhibit “**M**” is a copy of the Response to Counterclaim filed by Tomoson Kusumoto on August 1, 2023 in the Sanovest Action; and
 - i) Attached hereto as Exhibit “**N**” is a copy of the Response to Third Party Notice filed by Tomoson Kusumoto on August 1, 2023 in the Sanovest Action.
7. Tom Kusumoto commenced an action on August 2, 2022 in Supreme Court of British Columbia with an Action Number of S-226218 (the “**Tom Debt Action**”):
- a) Attached hereto as Exhibit “**O**” is a copy of the Notice of Civil Claim filed on August 2, 2022 in the Tom Debt Action;
 - b) Attached hereto as Exhibit “**P**” is a copy of the Response to Civil Claim filed on March 23, 2023 in the Tom Debt Action;
 - c) Attached hereto as Exhibit “**Q**” is a copy of the Counterclaim filed on March 23, 2023 in the Tom Debt Action; and
 - d) Attached hereto as Exhibit “**R**” is a copy of the Response to Counterclaim filed on June 16, 2023 in the Tom Debt Action.

8. Ecoasis Developments LLP, Ecoasis Resort and Golf LLP, and 599 commenced an action on June 1, 2023 in Supreme Court of British Columbia with an Action Number of S-234047 (the “**Partnership Action**”):

- a) Attached hereto as Exhibit “S” is a copy of the Notice to Civil Claim filed on June 1, 2023 in the Partnership Action; and
- b) Attached hereto as Exhibit “T” is a copy of the Response to Civil Claim filed by the defendants Sanovest, Tian Kusumoto, and TRK Investments Corporation on August 25, 2023 in the Partnership Action.

AFFIRMED BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, this 3rd day of July 2025.


A Commissioner for taking Affidavits for
British Columbia

LILY Y. ZHANG
Barrister & Solicitor
P.O. Box 1
2900-733 SEYMOUR STREET
VANCOUVER, B.C. V6B 0S6
(604) 691-7571



Zhao (Vivienne) Zhang

This is Exhibit "A" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia

Vivienne Zhang

From: Kibben Jackson <kjackson@fasken.com>
Sent: Wednesday, July 2, 2025 10:38 AM
To: Scott H. Stephens
Cc: Lily Y. Zhang; Jessica Cameron; Lily Y. Zhang; peter.rubin@blakes.com; Andrew I. Nathanson; Lars Brusven
Subject: RE: [EXT] Sanovest - litigation schedule application

[External Email – Use Caution]

Hi Scott.

It may be useful to discuss what you are suggesting below. In our view, any defence to our client's entitlement to the amounts owing in respect of its loan, including interest and fees, needs to be raised in response to the application in the receivership proceedings. Otherwise we risk inconsistent results (i.e. a decision saying Sanovest gets all its interest and fees and one which says it does not). So to the extent any of the extant litigation includes as any part of the relief sought by your clients a denial of Sanovest's entitlement to the full amount of its loan (including interest and fees), then that claim/defence should be included as part of the summary process in the receivership. Failing to do so would result in a defence of issue estoppel (in the other litigation).

It may be that you and I are on the same page on this, in which case a discussion around process and timing may obviate the need for a protracted hearing tomorrow on the scope and schedule of our application. Let me know if that's the case.

In any event, you have asked about when your Response might be due. In our CPO, we had July 18, which should be possible given that pleadings are closed in the related litigation. But if you need another week, I'm okay with that.

The point is we need to work towards an early hearing date, including to try to align with the Receiver's timing around a sale process. We should be able to get to a date in October 2025.

Kibben Jackson*

Partner

T +1 604 631 4786 | kjackson@fasken.com

Fasken Martineau DuMoulin LLP

*Law Corporation

From: Scott H. Stephens <sstephens@owenbird.com>
Sent: July-02-25 10:24 AM
To: Kibben Jackson <kjackson@fasken.com>
Cc: Lily Y. Zhang <lzhang@owenbird.com>; Jessica Cameron <jcameron@fasken.com>; Lily Y. Zhang <lzhang@owenbird.com>; peter.rubin@blakes.com; Andrew I. Nathanson <anathanson@fasken.com>; Lars Brusven <lbrusven@fasken.com>
Subject: RE: [EXT] Sanovest - litigation schedule application

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

I think I'll probably get instructions to agree to a limited scope of the application (i.e., just address quantum and leave all other matters to be litigated in the underlying actions). Even if not, we should address the timeline you put forward. Those dates are obviously no longer workable – please propose new ones so I have an idea of what you consider reasonable.

Scott H. Stephens
Owen Bird Law Corporation
 direct tel. (604) 691-7521
 direct fax. (604) 632-4447
 web. www.owenbird.com

From: Scott H. Stephens
Sent: Wednesday, July 2, 2025 8:07 AM
To: Kibben Jackson <kjackson@fasken.com>
Cc: Jessica Cameron <jcameron@fasken.com>; Lily Y. Zhang <lzhang@owenbird.com>; peter.rubin@blakes.com;
 Andrew I. Nathanson <anathanson@fasken.com>; Lars Brusven <lbrusven@fasken.com>
Subject: Re: [EXT] Sanovest - litigation schedule application

Let's start with the first step - how long do you say my clients should have to deliver a response?

On Jul 2, 2025, at 6:29 AM, Kibben Jackson <kjackson@fasken.com> wrote:

[External Email – Use Caution]

Hi Scott.

I don't think we will come to agreement on this – the timelines you propose are too long and I don't see the need for the additional step you propose. I'm happy to have a call, but I would be surprised if one of us will convince the other.

Kibben Jackson*

Partner

T +1 604 631 4786 | kjackson@fasken.com

Fasken Martineau DuMoulin LLP

*Law Corporation

From: Scott H. Stephens <sstephens@owenbird.com>
Sent: June-30-25 9:29 PM
To: Kibben Jackson <kjackson@fasken.com>
Cc: Jessica Cameron <jcameron@fasken.com>; Lily Y. Zhang <lzhang@owenbird.com>;
peter.rubin@blakes.com
Subject: [EXT] Sanovest - litigation schedule application

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}
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Kibben,

Writing regarding the “litigation schedule” application. As discussed briefly in court, our clients’ view is that any order made ought to be without prejudice to the arguments that: 1. the issue of the quantum of the indebtedness should not be determined in isolation from the other claims between the parties to the four underlying actions (an argument previously adjudicated and accepted by the court per the attached reasons – which we learned of a day or so ago...we still don’t have our clients’ file); and 2. the claims are not suitable for summary determination (i.e., including via hybrid procedures). In court you referred to Alderbridge as analogous. In that case, it appears that all related issues were litigated together, and fulsome pre-trial procedures were afforded to the parties, albeit on a somewhat expedited schedule.

@Peter – would you be so kind as to flip Lily and I a copy of the case plan order made in Alderbridge? Can’t find it on the website.

A complicating factor is that my clients have not yet retained new counsel for the underlying actions. My understanding is that they expect to retain new counsel very shortly (or perhaps did so earlier today). But the long and short of it is that me and my clients reasonably require the views of counsel who will actually litigate those issues in order to formulate the response (and in order to give informed advice, new counsel will need some time to get up to speed).

What I propose is as follows:

1. The debt declaration application is adjourned generally, to be re-set for hearing by agreement or further order.
2. My clients’ response to the debt declaration application will be filed and served by August 22, 2025.
3. Reply materials will be filed and served by August 29, 2025.
4. We will reserve a date before Justice Walker for so soon thereafter as he is available to determine:
 1. The threshold issues of whether the debt declaration claim should be determined in isolation from some or any of the other claims in the four underlying actions and whether some or all of the various parties’ claims should be litigated in this proceeding;
 2. If some or all of the claims are to be litigated in this proceeding, then what pre-trial procedures should be made available to the parties, on what timeline should the pre-trial/hearing steps be carried out, and what form of trial/hearing should this all culminate in.

It seems to me going beyond the above schedule would require Justice Walker to pre-judge arguments that we will only be organizing and advancing in the application response (for which we need, among other things, some working knowledge of the four underlying actions, our clients’ file and the input of new counsel). Let me know your thoughts. As you might’ve guessed, I’ll be in the office tomorrow should you want to connect on a call.

Regards,

Scott H Stephens*

Barrister & Solicitor | Shareholder

OWEN BIRD LAW CORPORATION

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*Scott H Stephens Law Corporation

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This is Exhibit “B” referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ecoasis Developments LLP v. Sanovest Holdings Ltd.*,
2024 BCSC 635

Date: 20240418
Docket: S234047
Registry: Vancouver

Between:

**Ecoasis Developments LLP, Ecoasis Resort and Golf LLP
and 599315 B.C. Ltd.**

Plaintiffs

And

**Sanovest Holdings Ltd., Tian Kusumoto, TRK Investments Corporation and
Ecoasis Bear Mountain Developments Ltd.**

Defendants

- and -

Docket: S223937
Registry: Vancouver

Between:

Sanovest Holdings Ltd.

Plaintiff

And

**Daniel Matthews, Tomoson (Tom) Kusumoto, Ecoasis Bear Mountain
Developments Ltd. and BM Mountain Gold Course Ltd.**

Defendants

And

Tomoson (Tom) Kusumoto

Third Party

And

**Sanovest Holdings Ltd., Tomoson (Tom) Kusumoto and
Tian Kusumoto**

Defendants by way of counterclaim

- and -

Docket: S226218
Registry: Vancouver

Between:

Tom Kusumoto

Plaintiff

And

Daniel Matthews

Defendant

- and -

Docket: S234048
Registry: Vancouver

Between:

599315 B.C. Ltd. and Daniel Matthews

Plaintiffs

And

**Ecoasis Bear Mountain Developments Ltd., Ecoasis Developments LPP, and
Ecoasis Resort and Golf LLP, Tian Kusumoto, and Sanovest Holdings Ltd.**

Defendants

Before: Associate Judge Nielsen

Reasons for Judgment

Counsel for the Plaintiffs in Action No:
S234047:

G. Brandt
D. Bains, Articled Student

Counsel for the Defendant, Tomoson (Tom)
Kusumoto in Action No: S223937:

W.E. Pedersen

Counsel for the Defendants, Sanovest
Holdings Ltd., Tian Kusumoto and TRK
Investments Corporation in Action No:
S234047
Defendants by way of counterclaim
Sanovest Holdings Ltd., and Tian Kusumoto
in Action No: S223937:

D. Byma

No other appearances

Place and Dates of Hearing:

New Westminster, B.C.
January 29 and April 12, 2024

Place and Date of Judgment:

Vancouver, B.C.
April 18, 2024

[1] This is an application pursuant to *Supreme Court Civil Rule 22-5(8)* by 599315 B.C. Ltd. and Daniel Matthews to join three actions which I will refer to as the (“Oppression petition”), the (“Partnership action”) and the (“Sanovest action”) to be tried and heard together.

[2] The application also seeks to convert the Oppression petition into an action. As all parties agree, that order will go by consent.

[3] There is a further action, which I will refer to as the (“Debt action”), which the applicant also seeks to have joined to the other three actions. This latter application is not specifically enumerated as an order sought in the applications, but was made orally during the course of argument. The plaintiff in the Debt action opposes the applications to consolidate. The other parties agree.

[4] The application also seeks an order that the evidence arising in the Debt action be admissible in the three afore mentioned actions. This application is opposed by the plaintiffs in both the Debt action, and the Sanovest action.

Background facts

[5] The four actions all arise from a common factual matrix relating to the ownership, financing, development, sale, and management of the Bear Mountain project located near Victoria BC, on Vancouver Island.

[6] In October 2013, 599315 B.C. Ltd. and Sanovest Holdings Ltd. went into business together to obtain assets associated with the Bear Mountain project. At the time, 599315 was represented by Mr. Daniel Matthews, and Sanovest by Mr. Tom Kusumoto. The Bear Mountain assets were acquired by two limited liability partnerships involving both Daniel Matthews and Tom Kusumoto. Ecoasis Bear Mountain Developments Ltd. (“EMBD”) was created to be the managing partner of the resort, and Mr. Daniel Matthews and Mr. Tom Kusumoto were appointed as EMBD’s directors. The parties did not prepare a formal written business plan, but did allegedly have a verbal business plan with the terms it would embody.

[7] From October 2013 to June 2021 the partnerships developed the project, and eventually sought the global sale of the project's assets. This was halted when Tom Kusumoto was replaced as Sanovest's nominee, and director, to EBMD's board by his son, Tien Kusumoto.

[8] Mr. Matthews and 599315 allege that since Tien Kusumoto assumed the role of director of EBMD, Sanovest has prevented and interfered with the operation of the Bear Mountain project, wrongfully prevented sales, and withheld funding. Tien Kusumoto and Sanovest allege various self-interested transactions on the part of Mr. Matthews and Tom Kusumoto. And finally, Mr. Tom Kusumoto alleges that he lent Mr. Matthews money on terms that provide payment is past due. From these various allegations, the four law suits have arisen.

Consolidation

[9] *SCCR 22-5(8)* allows the court to consolidate proceedings so they may be ordered tried at the same time. The legal test which applies in relation to *SCCR 22-5(8)* is canvassed by the Chief Justice in *Callan v. Cooke*, 2020 BCSC 290 at paras. 122 to 124 where the court states:

[122] An order under Rule 22-5(8) engages the discretion of the court. The order is discretionary and regard must be given to the administration of justice when considering an application to consolidate actions.

[123] The law to be applied in applications under Rule 22-5(8) is well-settled, and ably set out by Master Kirkpatrick in *Merritt v. Imasco Enterprises Inc.*, (1992) 2 C.P.C. (3d) 275. There are two questions that must be addressed. The first question is: do common claims, disputes and relationships exist between the parties? That determination is made on a review of the pleadings. The second question is: are the actions so interwoven that separate trials at different times before different judges would be undesirable and fraught with problems and expense? This question involves a consideration of factors beyond the pleadings.

[124] The factors to consider when making a determination on consolidation or ordering that actions be heard together include whether the consolidation will:

- 1) create a saving in pre-trial procedures;
- 2) reduce the number of trial days taken up by the actions heard together;

- 3) avoid serious inconvenience to a party being required to attend a trial in which they only have a marginal interest;
 - 4) save the time and witness fees of experts;
 - 5) dispose of all actions at the same time due to common issues of fact or law;
 - 6) avoid a multiplicity of proceedings; and
 - 7) whether the degree of commonality and intertwining of issues outweighs the prejudicial factors raised by the party opposing consolidation;
- bearing in mind:
- 8) the relative stages of the actions;
 - 9) whether the trial will be delayed and prejudice one or some of the parties; and
 - 10) whether the refusal to consolidate risks inconsistent results.

(See: *Merritt, Insurance Corporation of British Columbia v. Sam* (1998), 24 C.P.C. (4th) 338; *Liu v. Tsai*, 2017 BCSC 221 (Master))

[10] The issue of whether multiple proceedings should be ordered tried together involves a two-step test. The first issue is whether the proceedings involve common claims, disputes and relationships. This issue is determined on a review of the pleadings.

[11] The four actions have an interconnected relationship. Several have common parties, and in the actions where the parties are not common, those actions will require the testimony by key witness's who are parties in the other actions. In other words, the parties are involved in each of the four actions, one way or another. I find the first step of the test is met.

[12] The second issue to be addressed is whether the proceedings are so interwoven as to make separate trials at different times, before different judges undesirable and potentially fraught with problems and expense. On the application before me, all parties, with the exception of Tom Kusumoto, agree that consolidation is appropriate. They agree there will be a saving in pre-trial procedures, that there will be a reduction in the number of trial days needed, that there will be a savings in time and witness fees, that each of the four actions are at relatively the same stage

with examinations for discoveries having not yet to taken place, and that there would be the risk of conflicting findings if the actions proceeded before different judges.

[13] The objection of Tom Kusomoto is essentially that he is not a party to two of the three actions for which consolidation is sought, and therefore, being forced to participate in all three would be financially detrimental and prejudicial to him. In response, the other parties submit that he will be a critical witness in each action, whether or not he is a party, and he will be required to participate in each action in any event.

[14] In my view consolidation of the three actions as sought is appropriate. The underlying factual matrix is common to each action. The alleged underlying business arrangements will impact each action depending on the court's findings. Each of the actions are at the same stage of proceeding, where examinations for discovery have not taken place. There will undoubtedly be a reduction in time for trial when they are viewed globally, rather than individually. The common use of oral and documentary discoveries would also save time and expense. There would also be a serious risk of conflicting findings if the matters were heard by different judges.

[15] I agree there would be an element of prejudice to Mr. Tom Kusumoto as he is not a party in two of the three actions, however, I consider this prejudice to be outweighed by the factors in favor of consolidation.

[16] The Oppression petition, the Partnership action, and the Sanovest action are ordered consolidated in the form sought.

[17] As stated above, there is no application to consolidate the Debt action enumerated in the applications before me. Although argument was presented in that regard, in the absence of a proper application, which affords the opportunity of a formal response, and in the face of the objection of the plaintiff within the Debt action, I decline to address the issue of consolidating the Debt action. The issue can be addressed when, and if, a proper application is brought.

Relief from the Implied Undertaking in the Debt Action

[18] The remaining issue in dispute is whether evidence from the Debt action ought to be allowed in the three joined actions. The applicants submit that permitting the common use of documents and oral discovery evidence in each of the Bear Mountain proceedings will result in significant savings in trial procedures.

[19] The respondents object on a number of grounds. Both the respondents Mr. Tom Kusumoto and Sanovest submit that the lifting of an implied undertaking requires the applicant to demonstrate, on the balance of probabilities, that there exists a public interest of greater weight than the values that the implied undertaking is intended to protect, namely privacy and the efficient conduct of civil litigation. Further, the court must balance the mix of competing values in order to reach this determination, keeping in mind that relief from the implied undertaking is not the norm, and should only be set aside in exceptional circumstances. See *Nuchatlaht v. British Columbia*, 2021 BCCA 351, at paras. 19 to 23, and *Juman v. Doucette*, 2008 SCC 8 at paras. 32, 34, and 38.

[20] Specifically, Mr. Tom Kusumoto submits that it is not necessary or in the interests of justice to relieve the implied undertaking because the Debt action is a collections matter with written promissory notes which are admitted, and the remaining issue being whether the monies are due or not. He further submits the debt claim relates to events before June 21, 2021, and therefore, would have limited relevance, and the applicants have not shown any necessity to lift the implied undertaking. Finally, he submits relief from the implied undertaking will add delay, expense, and further complexity.

[21] The Respondent Sanovest also objects to the use of oral and documentary evidence from the Debt action, unless the Debt action is also consolidated. Otherwise, they submit they will be prejudiced as it would allow only the parties to the Debt action to transmit evidence across the four proceedings at their discretion, while Sanovest would have no right to participate in, or otherwise test the evidence in the Debt action to which they are not a party. Further, they submit this would allow

the applicants to create an asymmetrical access to evidence in the Debt action for the determination of the other three related proceedings.

[22] Sanovest also submits there is no independent rule or jurisprudence which allows a party to import evidence wholesale from one action into another, and the applicants have not provided authority for their request to mix and match their evidence across separate actions not being tried together. They further caution that evidence from a witness in a prior proceeding, *prima facie*, raises a hearsay danger because the trier of fact cannot examine the demeanor of the witness at trial. See *R. v. Hawkins*, [1996] 3 R.C.S. 1043 at para. 60.

[23] I agree with the respondents that to allow the application to import the evidence from the Debt action would result in prejudice to the respondents as they would not have equal access to evidence, including participatory rights in the discovery process, or the ability to test the evidence sought to be used at trial. In my view, this would be a significant prejudice which is not otherwise outweighed by the interests of justice.

[24] In the circumstances, the application to grant relief from the implied undertaking in the Debt action is denied.

Summary

1. The Oppression petition is converted to an action by consent;
2. The Oppression petition, the Partnership action, and the Sanovest action are ordered consolidated in the form sought;
3. The issue of whether the Debt action is to be consolidated is adjourned pending an application in the proper form;
4. The application to grant relief from the implied undertaking in the Debt action is denied.

“Associate Judge Nielsen”

This is Exhibit "C" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ecoasis Developments LLP v. Sanovest Holdings Ltd.*,
2025 BCSC 991

Date: 20250516
Docket: S234047
Registry: Vancouver

Between:

**Ecoasis Developments LLP, Ecoasis Resort and Golf LLP
and 599315 B.C. Ltd.**

Plaintiffs

And

**Sanovest Holdings Ltd., Tian Kusumoto, TRK Investments Corporation
and Ecoasis Bear Mountain Developments Ltd.**

Defendants

- and -

Docket: S226218
Registry: Vancouver

Between:

Tom Kusumoto

Plaintiff

And

Daniel Matthews

Defendant

- and -

Docket: S223937
Registry: Vancouver

Between:

Sanovest Holdings Ltd.

Plaintiff

And

**Daniel Matthews, Tomoson (Tom) Kusumoto, Ecoasis Bear Mountain
Developments Ltd. and BM Mountain Golf Course Ltd.**

Defendants

And

Tomoson (Tom) Kusumoto

Third Party

And

**Sanovest Holdings Ltd., Tomoson (Tom) Kusumoto
and Tian Kusumoto**

Defendants by way of Counterclaim

- and -

Docket: S234048
Registry: Vancouver

Between:

599315 B.C. Ltd. and Daniel Matthews

Plaintiffs

And

**Ecoasis Bear Mountain Developments Ltd., Ecoasis Developments LLP,
Ecoasis Resort and Golf LLP, Tian Kusumoto, and Sanovest Holdings Ltd.**

Defendants

Before: The Honourable Madam Justice Morellato

Oral Reasons for Judgment

In Chambers

Counsel for 599315 B.C. Ltd. and Daniel
Matthews:

G. Brandt
C. Ohama-Darcus
A. Macdonald, Articled Student

Counsel for Sanovest Holdings Ltd., Tian
Kusumoto and TRK Investments
Corporation:

L. Sun
T. Paulson

Counsel for Tomoson (Tom) Kusumoto:

W.E. Pedersen

Place and Date of Hearing:

Vancouver, B.C.
February 7, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 16, 2025

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I. INTRODUCTION

[1] There are four applications concurrently before me.

[2] The first of the applicants, 599315 B.C. Ltd. ("599"), is a plaintiff in Action S-234047 ("Partnership Action). 599 seeks essentially three orders in its Partnership Action; the first order is that Action S-226218, under style of proceedings *Tom Kusumoto v. Daniel Matthews* ("Debt Action"), be tried and heard together with its own Partnership Action, and also with two other actions, namely:

- (i) Action No. S-234048, under style of proceeding *599315 B.C. Ltd. et al. v. Ecoasis Bear Mountain Developments Ltd. et al.*, ("Oppression Action"); and
- (ii) Action No. S-223937, under style of proceedings *Sanovest Holdings Ltd. v. Daniel Matthews et al.* ("Sanovest Action").

[3] The second order sought by 599 in this first application is that the evidence in each of the Debt Action, Oppression Action, Partnership Action and the Sanovest Action be admissible in the other actions, subject to the right of any party to dispute the admissibility, in one of the proceedings, of evidence admissible in another proceeding, on the basis of relevance or otherwise.

[4] Third, 599 seeks other relief, ancillary to these first two orders, as set out in Schedule "A" of the Notice of Application. 599 also seeks the cost of its application.

[5] In the second application, 599 and Mr. Daniel Matthews, who are the plaintiffs in the Oppression Action, seek the same orders that 599 is seeking as in the Partnership Action.

[6] The applicant in the third application before me is the defendant Mr. Daniel Matthews in the Sanovest Action. He seeks the same orders as the plaintiffs in the Oppression Action and the Partnership Action.

[7] The applicant in the fourth application before me is the defendant, Mr. Daniel Matthews, in the Debt Action. He seeks the same orders as he does in the Sanovest Action and the Oppression Action.

[8] Mr. Tom Kosumoto opposes each and all of these applications and the orders sought by the applicants. He submits that the Debt Action is a simple case and ought not to be enmeshed in the three other actions. Sanovest and Mr. Tian Kusumoto take no position on the orders sought by any of the applicants in the applications before me.

II. BACKGROUND

[9] This case relates to the Bear Mountain Resort and a land development project near Victoria, BC ("Bear Mountain Project" or "Project"). The assets of the Bear Mountain Project included two golf courses, a hotel and, apparently, hundreds of acres of land ("Bear Mountain Assets").

[10] In or about September 2013, Sanovest and 599 went into business together and formed a partnership to acquire the Bear Mountain Assets and to advance the Bear Mountain Project. The company, Ecoasis Bear Mountain Development ("EBMD"), was also formed at this time to act as the "managing partner" of this partnership which comprised Sanovest, 599 and EBMD ("Partnership"). These Partners' respective interests in the Partnership are as follows: Sanovest and 599 each equally own a 49.75% interest and EBMD holds the remaining 0.5% interest.

[11] In a loan agreement, dated October 8, 2013, Sanovest agreed to provide financing for the Bear Mountain Project in the form of a mortgage loan for purposes of funding the acquisition, development work and operations. At that time, it appears that 599 was represented by Mr. Matthews, and Sanovest was represented by Mr. Tom Kusumoto. Mr. Kusumoto is the plaintiff in the Debt Action, but also the founder of Sanovest.

[12] The acquisition of the Bear Mountain Assets completed on October 8, 2013. In connection with this acquisition, Mr. Matthews was appointed as EBMD's President and Chief Executive Officer, responsible for managing the Bear Mountain Project's overall operations. Mr. Matthews and Mr. Tom Kusumoto were each appointed as directors of EBMD.

[13] Between September 2013 and June 2021, Mr. Kusumoto was a director of EBMD as the nominee of Sanovest.

[14] These applications relate to four legal actions that arise out of the business relationships, partnerships and transactions concerning the Bear Mountain Project. The respective pleadings may be summarized and framed as follows:

- a) In the Sanovest Action, commenced in May 2022 (and amended in March 2023), Sanovest advances claims against Mr. Tom Kusumoto and Mr. Matthews, alleging self-interested transactions and wrongdoings in their capacities as directors of EBMD and with respect to Ecoasis Partnership's affairs, between January 2016 and June 2022.
- b) In the Debt Action, commenced in August 2022, Mr. Tom Kusumoto seeks judgment against Mr. Daniel Matthews for \$1,585,000 plus interest in regard to three loans that Mr. Tom Kusumoto advanced to Mr. Daniel Matthews between July 2019 and February 2020, but which Mr. Matthews asserts are not due. Mr. Matthews asserts these loans were part of a larger agreement between himself and Mr. Kusumoto, as reflected in Mr. Matthews' counterclaim, where Mr. Matthews asserts that Mr. Tom Kusumoto failed to advance the full sum of \$5,000,000 that he promised under an agreement relating to the Bear Mountain Project ("Umbrella Agreement").
- c) In the Partnership Action, commenced in June 2023, 599 (in the name of and on behalf of the Ecoasis Partnership and the Ecoasis Resort Partnership), the plaintiffs assert that Sanovest and Mr. Tian Kusumoto committed "Partnership breaches" that have prevented Mr. Matthews from carrying out his role as Chief Executive Officer and President of EBMD, and from carrying out the parties' agreed Bear Mountain Business Terms.
- d) In the Oppression Action, commenced in June 2023, 599 and Mr. Matthews allege oppression resulting from Sanovest and Mr. Tian Kusumoto's course of conduct since June 2021, including, *inter alia*, interference with Mr. Matthews' role as President and CEO of EBMD, as well as Sanovest's and Mr. Tian Kusumoto's disruptive conduct such as the blocking of sales, refusal to authorize financing under the Sanovest Loan Agreement, and refusal to authorize the ordinary course of business payments.

[15] I refer to these four proceedings, collectively, as the "Bear Mountain Actions".

[16] In or around 2021, Mr. Kusumoto transferred his interest and control of Sanovest to a family trust, with his son, Mr. Tian Kusumoto, as the trustee. The Sanovest Action was commenced against Mr. Matthews, Mr. Tom Kusumoto, EBMD

and BM Mountain Golf Course Ltd. In that Action, Sanovest makes claims against Mr. Tom Kusumoto and Mr. Matthews in respect of certain alleged breaches of fiduciary duty.

[17] On October 31, 2023, Mr. Daniel Matthews applied for orders joining the Oppression Action, the Partnership Action and the Sanovest Action. At this October 31, 2023 application, Mr. Matthews also informally requested that the Debt Action be tried with the other three actions. Associate Judge Nielsen ordered that the Oppression Action, the Partnership Action and the Sanovest Action be tried together. However, Associate Judge Nielsen declined to address the issue of whether the Debt Action should also be heard along with these other three actions because Mr. Matthews had not filed a Notice of Application, at that time, requesting this specific order. Associate Judge Nielsen reasoned:

[17] ... there is no application to consolidate the Debt action enumerated in the applications before me. Although argument was presented in that regard, in the absence of a proper application, which affords the opportunity of a formal response, and in the face of the objection of the plaintiff within the Debt action, I decline to address the issue of consolidating the Debt action. The issue can be addressed when, and if, a proper application is brought.

[18] Counsel for the applicants underscores that such a “proper application” has now been brought through these very applications before me. He asserts that the interests of justice and the object of the *Supreme Court Civil Rules* favour hearing the Debt Action together with the other three Actions. Further, the applicants submit that the Debt Action is not, as Mr. Tom Kusumoto asserts, a “simple debt action that deals with the discrete issue of money owed by Matthews to Kusumoto”. Rather, counsel argues that the Debt Action is “one aspect interwoven in a long and complex history of business dealings between the parties”, a characterization which Mr. Tom Kusumoto strongly disputes.

[19] In 2024, Sanovest sought relief in bankruptcy and a Receiver was appointed over the assets and undertakings of the Ecoasis Partnership and Ecoasis Resort Partnership, subject to certain exclusions. Among those exclusions are the four Bear Mountain Actions that are the subject of these applications. The Receiver is tasked

with developing a report respecting a marketing and sales process for the assets, and marketing and selling the assets once the marketing and sales process is approved by the court.

[20] For each of these proceedings, at the time of these applications were heard:

- a) document discovery had yet to be completed;
- b) no examinations for discovery had yet occurred;
- c) the trials of the Partnership Action, the Oppression Action and the Sanovest Action, which will be heard together, are currently scheduled to begin in January 2026 for 25 days; and
- d) no notice of trial had been filed in the Debt Action.

[21] The applicants are not seeking to adjourn the January 2026 trial and are of the view that the four Bear Mountain Actions can be heard and completed within the 25 allotted days.

A. The Applicants' Position

[22] The applicants assert that each of the Debt Action, the Oppression Action, the Partnership Action and the Sanovest Action arise from a common factual matrix concerning the ownership, financing, development, management and sale of a master plan community development project; that is, the Bear Mountain Project.

[23] The applicants depose that between October 2013 and about April 2021, the Bear Mountain Project proceeded in accordance with the terms of a business plan discussed and agreed to between Mr. Matthews and Mr. Tom Kusumoto ("Bear Mountain Business Terms"). The applicants add that circumstances changed around May 17, 2021 when Mr. Tom Kusumoto's son, Mr. Tian Kusumoto, unilaterally ended a new Bear Mountain sales strategy developed by Colliers International. The applicants submit that weeks earlier, Mr. Daniel Matthews learned that Mr. Tom Kusumoto was being removed as Sanovest's President and no longer had full authority to act for Sanovest in respect of EBMD and the Ecoasis Partnership.

[24] On June 1, 2021, Mr. Tian Kusumoto formally replaced his father as Sanovest's nominee to EBMD and other related companies. Subsequently, further disputes arose, as reflected in the pleadings relating to the Bear Mountain Actions.

[25] The applicants further assert that documentary and oral discoveries in the Debt Action will be directly relevant to the matters at issue in the Partnership Action, the Oppression Action and the Sanovest Action — and *vice versa* — including:

- (a) the parties' reasonable expectations with respect to the Bear Mountain Business Terms, including the expected timing of land sales;
- (b) the arrangements between Mr. Tom Kusumoto and Mr. Matthews to induce Mr. Matthews to lead the Bear Mountain Project and to compensate Mr. Matthews for the limited salary earned through EBMD; and
- (c) Mr. Tom Kusumoto's credibility in relation to the matters in dispute between the parties in all four Bear Mountain Actions.

[26] The applicants also submit that, regarding Tom Kusumoto's then-voiced objection to the joinder of the Partnership Action, the Oppression Action and the Sanovest Action, Associate Judge Nielsen reasoned:

[13] The objection of Tom Kusumoto is essentially that he is not a party to two of the three actions for which consolidation is sought, and therefore, being forced to participate in all three would be financially detrimental and prejudicial to him. In response, the other parties submit that he will be a critical witness in each action, whether or not he is a party, and he will be required to participate in each action in any event.

[14] In my view consolidation of the three actions as sought is appropriate. The underlying factual matrix is common to each action. The alleged underlying business arrangements will impact each action depending on the court's findings. Each of the actions are at the same stage of proceeding, where examinations for discovery have not taken place. There will undoubtedly be a reduction in time for trial when they are viewed globally, rather than individually. The common use of oral and documentary discoveries would also save time and expense. There would also be a serious risk of conflicting findings if the matters were heard by different judges.

[15] I agree there would be an element of prejudice to Mr. Tom Kusumoto as he is not a party in two of the three actions, however, I consider this prejudice to be outweighed by the factors in favor of consolidation.

[27] The applicants allege that, with the Partnership Action, the Oppression Action and the Sanovest Action now joined together, any prejudice to Tom Kusumoto arising from the joinder of the Debt Action to the other Bear Mountain Actions is diminished, with corresponding efficiencies of having a single trial proceed for all four actions.

B. The Respondents' Position

[28] Mr. Tom Kusumoto underscores that between July 22, 2019, and February 10, 2020, he made a series of personal demand loans to the Defendant Daniel Matthews, as follows:

- a) On July 22, 2019, Mr. Tom Kusumoto loaned the defendant CA \$250,000.00 with a date of recall of October 31, 2019, at an interest rate of 5% per annum ("First Loan"). The interest on the First Loan, calculated to July 31, 2022, amounts to CA \$25,610.61.
- b) On October 28, 2019, Mr. Tom Kusumoto loaned the defendant CA \$700,000.00 with a date of recall of January 15, 2020, at an interest rate of 5% per annum ("Second Loan"). The interest on the Second Loan, calculated to July 31, 2022, amounts to CA \$97,427.42.
- c) On February 10, 2020, Mr. Tom Kusumoto loaned the defendant CA \$635,000.00 with a date of recall of May 31, 2020, at an interest rate of 5% per annum ("Third Loan"). The interest on the Third Loan, calculated to July 31, 2022, amounts to CA \$79,414.20.

(collectively "Mr. Matthews' Loans")

[29] Mr. Matthews' Loans were documented with written promissory notes executed by Mr. Matthews. Mr. Tom Kusumoto demanded the repayment of these loans, and Mr. Matthews declined to repay the loans immediately. Accordingly, asserts Mr. Kusumoto, Mr. Matthews' Loans are in default.

[30] Mr. Kusumoto's Debt Action was brought on August 2, 2022, to collect Mr. Matthews' Loans.

[31] Mr. Kusumoto underscores that he delivered a Notice to Admit in the Debt Action, wherein Mr. Matthews admitted, *inter alia*, that:

- a) he executed a promissory note to document the First Loan, received the sum of \$250,000.00 from Mr. Tom Kusumoto pursuant to the First Loan, and has made no payment on the First Loan;
- b) he executed a promissory note to document the Second Loan, received the sum of \$700,000.00 from Mr. Tom Kusumoto, and has made no payment on the Second Loan;
- c) That (with some qualification regarding date and interest rate) he executed a promissory note documenting the Third Loan, received the sum of \$635,000.00 from Tom Kusumoto, and has made no payment on the Third Loan; and
- d) The written promissory notes attached to the Notice to Admit accurately depict Mr. Matthew's signature.

[32] Mr. Kusumoto emphasizes that Mr. Matthews does not deny owing him monies. However, Mr. Matthews asserts that Mr. Kusumoto is subject to the Umbrella Agreement under which these loans are not yet payable and, further, Mr. Kusumoto is liable to Mr. Matthews for breach of the Umbrella Agreement. Again, Mr. Tom Kusumoto denies these allegations.

[33] Mr. Kusumoto further asserts that the Debt Action is unrelated to the relief sought in the other three actions. He argues that both the Loans, and the alleged Umbrella Agreement asserted by Mr. Matthews, pre-date June 1, 2021, which is the critical date after which the disputes in the other actions arose.

[34] Mr. Tom Kusumoto submits that both the Partnership Action and the Oppression Action, were filed by Mr. Matthews and 599 in 2023, and argues that both relate to the affairs of the various Bear Mountain entities *after* June 1, 2021, when Mr. Tian Kusumoto became a director of EBMD. Mr. Kusumoto adds that he is not named as a party in the Partnership Action or the Oppression Action and submits that all of the alleged conduct complained of by the Petitioners in these two actions occurred *after* he ceased to be a director of EBMD.

[35] Mr. Tom Kusumoto further submits that the claims made against him in the Sanovest Action, and by Mr. Matthews via counterclaim in his third-party notice, are entirely discrete from the claims made in the "two new actions" (presumably referring

to the Partnership Action and the Oppression Action). He argues there is no basis for them to be joined and heard together, and for Tom Kusumoto to be delayed in advancing his Debt Action, simply due to the complexity of the other proceedings.

III. DISCUSSION

[36] Under Rule 22-5(8) of the *Supreme Court Civil Rules*, proceedings may, at any time, be ordered tried at the same time or on the same day.

[37] In *Raymond James Investment Counsel Ltd. v. Clyne*, 2018 BCSC 720, the court set out a two-step analysis to determine whether proceedings should be tried together:

1. whether the proceedings involve common claims, disputes and relationships upon review of the pleadings; and
2. whether the proceedings are so interwoven as to make separate trials undesirable and fraught with expense.

[38] In assessing the second question, the court may consider a number of following factors including, as applicable:

- a) whether hearing the matters together will save pre-trial procedures;
- b) whether doing so will reduce the number of days of trial;
- c) whether hearing the matters together will seriously inconvenience a party by being required to attend a trial in which they have little interest;
- d) whether one proceeding is more advanced than the other;
- e) whether hearing the matters together will result in delay of trial of one of the proceedings, including the prejudice of that delay;
- f) whether there is a serious inconvenience to a party of marginal interest;
- g) the risk of inconsistent findings on identical issues;
- h) whether there will be savings in expert time and fees.

See *Callan v. Cooke*, 2020 BCSC 290 at paras.122-124; *Merritt v. Imasco Enterprizes Inc.* (1992), 2 C.P.C. (3d) 275; *Hashimi v. Miki*, 2019 BCSC 2287 at paras. 7-8; and *Grewal v. Grewal*, 2017 BCSC 291 at paras. 40-41.

[39] I draw a distinction, as do the applicants, in relation to an application to join trials, as distinct from an application to consolidate multiple extant proceedings into one. Consolidation is most appropriate where the commonality in issues and parties in the multiple actions “will mean that the disposition of one action will necessarily dispose of the issues in the other”: see *Liu v. Tsai*, 2017 BCSC 221 at para 3; *Raymond James Investment Counsel* at para. 39; *Discovery Enterprises Inc. v. Ebco Industries Ltd.*, 2001 BCSC 235 at para. 23. That same test need not be met for a joinder order where the matters are to be heard together, which is the main order sought in this proceeding.

[40] In exercising its discretion under Rule 22-5(8), the court must ultimately decide whether the degree of commonality and intertwinement of the issues outweighs prejudice to the party opposing joinder. Put another way, the ultimate question is whether an order joining actions, to be heard together, “makes sense” and is in the interests of justice: *Simmonds v. The Corporation of the City of Victoria*, 2016 BCSC 951 at para. 25; *0081092 BC Ltd. v. Callahan*, 2024 BCSC 864 at para. 56; *Wu v. Li*, 2023 BCSC 1205 at para. 20;

A. Stage 1: Common Claims, Disputes and Relationships

[41] I begin then by addressing the first stage in the requisite analysis; that is, by assessing whether there are common claims, disputes and relationships. Having regard to the first stage, I am mindful of Associate Judge Nielsen’s finding, referred to further in these Reasons, at para. 11 of his judgment:

[11] The four actions have an interconnected relationship. Several have common parties, and in the actions where the parties are not common, those actions will require the testimony by key witness’s who are parties in the other actions. In other words, the parties are involved in each of the four actions, one way or another. ...

[42] Associate Judge Nielsen’s observations are well-taken and also apply in the context of the applications before me. That is, Mr. Matthews, 599 and Mr. Tom Kusumoto are defendants in the Sanovest Action, with related counterclaims and third-party claims; Mr. Matthews is a defendant in the Debt Action, which Mr. Tom Kusumoto has brought and Mr. Matthews is also plaintiff by counterclaim; Sanovest

and Mr. Tian Kusumoto are respondents in the Oppression Petition, as are each of Ecoasis Partnership and Ecoasis Resort Partnership; Sanovest is a defendant in the Partnership Action brought by 599. All these actions relate to the Bear Mountain Project, including various agreements and arrangements by Mr. Matthews and Mr. Tom Kusumoto relating to their involvement in the development of the Project and its assets.

[43] Subsumed within the Debt Action and the other Bear Mountain Actions, and rooted in the pleadings regarding the agreements and arrangements between Mr. Matthews and Mr. Tom Kusumoto to advance the Bear Mountain Project, is a core issue concerning whether Mr. Matthews was and is entitled to compensation in advance of any substantial disposition of the Bear Mountain Assets. Mr. Matthews' Umbrella Agreement is also linked to the propriety or impropriety of the actions of each of the parties in relation to the Bear Mountain Actions that, in turn, concerns not only the Debt Action but also the Oppression Action, the Partnership Action and the Sanovest Action. In this regard, I have considered the following contextual backdrop, as framed by the pleadings.

[44] Mr. Matthews pleads that under the agreed upon business arrangement, he was to lead the Bear Mountain Project's overall operations. While he would receive an agreed-upon salary for this work, his salary would be substantially less than his customary annual earnings. Accordingly, pleads Mr. Matthews, he (and 599 and Sanovest) reasonably expected that far more substantial earnings would be realized after the sale of their Project's land and buildings. As such, pleads Mr. Matthews, his agreement with Mr. Tom Kusumoto was revised and his loans were advanced to him by Mr. Kusumoto subject to the Umbrella Agreement, in which Mr. Tom Kusumoto agreed to provide Mr. Matthew with continued access to the loaned funds pending distribution of profits on the occurrence of a "Liquidity Event", which has not occurred. Mr. Matthew also filed a Counterclaim asserting that Mr. Tom Kusumoto failed to advance the full \$5 million amount promised under the Umbrella Agreement.

[45] While Mr. Tom Kusumoto denies entering such an Umbrella Agreement, this issue not only runs through the pleaded Umbrella Agreement in the Debt Action but also through alleged agreements and arrangements between Mr. Matthews and Mr. Tom Kusumoto that were made between them pending the sale or disposition of Bear Mountain Assets, which Sanovest in turn pleads constitute breaches of fiduciary duty and the misappropriation of funds by Mr. Matthews and Mr. Kusumoto.

[46] For example, Mr. Tom Kusumoto, ostensibly on behalf of Sanovest, authorized the Ecoasis Partnership to lend \$1 million to Mr. Matthews in June 2020. This monetary advance creates an alleged link in the factual matrix underlying the Umbrella Agreement and the promissory notes that ought to be scrutinized and assessed by the Court in light of the entire turn of events relating to the Bear Mountain Project. Notably, when Mr. Tom Kusumoto advanced the last of the three promissory notes to Mr. Matthews in February 2020, on Mr. Matthews' pleadings at least, some \$3.5 million was still available under the Umbrella Agreement. Yet, these funds were advanced after the stated date of recall on the first of the three promissory notes, which was October 31, 2019. Also, arguably consistent with the existence of the Umbrella Agreement as alleged by Mr. Matthews, is Mr. Tom Kusumoto's Response to Counterclaim in the Sanovest Action. In that Response, Mr. Tom Kusumoto states that "Kusumoto agreed that EBMD could advance these sums to Mr. Matthews, based on representations from Mr. Matthews that the Proposed Asset Sale completed". Mr. Matthews asserts that in so pleading, Mr. Tom Kusumoto acknowledges he authorized the advance of additional funds to Mr. Matthews at a time when the first of the promissory notes under the Debt Action was already due on its terms, which Mr. Matthews asserts evidences the existence of the Umbrella Agreement. Further, no demand was made on any of the promissory notes until January 2022, after Mr. Tom Kusumoto's role with Sanovest had ceased and only several months before the Sanovest Action was first filed on May 13, 2022 alleging wrongdoing by both Mr. Matthews and Mr. Kusumoto. I should note that these are all issues arising in the pleadings and I make no finding regarding their merits.

[47] In addition, the pleadings suggest that Mr. Tom Kusumoto's alleged authorization of funds that were advanced to Mr. Matthews is related to the issues that are the subject of the other Bear Mountain Actions, which includes the Sanovest Action and also the course of conduct of Mr. Tian Kusumoto addressed in the Oppression Action. Mr. Tian Kusumoto, through the Sanovest pleadings, takes issue with funds being advanced to Mr. Matthews as they were. In the Oppression Action, 599 and Mr. Matthews allege oppression resulting from Mr. Tian Kusumoto and Sanovest's course of conduct since June 2021 that includes, among other things, interference with Mr. Matthews' role as President and CEO, disruptive conduct, blocking of sales, refusal to authorize financing under the Sanovest Loan for the purchase of the Bear Mountain Assets, and Mr. Tian Kusumoto's refusal to authorize "ordinary course business payments".

[48] In this light, the pleadings in the Bear Mountain Actions establish an overlapping set of relationships and interconnected issues in dispute. On the pleadings, questions arise in each of the four Actions with respect to, for example: (i) whether and how the Umbrella Agreement exists, is enforceable, applies or informs the alleged wrongdoings of each of the parties in each of the Bear Mountain Actions; ii) the past and ongoing relationships and legal obligations between 599, Mr. Matthews, Mr. Tom Kusumoto and Sanovest; and iii) the agreements and arrangements between Mr. Matthews and Mr. Tom Kusumoto in utilizing, directing and advancing the Bear Mountain Project including its assets, and whether they constituted breaches of fiduciary duty or misappropriation of Bear Mountain Assets.

[49] Accordingly, after reviewing the various pleadings in all four actions, I have no difficulty in concluding that the applicants have satisfied the first branch of the test under Rule 22-5(8). I am satisfied that the relationships between the parties, the inter-connected disputes between them, and the determinations to be made by the court in each of the Bear Mountain Actions, including findings of fact and conclusions of credibility, will inform the findings and conclusion in each of the Bear Mountain Actions.

B. Stage 2: Are Proceeding so Interwoven as to make Separate Trials Undesirable and Fraught with Problems

[50] I now consider the second step of my analysis in these applications. That is, whether the Bear Mountain Actions, including the Debt Action, are so interwoven as to make separate trials undesirable and fraught with problems. The factors set out by the authorities, and summarized earlier in these Reasons, have facilitated my assessment.

[51] A review of the pleadings, in the four Bear Mountain Actions, reveals that the issues as framed by Mr. Kusumoto in the Debt Action are not as discrete, clear and independent from the other Bear Mountain Actions and issues as he asserts. I have already addressed the interwoven nature of the issues between each of the Bear Mountain Actions and these need not be repeated here.

[52] I am satisfied, given the interconnected nature of the Bear Mountain Actions that hearing them together will streamline pre-trial procedures and will reduce the number of days of trial. The common background, factual matrix and inter-related issues will very likely reduce the trial time required for the Bear Mountain Actions if they are heard together, better ensuring the court is more fully informed of the entirety of the facts and issues before it, and avoiding the need to call and recall the same witnesses multiple times to speak to overlapping and related matters. Hearing the matters together should also facilitate in streamlining pre-trial discovery and other procedures.

[53] In addition, I find that any prejudice to Mr. Tom Kusumoto if the Debt Action is joined with the other Bear Mountain Actions is significantly outweighed by the efficiencies of having all four actions heard and tried together. Further, there will be less inconvenience to Mr. Tom Kusumoto because he will already be examined for discovery and required as a critical witness in the trial of the other three Bear Mountain Actions, which Associate Judge Nielsen has already determined ought to be heard together.

[54] As well, the proceedings are at similar stages in their pre-trial preparation such that Mr. Tom Kusumoto will not be more or disproportionately inconvenienced. He is not a party with a marginal interest in the Bear Mountain Project and its subsequent legal proceedings.

[55] Importantly, I am of the view that hearing these Actions together will reduce the risk of inconsistent findings and conclusions.

[56] In the final analysis, considering the pleadings, the parties' submissions and the guiding authorities, I am of the view that having a separate trial of the Debt Action is not in the interests of justice. Rather, hearing the four Bear Mountain Actions together would, in my view, promote the just, speedy and inexpensive determination of all four Bear Mountain Proceedings on their merits.

[57] Accordingly, I order that the Debt Action, the Partnership Action, the Oppression Action and the Sanovest Action be heard together.

[58] I am of the view that the second order sought by the applicants, in each of their respective Notices of Application and noted at the onset of these Reasons, is also just, expedient and consistent with the proper administration of justice. As such, I also order that evidence in the Partnership Action, Debt Action, Oppression Action, and Sanovest Action be admissible in each of these Actions, subject to the right of any party to dispute the admissibility, in any one of the proceedings, of evidence admissible in another proceeding, either on the basis of relevance or otherwise.

[59] I have also reviewed the other orders sought, ancillary to these two orders, as set out in the draft terms of order set out in Schedule "A", appended to the Notices of Application herein. I also find these other draft terms acceptable, reasonable and aligned with my decision to have the Bear Mountain Actions heard together. These draft terms will also form part of this order in addition to my first two orders, as follows.

[60] Third, while each of the Bear Mountain Actions will be heard together, each will proceed to trial as if they were separate actions and nothing in this order shall be

construed to merge or consolidate the claims. Subject to the discretion of the trial judge, the parties are at liberty to reach agreement on the sequencing and presentation of the four Bear Mountain Actions at trial.

[61] Fourth, these orders will not prejudice any application by a party, pursuant to Rule 9-6 or Rule 9-7 of the *Supreme Court Civil Rules*, for judgment either generally or on an issue in any of the Bear Mountain Actions.

[62] Fifth, any party may apply for an order that one or more of the Bear Mountain Actions be tried separately in the event of a material change in circumstances, such that having these Actions heard together would result in an unnecessary delay, complication or prolongation of the common trial, or would otherwise more seriously prejudice a party to the Bear Mountain Actions in a manner not contemplated in these Reasons.

[63] Costs will be in the cause.

“Morellato J.”

This is Exhibit "**D**" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

JUN 01 2023

S 234047
NO.
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

599315 B.C. LTD. and DANIEL MATTHEWS

PETITIONERS

AND:

ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD.,
ECOASIS DEVELOPMENTS LLP, and ECOASIS RESORT
AND GOLF LLP, TIAN KUSUMOTO, and SANOVEST
HOLDINGS LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Tian Kusumoto
228 West 5th Avenue
Vancouver BC, V5Y 1J4

Sanovest Holdings Ltd.
224 West 5th Avenue
Vancouver BC V5Y 1J4

Ecoasis Bear Mountain Developments Ltd.
2800 Park Place, 666 Burrard St.,
Vancouver BC V6C 2Z7

Ecoasis Developments LLP
2800 Park Place, 666 Burrard St.,
Vancouver BC V6C 2Z7

Ecoasis Resort and Golf LLP
2800 Park Place, 666 Burrard St.,
Vancouver BC V6C 2Z7

(collectively, the "Respondents")

This proceeding is brought for the relief set out in Part 1 below, by the Petitioners, 599315 B.C. Ltd. and Daniel Matthews.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
 - i. 2 copies of the filed Response to Petition; and
 - ii. 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (c) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- (d) if you were served with the Petition anywhere else, within 49 days after that service, or
- (e) if the time for Response has been set by order of the court, within that time.

The address of the Registry is 800 Smithe Street, Vancouver, British Columbia.

The ADDRESS FOR SERVICE of the Petitioners is c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Fax number address for service of the Petitioners is: (604) 669-1620.

Email address for service of the Petitioners is: cferris@lawsonlundell.com and gbrandt@lawsonlundell.com

The name and office address of the Petitioners' solicitor is: Lawson Lundell LLP, 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (Attention: Craig A.B. Ferris, K.C. / Gordon Brandt).

CLAIM OF PETITIONERS

Part 1: ORDERS SOUGHT

1. The petitioners apply for a declaration that the affairs of Ecoasis Bear Mountain Developments Ltd. ("**EBMD**") are being conducted in a manner that is oppressive to 599315 B.C. Ltd., entitling the petitioners to relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "**BCA**").
2. The petitioners apply for the following interim and final orders:
 - (a) An order removing the respondent Tian Kusumoto ("**Kusumoto**") as a director and officer of EBMD;
 - (b) An order authorizing EBMD to obtain third party debt financing, replacing the financing and security held by the respondent Sanovest Holdings Ltd. ("**Sanovest**");
 - (c) An order directing that 599315 purchase the shares of Sanovest in EBMD;
 - (d) In the alternative, an order for one shareholder's purchase or sale of the other's shares by "shotgun sale";
 - (e) Orders that Sanovest and Kusumoto compensate 599315 as follows:
 - (i) By reversing interest credited to Sanovest on its financing from and after June 1, 2021, or such other date as the Court deems appropriate;
 - (ii) By payment to 599315 to the extent of lost distributions through the limited liability partnerships that EBMD manages, in amounts as may be established at the hearing or trial, resulting from lost sales revenues from and after June 1, 2021; and

- (iii) By disentitling Sanovest from receiving preferential payments on distributions to be paid through the limited liability partnerships that EBMD manages;
 - (f) An order directing that Kusumoto compensate the petitioner Daniel Matthews (“**Matthews**”), as an aggrieved person, for harm and loss suffered as a result of disparaging statements Kusumoto has made against Matthews and his family in connection with the conduct of EBMD’s affairs; and
 - (g) In the alternative, an order directing the appointment of a third director to EBMD’s board of directors, to have equal voting powers to the directors appointed by Sanovest and 599315;
- 3. An Order converting this Petition into an Action;
 - 4. Such further and other relief as counsel may advise and this Court may permit; and
 - 5. Special costs, or in the alternative, costs.

Part 2: FACTUAL BASIS

A. The Parties

- 1. The petitioner 599315 B.C. Ltd. (“**599315**”) is a corporation incorporated under the laws of British Columbia with an address for service in this proceeding of 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2.
- 2. The petitioner Daniel Matthews (“**Matthews**”) is an individual resident in British Columbia with an address for service in this proceeding of 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2. Matthews is a principal of 599315. Matthews has been the nominee appointed by 599315 to the board of directors of the respondent Ecoasis Bear Mountain Developments Ltd. (“**EBMD**”) since 2013, except for a period between 2014 and 2016 when his spouse held this role.

3. EBMD is a corporation incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, B.C., V6C 2Z7. As set out in more detail below, EBMD is the “managing partner” of the respondents Ecoasis Developments LLP (the “**Partnership**”) and Ecoasis Resort and Golf LLP (the “**Resort Partnership**”).

4. The Partnership and the Resort Partnership are each limited liability partnerships registered in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348, both having a registered office located at 2800 – 666 Burrard Street, Vancouver, B.C., V6C 2Z7.

5. The respondent Sanovest Holdings Ltd. (“**Sanovest**”) is a corporation incorporated under the laws of Canada and registered extraprovincially in British Columbia with a head office located at 224 West 5th Avenue, Vancouver, B.C., V5Y 1J4, and an attorney in British Columbia of Tian Kusumoto (“**Kusumoto**”) having an address of 228 West 5th Avenue, Vancouver, B.C., V5Y 1J4.

6. Kusumoto is an individual resident in British Columbia with an address of 228 West 5th Avenue, Vancouver, B.C., V5Y 1J4. Since June 1, 2021, Kusumoto has been Sanovest’s nominee to EBMD’s board of directors, replacing his father Tomoson (Tom) Kusumoto, who had served in that role since EBMD’s incorporation in 2013.

B. Overview of Claim

7. In 2013, Matthews and Tom Kusumoto agreed to go into business together in the acquisition of land, assets and operations associated with the “Bear Mountain” resort community development in the Greater Victoria area (the “**Bear Mountain Project**”). As described in more detail below, Matthews and Tom Kusumoto had a pre-existing business relationship, which served as a framework for their expectations in relation to the Bear Mountain Project.

8. Matthews and Tom Kusumoto agreed that the assets to be acquired would be held in a limited liability partnership structure, with a new company incorporated to serve as “managing partner” of the limited liability partnerships. That company, and the units in the underlying limited liability partnerships, would be held 50% by Sanovest, which Matthews understood Tom Kusumoto controlled, and 50% by 599315, which Matthews controlled.

9. The acquisition completed on October 8, 2013. The assets were acquired by or on behalf of the Partnership and the Resort Partnership, with EBMD serving as managing partner of both. The Partnership held all of the units in the Resort Partnership, except for one unit held by EBMD.

10. From October 2013 and until June 2021, EBMD operated in accordance with the business terms that had been established at the time of acquisition. As set out in more detail below, these terms contemplated land development work and investment in operations and amenities suitable to the development of a unique, high calibre, urban resort community at Bear Mountain. This was intended to increase the value of the Bear Mountain Project's assets, and ultimately lead to a return on investment through the sale of those assets in an appropriate manner. In accordance with Matthews' and Tom Kusumoto's agreement that Matthews would be responsible for the overall operations, Matthews was appointed to the positions of President and CEO of EBMD. Tom Kusumoto was appointed as Secretary. Sanovest's primary responsibility was to provide the funding necessary for the acquisition and for the ongoing operations and land development work that Matthews and Tom Kusumoto intended to pursue in order to realize their return on investment.

11. On June 1, 2021, Kusumoto replaced Tom Kusumoto as Sanovest's nominee to EBMD. Since that time, Kusumoto has interfered markedly with the course of EBMD's operations and direction, as established over the previous 8 years, and has prevented Matthews from effectively carrying out his role as EBMD's President and CEO. In turn, EBMD has been unable to effectively manage the Partnership and Resort Partnership in accordance with the established business terms. Kusumoto has sought to radically alter the business objectives by seeking to involve EBMD and the Partnership in vertical building partnerships with developers, rather than pursue the established plan of bulk sales of multi-family sites and single family residential lots. In order to further this plan, or to otherwise force the sale of 599315's interest in EBMD and the Partnership on a distressed and devalued basis, Kusumoto and Sanovest have improperly withheld funding and prevented sales to deliberately place financial and operational pressure on Matthews and 599315. This conduct is oppressive to 599315 as shareholder in that Kusumoto has acted in his and Sanovest's self-interest and to the detriment of EBMD and the Partnership, and because this conduct is contrary to the parties' reasonable expectations that, among other things: (a) the Bear Mountain Project's assets would be managed for the purpose of realizing on favourable sales

opportunities; (b) Matthews, as 599315's nominee, would be able to direct EBMD's overall operations in a manner consistent with the role of President and CEO; and (c) Sanovest would not entrench and then abuse its position as lender to unilaterally impose new business terms on 599315.

C. The Bear Mountain Project

1. Background

12. In March 2013, Matthews approached Tom Kusumoto with an investment opportunity involving the acquisition of the Bear Mountain Project's assets. The assets included more than eight hundred acres of land on and adjacent to Skirt Mountain in the City of Langford and District of Highlands, as well as the Westin Bear Mountain Golf Resort and Spa (the "**Hotel**") and two golf courses located on those lands (the "**Bear Mountain Assets**").

13. At that time, Tom Kusumoto and Matthews were involved in a land development project at Whistler Mountain (the "**Whistler Project**"). The Whistler Project involved the acquisition, site servicing, land development, and ultimately the sale of single-family residential lots.

14. The Whistler Project operated under the following general structure:

- (a) The project operated under the "Ecoasis" brand: a brand that Matthews had created and developed;
- (b) An operating company represented 50% by Matthews, 30% by Tom Kusumoto / Sanovest, and 20% by a third partner;
- (c) Matthews was responsible for all operational aspects of the Whistler Project; Sanovest's primary responsibility was to provide the funding necessary for the acquisition and site servicing work;
- (d) Sanovest was entitled to receive an 8% - 8.5% rate of return on the debt financing, together with a first charge on assets;

- (e) The parties' objective throughout was to sell serviced lots as and when market conditions permitted, with an approximate time horizon of three to five years.

(the "**Whistler Business Terms**").

15. In or around 2011, Matthews became aware of the potential sale of the Bear Mountain Assets through business contacts. On learning of the potential sale opportunity, Matthews, at his expense, conducted investigations and inquiries over a period of approximately 18 months into the assets' development potential, their potential operating and land development costs, and the feasibility of the project and its acquisition.

16. When Matthews approached Tom Kusumoto with the Bear Mountain Project opportunity, Tom Kusumoto and Matthews agreed that if they were successful in acquiring the Bear Mountain Assets, they enter into a business arrangement with the financing and development obligations modeled on the Whistler Business Terms.

17. Ultimately, Matthews, through a company he controlled, entered into a purchase and sale agreement for the Bear Mountain Assets in August 2013. Matthews and Tom Kusumoto agreed to the following general business structure for their business endeavour:

- (a) the Bear Mountain Assets would be held in a limited liability partnership structure, which would take an assignment of the purchase and sale agreement. The partnership would be owned equally by Sanovest, which Matthews understood Tom Kusumoto controlled, and 50% by 599315, which Matthews controlled;
- (b) 599315, through Matthews, would be responsible for managing the overall operations, setting strategic direction and managing relationships with stakeholders at Bear Mountain and in the broader community; including the land development work; Sanovest's primary responsibility was to provide the funding necessary for the acquisition, operations, and land development work;
- (c) Matthews, nominated by 599315, and Tom Kusumoto, nominated by Sanovest, would serve as directors in any companies associated with the partnership. In such

companies, Matthews would serve in the role of President/CEO, reflecting 599315's responsibility for managing the overall operations;

- (d) Sanovest would receive an 8% rate of return on its debt financing, together with a first charge on assets and a preferred waterfall distribution based on profitability; and
- (e) Their objectives with the Bear Mountain Assets would be to: (i) service and improve the operating businesses and amenities, with a view to improving the public image and community character of the Bear Mountain development; (ii) conduct land development work, including site servicing work, with a view to selling bulk sites to developers with vertical construction expertise and single family lots to high quality home builders, thereby increasing the sale value of the land assets as a whole; (iii) generate sufficient revenues from initial sales to pay down the financing provided by Sanovest; and (iv) sell the land assets, either in tranches or *en bloc*, in an appropriate manner, once the increased land value yielded a reasonable return on their investment.

(the "**Bear Mountain Business Terms**")

2. Asset Acquisition and Business Structure

18. On August 29, 2013, Ecoasis Innovative Communities Inc., a company Matthews controlled, acquired the right to purchase the Bear Mountain Assets from Bear Mountain Land Holdings Ltd.

19. Matthews and Tom Kusumoto then set up the business structure to support the acquisition of the assets. Thus, EBMD was incorporated on September 17, 2013, with 599315 and Sanovest each owning 50% of its issued and outstanding shares. Matthews and Tom Kusumoto were the first directors. In accordance with the Bear Mountain Business Terms, Matthews was appointed President and CEO of EBMD and Tom Kusumoto was appointed Secretary.

20. The Partnership was formed by agreement dated September 24, 2013 (the "**Partnership Agreement**") for the purpose of holding the Bear Mountain Assets. 599315,

Sanovest and EBMD each became partners in the Partnership. In accordance with the Partnership Agreement, EBMD subscribed for one Class A Unit, 599315 subscribed for 100 Class B Units, and Sanovest subscribed for 100 Class C Units.

21. As set out in the preamble to the Partnership Agreement, the assets to be acquired included: (a) the “Mountain Course” and the “Valley Course” (the “**Golf Courses**”); (b) the Hotel; and (c) significant tracts of lands, including as described as Schedule “C” to the Partnership Agreement.

22. Section 2.3 of the Partnership Agreement specified that the Partnership would acquire and maintain a limited liability partnership interest in a second limited liability partnership, the Resort Partnership, which would own and operate the Golf Courses and the Hotel.

23. Section 11.3 of the Partnership Agreement provides that after accounting for certain tax liabilities, distributions to the partners are to be made, on *pari passu* basis between 599315 and Sanovest for the first \$15,000,000 in distributions. Thereafter, Sanovest is entitled to a preferential payment of \$30,000,000; equal payments then resume.

24. The Resort Partnership was formed by a separate partnership agreement also dated September 24, 2013 (the “**Resort Partnership Agreement**”). The Partnership and EBMD became its partners, with the latter as “managing partner”. The units of the Resort Partnership were held 100 by the Partnership and 1 by EBMD. As described in the Resort Partnership Agreement, the Resort Partnership was formed for the purpose of acquiring the assets comprising the Golf Courses and the Hotel, and to carry out the businesses of the Golf Courses and the Hotel and other activities or business ancillary to or in furtherance of those businesses.

25. Section 11.3 of the Resort Partnership Agreement provides that, after accounting for certain tax liabilities, distributions to the partners are to be made, on a *pari passu* basis between 599315 and Sanovest.

26. In accordance with the Bear Mountain Business Terms, Matthews and Tom Kusumoto discussed and agreed that as funds became available from sales or operations, they would determine the extent to which such funds should be reinvested into amenities. Thereafter, for any remaining funds not required for operations, repayment of the Sanovest financing (as

discussed below) would be a priority, limiting the distributions available to partners until the Sanovest financing was repaid.

3. Sanovest Loan Agreement

27. In accordance with the Bear Mountain Business Terms, Sanovest advanced the debt financing required for the purchase of the Bear Mountain Assets, and at that stage, made available additional funds required for the business operation and land development work (the “**Sanovest Loan**”).

28. The terms of the Sanovest Loan were set out in a commitment letter to the Partnership dated October 8, 2013 (the “**Sanovest Loan Agreement**”). The terms of Sanovest’s financing included, among other things, an interest rate of 8% per annum, stated to be calculated daily and compounded quarterly, in addition to a lender’s fee of \$700,000 paid from the initial advance. The Sanovest Loan Agreement set a maturity date of November 30, 2017. The Sanovest Loan was secured by, *inter alia*, a mortgage over real property held by nominee companies on behalf of the Partnership, as well by guarantees from the Resort Partnership.

29. By agreement dated June 15, 2016 (the “**First Modification Agreement**”), Sanovest and the Partnership agreed to extend and increase the amount of the Sanovest Loan. By that time, according to the First Modification Agreement, Sanovest had advanced \$40,000,000 under the Sanovest Loan.

30. Pursuant to the First Modification Agreement, Sanovest agreed to increase the Sanovest Loan limit to \$70,000,000 and to extend the term of the Sanovest Loan to November 1, 2021. As set out further below, a second modification agreement subsequently extended the Sanovest Loan to May 1, 2024.

D. Operation under Bear Mountain Business Terms

1. 2013 - 2016

31. Following the acquisition, Matthews, as President and CEO of EBMD, began to carry out the Bear Mountain Business Terms. By agreement between Matthews and Tom

Kusumoto, the Bear Mountain Business Terms became EBMD's approved business plan (the "**Business Plan**") for all purposes, including to satisfy the requirements of the Partnership Agreement and the Resort Partnership Agreement in that regard.

32. Matthews carried out operational matters under his own authority, reporting to Tom Kusumoto from time to time. As and when significant business decisions needed to be made, including with respect to sales, Matthews brought those matters to Tom Kusumoto for discussion and for agreement on behalf of Sanovest.

33. Tom Kusumoto represented to Matthews that Sanovest was "his" company, and that he had full authority to act on Sanovest's behalf. At various times, and from time to time, Tom Kusumoto involved Kusumoto in various aspects of the Partnership. However, where decisions of partners were required, all such decisions were made by Matthews for 599315 and by Tom Kusumoto for Sanovest, who advised Matthews that Kusumoto did not have authority to make decisions on Sanovest's behalf in respect of the Bear Mountain Project. This changed in April 2021, as described in more detail below.

34. In carrying out the Bear Mountain Business Terms, Matthews focused on strengthening and managing the Bear Mountain resort community, whose reputation, public image, and community relations had been negatively impacted by earlier circumstances, which had involved the removal of the original owner and the Bear Mountain Assets coming into the control of HSBC Bank Canada.

35. This involved, among other things, the visibility and presence of Matthews as a representative of the ownership group to the Bear Mountain community's approximately 3,000 residents; and Matthews' work in developing relationships and strategic partnerships with residents, developers, local governments, business leaders, municipals staff and council, and national sports organizations. Matthews also set out to improve the on-site amenities and to resume site servicing and land development work, generating significant momentum for Bear Mountain as a growing community.

36. By the end of 2016, key achievements in these areas included the following:

- (a) Significant increase in the purchase price of residences in the Bear Mountain neighbourhoods (reflecting an overall increase in the value of the Bear Mountain lands that exceeded property value growth in the surrounding region);
- (b) Work with local governments and adjacent landowners to have construction begin on the Bear Mountain Parkway extension, which would significantly improve road access and bring public transportation to Bear Mountain;
- (c) Improvements to the quality and profile of the Golf Courses, including hosting the PGA Pacific Links Bear Mountain Championship in 2016;
- (d) Integration of cycling, hiking, and running features and events into the Bear Mountain resort community experience;
- (e) Refurbishment of the Hotel, a significant project involving a major investment of Partnership funds; and
- (f) Intensive community engagement, including profile associated with sponsorships of various community events, charities and non-profit organizations.

37. In addition, EBMD had executed strategic sales of single family lots and sites to vertical builders. Sales of single family lots were brought to market in 2013, August 2014 and June 2016 and September 2016. In planning the single family lot sales, Matthews developed specific relationships with high-quality builders in to order to ensure consistent, quality construction of the neighbourhoods.

38. By 2016, the Partnership had received numerous expressions of interest for bulk sales of all, or substantially all of the Bear Mountain Assets. This included interest from several Canadian and international investment groups and large scale developers, who conducted due diligence on the Bear Mountain Assets and operations. Given the volume of interest, Matthews and Tom Kusumoto determined that the appropriate course of action would be to engage a commercial broker in order to obtain better market information in setting pricing.

2. 2017 – May 2021

39. In late 2016, the Partnership retained the real estate services firm Jones Lang LaSalle (“JLL”) to review the Bear Mountain Assets and prepare a marketing strategy for the sale of all or substantially all of the assets. EBMD publicly announced JLL’s engagement in February 2017. That announcement confirmed that JLL would be seeking interest from organizations qualified to “build out” the Bear Mountain development, while maintaining the high standards that EBMD had established.

40. By April 2017, and after discussions between Matthews and Tom Kusumoto as to the specific assets to be included, JLL had prepared a confidential offering memorandum for circulation to potential purchasers. JLL’s work attracted expressions of interest from several potential purchaser groups, who performed due diligence with respect to the Bear Mountain Assets.

41. In this process, Kusumoto was involved, at Tom Kusumoto’s request, in reviewing the confidential offering memorandum and the expressions of interest received. Tom Kusumoto advised Matthews that Kusumoto could be of assistance to EBMD in providing tax analysis.

42. In reviewing expressions of interest received, Kusumoto, frequently and repeatedly, pressed for sales to various potential purchasers. Thus, and by way of example, Kusumoto at times advocated a process of selling without a focus on amenities. While Matthews and Kusumoto agreed with pursuing sales, they did not agree to do so on a basis that diminished the brand and quality of the Bear Mountain Project as a resort development.

43. However, ultimately, and for various reasons, including expressions of interest that offered prices below the current market value, no large-scale sales of the Bear Mountain Assets occurred at that time. The Bear Mountain Project continued to hit important milestones during this period. In 2017, Bear Mountain Tennis Facility opened eight new red clay tennis courts and the Partnership hosted the PGA Tour Champions Pacific Links Bear Mountain Championship. Residential single-family sites continued to be brought to market and other major sporting events were held.

44. In 2019, a potential purchaser group entered into negotiations with the Partnership. The group consisted of representatives who had first looked at a potential purchase in 2015 together with additional partners. These discussions ultimately led to a conditional “framework agreement” for the purchase of a majority of the Bear Mountain Assets.

45. The purchaser group proceeded with its due diligence in 2020 resulting in a framework agreement that went through several iterations as to deal structure. However, the overall deal collapsed following negotiations in early 2021, with the purchaser group refusing to remove conditions absent a significant price concession from the Partnership, which was refused.

46. Despite the apparent collapse of this potential purchase, Kusumoto continued to press Tom Kusumoto and Matthews to return to negotiations with the group, seeking to revive the purchase and sale agreement despite the significantly lower sale price now proposed. Further negotiations were attempted but were not successful.

47. While the above discussions were progressing, Matthews and Tom Kusumoto also pursued an alternative marketing plan dividing a majority of the Bear Mountain lands into five distinct sites, each representing a separate purchase opportunity. Sales also occurred during this period: in January 2021 in relation to the Elevate multi-family condominium site, and for the Turnberry Corner multi-family site, which closed in March 2021.

48. In or around March 2021, Matthews identified a new potential purchaser group through personal contacts. Following discussions, that group presented a memorandum of understanding on April 21, 2021, which contemplated the purchase of Sanovest’s interest in the Partnership, with 599315 retaining an interest, and Matthews partnering with the purchaser group, who expressed the desire for him to continue managing overall operations.

49. Kusumoto was involved, on behalf of Sanovest, in considering the memorandum and the Partnership’s response. Taking an insistent position, and despite reservations that Matthews had expressed to him, Kusumoto presented a counterproposal for a sale of the Bear Mountain Assets at a higher price than was offered and with the option of Sanovest retaining a 20% interest. This resulted in the purchaser group revoking its memorandum of understanding and discontinuing further discussions. In response, Kusumoto suggested that Matthews contact the

purchaser group's representative with a view to "revive this deal in any way". Matthews' efforts in this regard did not result in any new proposal being advanced.

50. In April 2021, the Partnership engaged Colliers International ("Colliers") as real estate broker to market the distinct sites, noted above, as separate purchase opportunities. Colliers scheduled a marketing launch to occur on May 19, 2021 for the "Players Peak" site. Two days prior to the launch, Kusumoto purported to issue a notice of meeting of EBMD's directors to, among other things: (a) "Create a special committee to approve the sale and purchase of assets including the negotiations and structure of the transactions"; and (b) advance Kusumoto's proposal of having him appointed to the board as a Sanovest representative, with Tom Kusumoto being appointed as "non-executive Chairman" of the board.

51. Matthews objected to such a meeting being held without adequate notice. However, Kusumoto maintained that the planned Colliers launch could not occur until such a meeting was held. On May 18, 2021, he contacted Colliers to cancel a scheduled pre-launch call and the marketing launch itself.

52. These matters were resolved with the agreement that, effective June 1, 2021, Kusumoto would replace Tom Kusumoto as Sanovest's nominee to EBMD's board of directors and would have the title of "CFO" on EBMD's board. No special committee was created.

3. June 2021 to Present

53. Kusumoto's appointment as Sanovest's nominee to EBMD's board of directors followed an internal change within Sanovest whereby, on or around March 1, 2021, and unknown to Matthews at that time, Kusumoto was added as a director of Sanovest. Subsequently, on or around October 20, 2021, Tom Kusumoto ceased to be a director of Sanovest.

54. Since his appointment as a director and CFO of EBMD, Kusumoto has persisted in a course of conduct designed to further his interests and Sanovest's interests to the detriment of EBMD, the Partnership, the Resort Partnership and 599315. Such conduct represents a significant departure from the Bear Mountain Business Terms and from the shareholders' reasonable expectations, including as followed over the previous eight years.

55. As set out in the following sections, Kusumoto's misconduct as director includes, among other things, the following categories: (a) refusal to engage in good faith and in accordance with the Bear Mountain Business Terms in the marketing and sale of the Bear Mountain Assets; (b) blocking third-party financing, while also withholding necessary project funding available under the Sanovest Loan Agreement; (c) disruptive and prejudicial conduct with respect to the Partnership's operations; and (d) disruptive conduct in relation to litigation involving the Partnership. This conduct is expressly designed to place improper pressure on 599315 and Matthews, to either dictate new partnership terms or compel 599315 to sell its interest in the Bear Mountain Project at a discount.

(a) Initial Disruptive Conduct

56. Kusumoto's initial disruptive conduct began in the days following his appointment as a director and CFO of EBMD.

57. Kusumoto's appointment as director and CFO permitted discussions with Colliers to resume, leading to the marketing launch occurring in the morning of June 7, 2021. However, hours after the launch had occurred, Kusumoto wrote to the Colliers' representative asking to place the marketing "on hold". Although he later relented on this request, on June 11, 2021, and acting unilaterally, he requested that Colliers identify him as "Director / CFO and majority stakeholder" in outgoing marketing materials. Matthews objected to this title as misleading, first verbally and later in a letter from counsel. Nonetheless, Kusumoto has persisted in using this styling in this and other external communications.

58. Beginning at or around the same time, Kusumoto attempted to revoke Matthews' access to the Partnership's financial institutions.

59. In correspondence between June 10 and 18, 2021, Kusumoto attempted to remove Matthews as a signing authority to the Partnership's account at Coast Capital Federal Credit Union ("**Coast Capital**"). Matthews did not become aware of this correspondence until copied in to the email exchange by Coast Capital, who advised that Matthews was a director and therefore could not be removed as a signatory.

60. Kusumoto made a second similar attempt to disrupt the Partnership's banking on July 26, 2021, when, acting unilaterally, he purported to instruct Bank of Montreal ("BMO") to suspend all Partnership bank accounts until he was added as a signing authority in place of Tom Kusumoto. This triggered an objection from 599315's corporate counsel confirming that Kusumoto did not have authority to unilaterally suspend any of the Partnership's bank accounts.

(b) Blocked Sales

61. By late June 2021, the Colliers' marketing process was well underway. Colliers proposed setting July 20, 2021 as the date to begin reviewing/accepting offers, and that this date be announced on July 8, 2021. In response, Kusumoto wrote to the Collier's representative asking them not to "reach out to prospective purchasers until further notice". He further expressed the intention to consider "partnership vs site sale", which was not something that had been part of Colliers' mandate. Matthews had not discussed this communication with Kusumoto before it was sent, and disagreed with this course of action.

62. Ultimately, Kusumoto permitted the marketing process to continue. In late July 2021, the Partnership considered three letters of intent that Colliers had received from three separate purchaser groups, each expressing interest on the "Player's Peak" site and providing a non-binding dollar value for an intended offer.

63. All three letters of interest expressed values well within the appraised value and the valuation that Colliers had projected for the site.

64. In response to the first letter of intent received, Kusumoto proposed to Colliers that the Partnership seek a revised letter of intent for a higher price and that the Partnership remain a partner in the development. Kusumoto stated his opinion that the Partnership's involvement would command a higher price, and that the Partnership should pursue "participation in the vertical development of Players Peak if the pro forma justifies".

65. Kusumoto's position was inconsistent with the Bear Mountain Business Terms, which did not contemplate ongoing Partnership involvement after the sale of the Bear Mountain Assets nor Partnership involvement in any major vertical development endeavors. Matthews did not agree with this approach.

66. By August 2021, two candidates remained for the Players' Peak site. Colliers strongly recommended engaging with one of those candidates with a view to entering into a purchase and sale agreement. Specifically, Colliers' Executive Vice President advised that "[i]n all of our engagements, we have never, ever witnessed a vendor turn down a record-breaking value". Colliers further warned that refusal to engage with either candidate risked reputational damage in the investor/developer community by creating the perception that the Partnership was not a serious vendor.

67. Kusumoto disagreed with Colliers' recommendation, and instead repeated a version of his prior proposals – that the Partnership partner with the purchaser (a scenario that was not contemplated by Colliers' offering memorandum). Matthews did not agree to proceed in this fashion. In response, and despite Matthews' admonition that he could not unilaterally reject the offer, Kusumoto informed Colliers on August 12, 2021 that "[w]e cannot at this time accept ... offer to purchase as the price and terms are unacceptable." Kusumoto also refused Matthews' suggestion to discuss the matter further at an upcoming meeting of the EBMD board of directors before responding to the candidate.

68. In early October, 2021, the Partnership was awaiting a revised letter of intent from a group in relation to the "Village Core" site. However, on October 4, 2021, and acting unilaterally, Kusumoto wrote to that group advising that "I believe Dan [Matthews] has told you we are on 'pause' ... as we finish reviewing the development strategy". As a result, discussions with that group did not proceed further.

69. During the summer and fall of 2021, Kusumoto was openly stating to Matthews and to others that he intended for Sanovest to purchase 599315's interest in the Partnership on a discounted basis, and that he had the benefit of time to force such a sale, as the accrual of interest on the Sanovest Loan would, over time, effectively erode 599315's equity in the Partnership. Matthews also learned that Kusumoto had made inquiries with one of the Partnership's financial institutions as to them providing funding to Sanovest for purchasing 599315's interest in the Partnership and developing the Bear Mountain Project.

70. Kusumoto's conduct in blocking sales was done for the purpose of furthering the above strategy in that it deprived the Partnership of funds necessary to pay down the Sanovest

Loan and to pay for necessary operating expenditures. As set out in more detail below, this conduct was done in concert with other steps also designed to deprive the Partnership of operating funds and to have Sanovest unilaterally exercise control over EBMD through its position as lender.

(c) Financial Oppression

71. Under the Sanovest Loan Agreement, Sanovest is required to advance funds to the Partnership, as and when requested, for Partnership activities, including development of the Bear Mountain Assets and to fund ongoing operations. As noted above, the Modification Agreement extended the Sanovest Loan term to November 1, 2021 and increased the loan limit to \$70,000,000. It also expressly provided that the permitted uses of the funds remained as set out in the Sanovest Loan Agreement.

72. Contrary to the Sanovest Loan Agreement and the First Modification Agreement, Sanovest refused to advance funds after June 1, 2021 as and when required for permitted uses. In particular, Kusumoto caused Sanovest, as lender, to withhold funds in order to improperly advance his agenda as director. At this time, and at all material times thereafter, the amount drawn under the Sanovest Loan Agreement was significantly below the \$70,000,000 loan limit.

73. In particular, and beginning in the weeks following his appointment as director, Kusumoto refused to advance funding that had been validly requested under the Sanovest Loan Agreement and took the position that: (a) Sanovest would not advance any further funding to the Partnership in the near term; and (b) proceeds of sale closings (which were occurring during this period) must be paid to Sanovest directly, without any reserve funds retained within the Partnership. The consequences of this included, among other things, the following:

- (a) Partnership expenses were left unpaid, including essential items such as property taxes, leading to reputational damage and avoidable interest charges; and
- (b) The Partnership was required to abruptly discontinue site servicing work on the “Shadow Creek” project (which was previously approved by the EBMD board of directors), leaving an unsightly unfinished site in a prominent location, generating false rumours of insolvency within the Partnership, and damaging the Partnership’s

relationship with builders that had worked on the site for many years, and had committed to purchasing Shadow Creek lots once serviced.

74. Following Matthews' complaints that Sanovest was improperly withholding advances under the Sanovest Loan Agreement, Kusumoto proposed that Sanovest advance funds as a "cash call", attracting an interest rate of 18%. When Matthews' refused to accept such a proposal, Kusumoto continued to tie the advance of further funding under the Sanovest Loan Agreement to resolving his newly asserted concerns respecting the Partnership's previous management—matters that had proceeded by agreement between Matthews and Tom Kusumoto during the latter's tenure as Sanovest's nominee to EBMD.

75. In particular, on or around June 30, 2021, Matthews and Kusumoto discussed the Partnership's finances with the Partnership's external accountant. On that call, Matthews raised the significant harms being incurred by Sanovest's refusal to advance funds under the Sanovest Loan Agreement. Matthews proposed that: (a) Sanovest permit the Partnership to enter into a loan agreement with a new lender in order to permit development work to proceed and financial commitments to be met; and (b) proceeds from ongoing land closings remain in the Partnership, rather than paid entirely to Sanovest. Kusumoto, as a director of EBMD and as a principal of Sanovest, refused these proposals, stating expressly that Sanovest wished to remain in control of EBMD's financing, given the control this provided to Sanovest over EBMD and the Partnership's activities.

76. On August 14, 2021, two days after Kusumoto's rejection of the letter of intent for Player's Peak, Mathews issued a Notice of Meeting of the Board of Directors to be held on August 17, 2021. The agenda proposed four items: (a) the refinancing of the Sanovest debt; (b) resolutions to address issues at the Shadow Creek site; (c) a process for valuing the assets of EBMD, the Partnership and the Resort Partnership; and (d) a resolution proposing the approval of the letter of intent for Player's Peak.

77. The proposed resolution with respect to financing was as follows:

On motion duly made, the Board resolve to approve the seeking, as a matter of priority, of third party debt financing to repay and replace the existing debt financing provided by Sanovest Holdings Ltd., with the terms and legal

documentation in respect of such refinancing to be submitted to the Board at a later meeting for consideration and approval.

78. After requests by Kusumoto to postpone, the meeting was held on August 19, 2021. The directors were deadlocked on all four resolutions.

79. Matthews and Kusumoto exchanged further correspondence with respect to funding following the August 19, 2021 board of directors' meeting. However, Kusumoto continued to refuse alternate funding or to otherwise permit funds to remain within the Partnership, expressly stating asserted concerns regarding the Partnership's previous management, as well as a desire to revisit the Bear Mountain Business Terms, as a basis for Sanovest's refusal to advancing funding under the Sanovest Loan Agreement.

80. On or around January 26, 2022, Sanovest and the Partnership agreed to extend the Sanovest Loan to May 1, 2024 by second modification to the Sanovest Commitment Letter (the "**Second Modification Agreement**"), with an extension fee of \$700,000 accruing to Sanovest.

81. Following the Second Modification Agreement, Kusumoto authorized Sanovest to advance funding for certain matters, but refused others. Kusumoto's conduct in this regard was calculated to have Sanovest exert control over EBMD outside of EBMD's board of directors and to circumvent Matthews' authority under the Bear Mountain Business Terms: as President and CEO of EBMD nominated by 599315 with authority to direct the Partnership's overall operations.

82. Further, Kusumoto has continued to use his position within Sanovest to withhold funding for necessary operational matters. Among other things, Kusumoto withheld property taxes when due in June 30, 2022 in an effort to compel Matthews to provide him with exclusive signing authority for the Partnership's banking. Kusumoto also confirmed that he would not consider external funding absent a revision to the Business Plan expressed in the Bear Mountain Business Terms. Kusumoto has also continued to refuse to permit the Shadow Creek project to advance.

83. Kusumoto has exercised this control by insisting, including as noted above, that any significant funds coming into the Partnership be paid first to Sanovest, even if operating funds were required, and even if Sanovest would be required to re-advance the same funds in short order.

84. Kusumoto has also refused to consider the replacement of the Sanovest Loan Agreement by other financing, or the subordination of Sanovest's security in order to secure an additional lender. Sanovest's refusal in this regard is commercially unreasonable, given that the current value of Sanovest's security significantly exceeds the amount outstanding on the Sanovest Loan.

85. Kusumoto's conduct with respect to the Sanovest Loan is done out of self-interest, in that TRK Investments Corporation, a company he owns and controls, earns management fees from the advancing and re-advancing of funds from Sanovest to the Partnership.

(d) Interference in Litigation

86. When Kusumoto was appointed as Sanovest's nominee in June 2021, the Partnership and Resort Partnership were involved in several ongoing legal matters. The two primary matters were a significant arbitration matter and a construction dispute, both of which remain ongoing

87. Prior to June 2021, Matthews had been responsible for instructing counsel in relation to these matters on behalf of EBMD, informing Tom Kusumoto of material developments as they occurred.

88. Within days of his appointment, Kusumoto attempted to take over exclusive control of the ongoing litigation matters. Although Matthews did not agree to this, as described in this section, Kusumoto has nevertheless acted unilaterally in relation to those matters, causing harm to the Partnership and the Resort Partnership's litigation positions.

89. On June 11, 2021, Kusumoto wrote to Matthews opining that he should "take over all Ecoasis representation on lawsuits". Kusumoto sought to justify this position by reference to Sanovest's position as a lender. Although the legal expenses were Partnership expenses, he stated that he should take control as "the legal bills will be paid by Sanovest", collapsing the distinction between Sanovest's role of lender and Tian's position as a director in a company owned equally by 599315 and Sanovest.

90. Although Matthews did not agree to this proposal, Kusumoto subsequently falsely advised the Partnership's external accountant later that "Dan has agreed that I will be taking over handing of all lawsuits".

91. In October 2021, Matthews learned that Kusumoto had been holding direct discussions with the principal of the adverse party in the construction dispute. He had done so without coordination with Matthews, who did not agree to or approve any such direct communications. On October 19, 2021, Kusumoto wrote to Matthew suggesting — in contrast to his refusal to otherwise fund Partnership operations — that Sanovest advance \$50,000 to the adverse party for the purpose of construction work. Matthews responded that no such payments should be made, given the ongoing litigation and the nature of the claims the adverse party had made against the Partnership. In reply, Kusumoto asserted, incorrectly, that Matthews had agreed to him "taking over the lawsuits against and by Ecoasis".

92. As a result of representations that Kusumoto made to the principal of the adverse party, unilaterally and without authorization, the details of which are not known to Matthews or 599315, but are known to Kusumoto and Sanovest, the adverse party discontinued the settlement discussions that were ongoing with the Partnership at that time. As a result, the Partnership has and will incur damages, increased legal costs and litigation risk and impaired litigation outcomes.

93. Kusumoto engaged in similar unilateral and disruptive conduct in the arbitration matter. In similar form, Kusumoto engaged in direct contact with the representatives of the adverse parties, acted contrary to the recommendations of the Partnership's counsel, and disrupted the pre-existing litigation strategy. Kusumoto's purpose in doing so included, among other things, to gain a separate advantage for Sanovest — through partnerships or business arrangements with the adverse party — outside of the Partnership, the details of which are not known to Matthews or 599315, but are known to Kusumoto and Sanovest. As a result, the Partnership has and will incur damages, including increased legal costs, increased litigation risk, abandoned or lapsed legal claims, and impaired litigation outcomes.

(e) Unauthorized Fees

94. In or around 2019, Kusumoto, who at that time maintained the loan schedule for the Sanovest Loan, added an “additional fee” of \$100,000 to the loan schedule, attributing this fee to the Sanovest Loan reaching an outstanding amount of \$70,000,000. This amount was unauthorized by the Sanovest Loan Agreement in that: (a) the Sanovest Loan Agreement does not provide for an “additional fee” to be incurred when reaching the \$70,000,000 threshold; and (b) in calculating that threshold, Kusumoto attributed certain funds that Tom Kusumoto had advanced directly (rather than through Sanovest). Matthews did not learn of this unauthorized fee until on or around June 10, 2021, when provided with a partial snapshot of the loan schedule. When confronted with this unauthorized fee in 2022, Kusumoto provided the justification that “Ecoasis got >\$70M in funding, shouldn’t it pay for the fee’s on that amount”.

95. To date, Matthews has not been provided with a complete copy of the Sanovest loan schedule, and has accordingly been unable to ascertain the validity or accuracy of the current loan balance indicated.

(f) Interference with Role of President and CEO, and Disparagement

96. Kusumoto’s attempts at interference in Matthews’ role as CEO continued beyond the initial period described above and remain ongoing. Kusumoto’s actions in this regard constitute a pattern of conduct designed to create an intolerable situation for Matthews as President and CEO, and for 599315’s continued participation in the Partnership.

97. This section sets out only a partial recitation of this misconduct.

98. On June 28, 2022, Kusumoto made a further attempt to obtain unilateral control of the Project’s banking and finance arrangements. He emailed the Partnership’s counsel asserting, falsely, that “Dan has agreed to give me financial control over the bank accounts and finances of Ecoasis and he want to make it officially represented in a consent director’s resolution”. He further asserted that he then intended to advance funds from Sanovest for Partnership needs, including property tax payments, effectively conditioning such financing on gaining unilateral financial control. Matthews responded the next day confirming that Kusumoto’s email was inaccurate, but

that he was willing to work within the existing banking arrangements to satisfy Kusumoto's apparent concerns.

99. Kusumoto's misconduct has also been directed at Matthews personally and at his family, causing harm to Matthews' personal reputation, the Partnership's reputation and the Ecoasis brand, all of which has impacted interest from potential purchasers and activity partners.

100. Kusumoto's disruptive conduct has also extended to Partnership employees. For example, in September 2021, Kusumoto copied staff, for no operational reason, on emails suggesting that Matthews had or would improperly take funds from the Partnership. More recently, on January 25, 2023, Kusumoto communicated to the Partnership's controller that he should "demand to be removed" from banking authority with the Partnership's accounts at HSBC; and that he would otherwise be "in this position of being Dan co-conspirator". Shortly afterwards, that employee resigned his employment with the Partnership, due in part to the improper pressure that Kusumoto had applied on him.

101. These departures have stressed the Partnership's senior management. This has, in turn, significantly impaired Matthews' ability to function as CEO.

102. Since the Partnership's inception, and by agreement between Sanovest and 599315, Matthews had received a monthly management fee for serving in the role of CEO and leading the project's overall operations. The management fee had been paid to Matthews, through Ecoasis Innovative Communities Inc., including after June 2021 with Kusumoto's express agreement this could be paid without further authority. However, beginning in January 2023, Kusumoto has prevented the payment of this management fee.

103. Accordingly, Matthews has been fulfilling his responsibilities as CEO without remuneration since January 2023; and has been unable to replace this lost income given that these responsibilities occupy more than full time working hours. Kusumoto's conduct in this regard was done for the purpose of placing financial pressure on and extracting concessions from Matthews and 599315, and not for any proper purpose related to EMBD or the Partnership.

(g) Bear Mountain Activity Funding

104. The Bear Mountain Activity Centre (“**BMAC**”) is a community centre facility located near the centre of the Bear Mountain village area. It was previously known as the North Langford Recreation Centre and was owned by the City of Langford. In December 2020, the Resort Partnership funded the purchase of BMAC. However, ownership of the BMAC assets was assigned to a separate company, Bear Mountain Adventures Ltd. (“**BMA**”). BMA is owned 50% by a company associated with Matthews and 50% by a company associated with Tom Kusumoto (not 599315 or Sanovest). The BMAC purchase was done in this way for strategic reasons, in coordination with the marketing strategy for the Bear Mountain Assets in place at that time. However, EBMD (through Tom Kusumoto and Matthews as directors) agreed that BMAC would be treated as an asset of the Resort Partnership; that its operations would be funded from the Resort Partnership; and that any profits generated would be treated as Resort Partnership revenues.

105. BMAC was operated in this way from December 2020 until in or around August 2022. In August 2022, Kusumoto stated that he would refuse further payments to BMA (which he was also a director of) and wished to create a separate bank account for BMAC within BMA. In response, Matthews reaffirmed that BMAC had always been treated as an asset of the Resort Partnership (and its revenues paid into a designated account within the Resort Partnership), and that if Kusumoto wished, the ownership could be formally transferred to the Resort Partnership. On September 27, 2022, before any resolution had been reached on these issues, and knowing that the payroll payment to BMAC employees needed to be forwarded the next day, Kusumoto prevented that payment from proceeding (*i.e.* from the BMAC account within the Resort Partnership). However, he stated to Matthews that he would authorize payroll if Matthews signed a form of agreement he had presented in August, and that Matthews had not accepted.

106. As a result, Matthews was required to advance personal funds, by way of loan, to fund BMAC’s ongoing operations, including staff payroll. More recently, the BMAC revenue has been sufficient to cover operations and may generate a modest profit for the Resort Partnership.

107. On March 20, 2023, Sanovest filed an Amended Notice of Civil Claim against Matthews (and others) in British Columbia Supreme Court Action No. S-223937. In the Amended Notice of Civil Claim, Sanovest introduced the allegation that Matthews “diverted” funds to

BMAC without authorization. That allegation forms part of Kusumoto's oppressive conduct: he has persisted in alleging that the Partnership should not fund BMAC, but has refused to accept the transfer of those assets to the Resort Partnership. He was also prepared to continue funding BMAC payroll provided that Matthews make certain concessions to him (an act that would be in breach of his duties as director, if his allegation as to "diverted funds" were accepted). In sum, Kusumoto has taken advantage of BMAC's current structure as formally held outside of the Partnership to improperly pressure Matthews and to interfere with his role as President and CEO.

(h) Additional Lost Sales Opportunities

108. Following the steps Kusumoto took in the summer and fall of 2021 to derail discussion with prospective purchasers, and the sales strategy more generally, the Partnership has not engaged in a concerted sales strategy for the sale of either asset tranches or the Bear Mountain Assets *en bloc*. Nevertheless, the Partnership has continued to receive serious expressions of interest meeting or exceeding market value estimates.

109. In 2022 alone, the Partnership received credible and serious expressions of interest on certain bulk sites worth more than \$164,000,000. However, Kusumoto refused to permit those processes to move forward towards sale.

110. But for Kusumoto's actions, beginning in or around August 2021 and continuing to present, to prevent sales from proceeding in accordance with the Bear Mountain Business Terms, the Bear Mountain Assets, or large portions thereof, would have been sold. The Sanovest Loan would have been long since retired. The overall value of the Bear Mountain Assets would also have been increased by reinvestment in the community and amenities prior to any bulk or *en bloc* sale. Further, 599315 and Sanovest would have received significant distributions, realizing on the value generated through 10 years of effort in the Bear Mountain Project.

111. Kusumoto's conduct in preventing sales has been oppressive and unfairly prejudicial towards 599315, which did not reasonably expect that: (a) it would continue to pay interest to Sanovest under the Sanovest Loan in circumstances where alternative financing was available and where commercially reasonable sales opportunities existed; and (b) that Sanovest would take advantage of the situation it had manufactured – by remaining a creditor of the

Partnership – to prevent appropriate funding of Partnership activities and to interfere with Matthews' role as President and CEO of EBMD.

Part 3: LEGAL BASIS

A. The Affairs of EBMD are being Conducted in an Oppressive Manner

112. Section 227(2) of the *BCA* permits a shareholder to apply to court for an equitable remedy on the following bases:

- (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
- (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

113. The oppression remedy involves a two-step enquiry. The first step requires a consideration of the stakeholder's reasonable expectations. If a breach of reasonable expectations is established, the Court must then consider whether the conduct complained of amounts to "oppression" or "unfair prejudice". Courts considering claims for oppression should look at business realities, not merely narrow legalities, and ought to enforce not just what is legal but what is fair. An oppression claim requires the claimant to first show that it held a reasonable expectation with respect to the conduct of the company, and second, that the reasonable expectation was violated by conduct that was oppressive or unfairly prejudicial.

BCE Inc. v. 1976 Debentureholders, 2008 SCC 69 ("*BCE*"), paras 56, 58, 68.

114. The concept of reasonable expectations is objective and contextual. The question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context.

BCE, paras 62, 71-72

115. Representations and agreements, such as shareholder agreements, may be viewed as reflecting the reasonable expectations of the parties. A departure from normal business practices

that has the effect of undermining or frustrating the complainant's exercise of his or her legal rights will generally (although not inevitably) give rise to a remedy. Reasonable expectations may also be effected by past practice, the nature of the corporation and representations made to stakeholders or to the public in promotional material, prospectuses, offering circulars and other communications.

BCE, paras 72, 73, 79-80.

116. 599315 and Sanovest's reasonable expectations flow from the Bear Mountain Business Terms. Those expectations include the following:

- (a) The Bear Mountain Assets would be managed for the purpose of realizing on bulk site and lot sales opportunities that reflected market value, following a reasonable period in which those assets' value would grow through investment in the Bear Mountain Project's land infrastructure and operations;
- (b) Matthews would be able to direct EBMD's overall operations in a manner consistent with the role of President and CEO;
- (c) Sanovest's main responsibility was to provide financing for the Bear Mountain Project's acquisition costs, operating costs, and land development costs, which obligation was reflected, *inter alia*, in the \$30,000,000 preferential payment allocated to Sanovest under the Partnership Agreement;
- (d) Repaying the Sanovest Loan from the proceeds of sales would be a priority; and as a corollary of this, Sanovest would not entrench and then abuse its position as lender to profit from or unilaterally impose new business terms on 599315; and
- (e) Through the directors they appointed to EBMD, Sanovest and 599315 would operate honestly and in good faith, in a commercially reasonable manner, and in the best interests of EBMD and the partnerships it managed.

117. At a basic level, shareholders also have a reasonable expectation that directors will act in the best interest of the company and not for their own personal gain.

1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd., 2014 BCSC 1197,
para. 126, rev'd in part 2016 BCCA 258, leave to appeal ref'd [2016] S.C.C.A.
No.3 83.

118. In light of the shareholders' reasonable expectations, Kusumoto's conduct has been oppressive and unfairly prejudicial to 599315. Oppression is conduct which is "burdensome, harsh or wrongful", whereas unfairly prejudicial conduct is conduct which is unjustly or inequitably detrimental to a shareholder's interests.

Walker v. Betts, 2006 BCSC 128 at para. 80.

119. A stalemate between two equal shareholders and the directors they appoint is oppressive where the company fails to live up to its obligation to the shareholders, justifying a remedy from the Court.

Kirtzinger v. Schlosser, 2010 SKQB 478 ("*Kirtzinger*"), paras. 7 and 11 – 13.

B. Corporate Remedies

120. Section 227(3) gives the court broad discretion to fashion an appropriate remedy. There are four general factors to guide the court in fashioning a fit remedy under s. 227 of the BCA:

- (a) the remedy must be a fair way of dealing with the situation;
- (b) the remedy should go no further than necessary to rectify the oppression;
- (c) the remedy may only vindicate the reasonable expectations of parties in their capacity as corporate stakeholders and not those expectations that arise merely by virtue of a familial or personal relationship; and
- (d) the remedy must take into account the general corporate law context.

Dais v Virvilis, 2018 BCSC 459, para. 96;
Wilson v Alharayeri, 2017 SCC 39, paras. 49-57.
Antonov v Gill, 2022 BCCA 256 at paras 45-46.

121. The removal of a director or officer is a remedy available under s. 227 of the *BCA*. The remedy may be appropriate where a director or officer has engaged in misconduct, including by preferring his or interests over those of the company.

Walker v. Betts, 2006 BCSC 1096;
Catalyst Fund General Partner I Inc. v. Hollinger Inc.,
 [2004] O.T.C. 1025 (Sup. Ct. J.) aff'd (2006), 79 O.R. (3d) 288 (C.A.)

122. In order to finally resolve a deadlock between shareholders, the Court has broad discretion to fashion a fair sale process of one party's interest to the other. This may include, among other processes, a "shotgun sale".

Mostyn v. Schmiing, 2011 BCSC 275;
Sonderhoff v Ellesmere Farm Corporation, 2021 BCSC 2311.

123. In instances of stalemate between equal shareholders and the directors they appoint, the appointment of a third director may be a reasonable remedy.

Kirtzinger at para 15.

C. Orders for Compensation

124. Under s. 227(3)(j) of the *BCA*, the Court may vary or set aside a transaction to which the company is a party and direct a party to the transaction to compensate any other party to the transaction. Section 227(3)(m) provides general authority for the Court to order the company to compensate an aggrieved person.

125. Compensatory orders from Kusumoto and Sanovest to 599315 are appropriate in this case where:

- (a) Kusumoto, as the Sanovest-appointed director to EBMD, has acted to prevent sales from occurring in accordance with the Bear Mountain Business Terms, losing the advantage of a favourable market, and preventing distributions from flowing to 599315 in accordance with the parties' reasonable expectations;
- (b) Sanovest has itself benefitted from this misconduct as it continues to earn interest on the Sanovest Loan; and

- (c) Kusumoto has personally benefitted from the Sanovest Loan remaining outstanding through his arrangement, personally or through TRK Investments Corporation, in providing fund management services to Sanovest.

126. The provision in the Partnership Agreement for Sanovest to receive a preferential distributions was part of the parties' overall arrangement and expectations, which included that: (a) Sanovest would advance funding as required for the Bear Mountain Project; (b) Sanovest would not take advantage of its position as lender; (c) Sanovest would not deprive the Bear Mountain Project of operating capital; and (d) Sanovest would allow land sales so as to permit the repayment of the Sanovest Loan. Having failed to abide by this overall arrangement, it is appropriate that the Partnership Agreement be varied so as to disentitle Sanovest from receiving preferential distributions.

127. There are instances where the court's broad discretion to make any appropriate interim or final order it will contemplate holding directors personally liable under section 227(3).

128. The imposition of personal liability on Kusumoto is appropriate in light of the principles developed in *Wilson v. Alharayeri*, 2017 SCC 39.

See also: *Azam v Andrews Custom Furniture Designs Inc.*, 2022 BCSC 1166, para 80;
Multiguide GmbH v. Broer, 2022 BCSC 852.

129. Matthews, as an aggrieved person, seeks a compensation order against Kusumoto to account for damage to his personal reputation and the Ecoasis brand occasioned by the tactics of personal disparagement that Kusumoto has employed in carrying out the oppressive conduct described in this Petition.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Daniel Matthews, made June 1, 2023
2. Such further and other material as counsel may advise and the Court may allow.

The Petitioners estimate that the hearing of the Petition will take 5 days.

Dated at the City of Vancouver, in the Province of British Columbia, this 1st day of June, 2023.



Lawson Lundell LLP
Solicitors for the Petitioners, 599315 B.C.
Ltd. and Daniel Matthews

This Petition to the Court is filed by Craig A.B. Ferris, K.C. and Gordon Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ____
of Part 1 of this Petition

☐ with the following variations and additional terms:

Date: _____
Signature of ☐ Judge ☐ Master

This is Exhibit "E" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia



No. S234048
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

599315 B.C. LTD. and DANIEL MATTHEWS

PETITIONERS

AND:

ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD.,
ECOASIS DEVELOPMENTS LLP, and ECOASIS RESORT
AND GOLF LLP, TIAN KUSUMOTO, and SANOVEST
HOLDINGS LTD.

RESPONDENTS

RESPONSE TO PETITION

Filed by: Tian Kusumoto and Sanovest Holdings Ltd. (the "Petition Respondents")

THIS IS A RESPONSE TO the Petition filed 01/JUN/2023.

Part 1: ORDERS CONSENTED TO

The Petition Respondents consent to the granting of the Orders set out in the following paragraphs of Part 1 of the Petition: paragraph 3.

Part 2: ORDERS OPPOSED

The Petition Respondents oppose the granting of the Orders set out in paragraphs 1-2 and 4-5 of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondents take no position on the granting of the Orders set out in NONE of the paragraphs of Part 1 of the Petition.

Part 4: FACTUAL BASIS

Introduction

1. The Petition Respondents deny each and every allegation of fact contained in the Petition unless expressly admitted herein.

The Parties

2. The Petitioner 599315 B.C. Ltd. ("599") is a corporation incorporated under the laws of British Columbia.
3. The Petitioner Daniel Matthews ("Matthews") is a businessperson who resides at 3480 Ripon Road, Victoria, British Columbia.
4. Matthews controls 599.
5. The Respondent Ecoasis Bear Mountain Developments Ltd. ("EBMD") is a company incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, British Columbia.
6. The Respondent Ecoasis Developments LLP (the "Partnership") is a limited liability partnership created in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348 (the "*Act*").
7. The Respondent Ecoasis Resort and Golf LLP (the "Resort Partnership") is also a limited liability partnership created in accordance with Part 6 of the *Act*.
8. The Respondent Tian Kusumoto ("Tian Kusumoto") is a businessperson with an address for service care of 2900 – 550 Burrard Street, Vancouver, British Columbia.
9. The Respondent Sanovest Holdings Ltd. ("Sanovest") is a corporation incorporated under the laws of Canada with an address for service care of 2900 – 550 Burrard Street, Vancouver, British Columbia.
10. At all material times, Sanovest and 599 each owned 50% of the issued and outstanding common shares of EBMD.

11. At all material times, Matthews was the president and chief executive of EBMD and a director of EBMD.
12. Between September, 2013 and June, 2021, Tom Kusumoto was a director of EBMD. In June 2021, Tom Kusumoto ceased to be a director of EBMD and thereafter Tian Kusumoto has served as a director of EBMD.

The Partnership

13. In or about September, 2013, EBMD, Sanovest and 599 (the "Partners") formed the Partnership.
14. The Partners' respective interests in the Partnership are as follows: Sanovest (49.75%), 599 (49.75%) and EBMD (0.5%).
15. The Partnership is governed by a written limited liability partnership agreement between EBMD, Sanovest and 599 made as of September 24, 2013 (the "Partnership Agreement").
16. The Partnership was created to acquire, pursuant to a Purchase and Sale Agreement dated August 29, 2013 (the "Purchase Agreement") between Bear Mountain Land Holdings Ltd., as vendor, and an affiliate of EBMD, Ecoasis Innovative Communities Ltd. ("EIC"), as purchaser, certain assets comprising the Bear Mountain Resort located near Victoria, British Columbia (the "Bear Mountain Assets").
17. The Bear Mountain Assets included, without limitation, two golf courses known as the "Mountain Course" and the "Valley Course" (the "Golf Courses"), together with associated practice facilities; a 156 room hotel located at Bear Mountain and operated under the name "Westin Bear Mountain Golf Resort and Spa" (the "Hotel"); and extensive real property holdings.
18. The business of the Partnership is set out in s. 2.3 of the Partnership Agreement, and expressly included the development, construction and investment in the real property that formed part of the Bear Mountain Assets (referred to as "the Property"):

2.3 Nature of Business

The business of the Partnership shall be to:

- (a) acquire and maintain a limited liability partnership interest in Ecoasis Resort and Golf LLP which shall own and operate the Golf Courses and the Hotel;
- (b) acquire, improve, develop, construct, finance, sell, operate, maintain and manage the Property and any activity or undertaking related thereto, to directly or indirectly acquire, hold, develop, construct, invest in, market and sell real property and other assets and undertake other activities or businesses which are ancillary or incidental to or in furtherance of any aspect of the operation or development of the Property, or
- (c) the direct or indirect acquisition, holding, construction, development, investment in, marketing and sale of real property or other assets and to carry on any other business approved by Extraordinary Resolution of the Partners.

The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or complementary to the accomplishment of its business and purposes including, without limitation, acquiring, owning or disposing of mortgages, partnership interests, shares or other securities.

19. Under the terms of the Partnership Agreement, the Partners agreed that EBMD would serve as the managing partner of the Partnership (the "Managing Partner"). As Managing Partner, EBMD had and has the exclusive authority to manage and operate the Partnership's business, and to bind the Partnership and Partners in respect of the business and assets of the Partnership. The Partnership acts only through EBMD and the Partnership's property is held by EBMD for the benefit of the Partners, in accordance with the Partnership Agreement and the *Act*.
20. Article 13 of the Partnership Agreement provided, in material part:

13.2 Books of Account

The Managing Partner will keep and maintain or cause to be kept and maintained proper, complete and accurate books of account and records of the Business of the Partnership and will enter and record or cause to be entered and recorded therein fully and accurately all transactions and other matters related to the business and affairs of the Partnership.

13.3 Business Plan and Budgets

The Managing Partner shall prepare and provide to the Partners for approval:

- (a) an overall business plan for the development of the Lands incorporating, as appropriate, any budgets, plans and projections furnished by any consultant retained by the Partnership together with annual updates thereto;
- (b) a development budget containing a detailed estimate of all costs and expenses for the design, financing, construction and marketing of the proposed development together with annual updates thereto;
- (c) an annual operating budget for the Business which shall be provided to Partners prior to the commencement of each Fiscal Year.

13.4 Reporting by Management Committee

The Managing Partner shall, no less than on a quarterly basis and within 30 days of the end of each fiscal quarter, provide the Partners with a report on the Business which report shall include management prepared financial statements for the Partnership for the most recent fiscal quarter, a report on the Actual Operating Expenses incurred during the fiscal quarter as compared to budget and a summary report regarding the status of the development of the Partnership Property in relation to the approved business plan.

- 21. Sanovest and Tian Kusumoto plead and rely on the terms of the Partnership Agreement in their entirety.
- 22. The Resort Partnership is an asset of the Partnership and is governed by a written limited liability partnership agreement between the Partnership and EBMD, made as of September 24, 2013 (the "Resort Partnership Agreement"). All of the units in the Resort Partnership are held by the Partnership, except for one unit, which is held by EBMD. EBMD is the managing partner of the Resort Partnership, with powers and obligations similar to those it has to the Partnership under the Partnership Agreement.

The Sanovest Loan Agreement

- 23. By an agreement made as of October 8, 2013, and as subsequently amended, Sanovest, as "Lender", agreed to loan the Partnership, as "Borrower", up to \$35 million, which was later increased to \$70 million (the "Sanovest Loan"), secured by a first mortgage on certain of the Bear Mountain Assets and other security (collectively, the "Security"), on terms and

conditions set out in the agreement, including as to the payment of interest (originally and as amended, the "Sanovest Loan Agreement").

24. Matthews personally approved and executed the Sanovest Loan Agreement on behalf of EBMD and the Partnership.
25. The Partnership agreed that the purpose of the Sanovest Loan, and its permitted uses, were to facilitate the purchase of the Bear Mountain Assets; the construction and development of the real property that formed part of the Bear Mountain Assets; to fund the operations of the Golf Courses and Hotel; and such other uses as approved by Sanovest.
26. The Sanovest Loan Agreement provided that the Sanovest Loan would be advanced in multiple advances, with advances funded on the satisfaction or waiver by Sanovest of conditions precedent set out in s. 13 of the Sanovest Loan Agreement.
27. The Sanovest Loan Agreement provided, inter alia, that:
 - (a) The Borrower would not use the proceeds of the Sanovest Loan for non-permitted purposes;
 - (b) The Borrower represented and warranted that there were no actions or proceedings which challenge the validity of the Sanovest Loan Agreement and Security, or which would materially adversely affect the ability of the Borrower or EBMD to perform their obligations under the Sanovest Loan Agreement and Security, and that this was true as a condition of receiving advances under the Sanovest Loan;
 - (c) The Borrower would disclose all information relating to its operations and financial condition and provide financial information required under the Sanovest Loan Agreement, including, without limitation, monthly detailed management prepared financial statements and audited annual financial statements;
 - (d) The Borrower would not sell properties, all of which were subject to the Security, without the Lender's consent or at less than fair market value, and would pay the proceeds of the sale of properties to the Lender to be applied to the outstanding balance due under the Sanovest Loan; and

- (e) Except in accordance with a budget previously approved by the Lender, the Borrower would not make payments other than in the normal course of business, or pay salaries or other remuneration or make loans to any shareholder, partner, director or officer of the Borrower, or to corporations related to such persons.
28. Under the Sanovest Loan Agreement, the Partnership granted Sanovest certain rights as a preferred lender. With the exception of operating lines of credit maintained in the ordinary course of business, the Partnership agreed not to borrow money from any person other than Sanovest, the Partners of the Partnership or trade creditors in the ordinary course of business. The Partnership also covenanted and agreed not to enter into any further financing of the real property that formed part of the Bear Mountain Assets and not to further mortgage or encumber that property without the prior written approval of Sanovest which approval Sanovest could withhold in its sole discretion. Sanovest was granted other approval and consent rights relating to charges over the Bear Mountain Assets.
29. Sanovest and Tian Kusumoto plead and rely on the terms of the Sanovest Loan Agreement and Security in their entirety.
30. Sanovest has made and, at the Partnership's request, has continued to make advances under the Sanovest Loan Agreement, including as recently as approximately June 27, 2023. In making the advances, and in agreeing to amendments to the Sanovest Loan Agreement, Sanovest was relying on the terms of the Sanovest Loan Agreement, including its entitlement to interest thereunder.

The parties' reasonable expectations

31. In response to Part 2, paragraphs 16-17, 31 and Part 3, paragraph 116 of the Petition, Sanovest and Tian Kusumoto deny that 599 and Sanovest agreed, directly or through Matthews and Tom Kusumoto, on the "Bear Mountain Business Terms", or that the Bear Mountain Business Terms formed the basis for the parties', or 599's reasonable expectations, as alleged or at all.
32. Sanovest and 599 had the following reasonable expectations:

- 8 -

- (a) As equal partners in the Partnership and equal shareholders of EBMD, Sanovest and 599 would, through the board of directors of EBMD, exercise shared management control of EBMD, and through EBMD, of the affairs of the Partnership and the Resort Partnership;
- (b) Sanovest and 599 would be equal, and would have equal rights, except as provided for under the Sanovest Loan Agreement and the Partnership Agreement;
- (c) Except as provided for in the Partnership Agreement or Sanovest Loan Agreement, there would be no change of control of EBMD or of the Partnership without the consent of Sanovest and 599;
- (d) EBMD would comply with its statutory fiduciary duties to the Partnership and the Resort Partnership, and manage the Partnership and the Resort Partnership in a manner that complied with its obligations under the Partnership Agreement, the Resort Partnership Agreement, the Sanovest Loan Agreement and the Security;
- (e) The directors and officers of EBMD would comply with their statutory, fiduciary and other duties to the corporation, and would cause EBMD to operate in a manner that complied with the *Business Corporations Act*, SBC 2002, c 57, EBMD's articles and its obligations under the Partnership Agreement, the Resort Partnership Agreement, the Sanovest Loan Agreement and the Security;
- (f) In particular:
 - (i) The directors would not cause EBMD to divert assets of the Partnership for their own personal benefit or in a manner that was contrary to EBMD and the Partnership's best interests or its obligations, including under the Sanovest Loan Agreement and the Security;
 - (ii) The directors and officers of EBMD would cause EBMD to comply with the budgeting, business planning and reporting requirements of the Partnership Agreement and the Resort Partnership Agreement. These requirements included the preparation of an overall business plan for the

development of the lands, to be provided to the Partners for approval and updated annually; a development budget containing a detailed estimate of all costs and expenses for the proposed development of the Bear Mountain Assets, also to be updated annually; and an annual operating budget, to be provided to the partners prior to the commencement of each fiscal year of the Partnership and the Resort Partnership;

- (iii) The directors and officers of EBMD would cause EBMD to diligently complete and deliver monthly financial statements and annual financial statements that fairly and accurately disclosed, in all material respects, the financial position of EBMD, the Partnership, and the Resort Partnership;
- (iv) The directors and officers of EBMD would cause EBMD to obtain, in a timely manner, an audit opinion on the annual financial statements of EBMD, the Partnership, and the Resort Partnership, except where the statutory and contractual obligations to appoint an auditor and obtain an audit opinion on the financial statements were expressly waived in writing by the shareholders of EBMD and Sanovest in its capacity as lender under the Sanovest Loan Agreement; and
- (v) EBMD would prepare, revise where appropriate, and execute on a written business plan, and that in managing or supervising the management of EBMD, its directors would consider and reasonably adapt EBMD, the Partnership, and the Resort Partnership's business policy and strategy in a manner appropriate to the prevailing circumstances, acting in the long term best interests of EBMD, the Partnership, and the Resort Partnership.

33. In specific response to Part 3, paragraph 116 of the Petition:

- (a) 599 and Sanovest did not have a reasonable expectation that the Bear Mountain Assets would be managed for only the purposes of realising on bulk site and lot sales opportunities. There was no agreement, understanding or business plan to this effect, and in fact EBMD failed to prepare, submit or secure approval of the detailed business plan required by the Partnership Agreement, the Resort

Partnership Agreement, and the Sanovest Loan Agreement. The Partnership's business expressly included development, construction, marketing and sale of its real estate assets. The Partnership Agreement specifically required a business plan for the development of the real estate portion of the Bear Mountain Assets and a development budget. As described further below, contrary to the allegations in the Petition, in practice the Partnership did engage in development activities for its own account;

- (b) Matthews' powers were subject to the reasonable expectations set out above. They were also subject to EBMD's articles, which provided that Matthews' power as officer was subject to the ultimate control, direction and supervision of EBMD's board of directors;
- (c) Sanovest's "main responsibility" was not to provide financing, as alleged, and further, contrary to the allegation in Part 2, paragraph 71 of the Petition, under the terms of the Sanovest Loan Agreement, Sanovest was not required to advance funds to the Partnership as and when requested, but rather, advances under the Sanovest Loan Agreement were always subject to the satisfaction of the conditions precedent to advances and the Partnership's satisfaction of the other terms and conditions of the Sanovest Loan Agreement and the Security. In particular, under the terms of the Sanovest Loan Agreement, Sanovest was and is entitled, "in its sole and absolute discretion" to be satisfied as to the financial condition of, and further, that there had not been any material adverse change in risk in respect of, the Partnership, the Guarantors and the Property (all as defined), before making an advance;
- (d) Pursuant to the terms of the Sanovest Loan Agreement, Sanovest had preferred status as Lender to the Partnership. Sanovest denies that it sought to improperly entrench its position as Lender or that it abused that position, as alleged or at all; and
- (e) Matthews, and in respect of certain of his duties, Tom Kusumoto, did not act honestly and in good faith in the best interests of EBMD, the Partnership and the Resort Partnership. Contrary to the allegations in the Petition, Tian Kusumoto has

acted honestly and in good faith in the best interests of EBMD, the Partnership and the Resort Partnership.

The conduct of the affairs of the Partnership prior to 2021

34. In approximately October 2013, the Partnership completed the acquisition of the Bear Mountain Assets from Bear Mountain Land Holdings Ltd., which was controlled by HSBC Bank Canada.
35. In response to Part 2, paragraph 31, Sanovest and Tian Kusumoto deny that Matthews and Tom Kusumoto agreed that the Bear Mountain Business Terms (as defined in the Petition) became EBMD's approved business plan for all purposes, including to satisfy the requirements of the Partnership Agreement and Resort Partnership Agreement, as alleged or at all. Rather, Matthews, for his own purposes, and contrary to his duties and despite demands from Sanovest and Tian Kusumoto, failed, blocked and then refused to cause or permit EBMD to prepare an overall business plan for the development of the real estate component of the Bear Mountain Assets.
36. Contrary to the allegations set out in the Petition, including that the Bear Mountain Business Terms formed the basis for the Partnership and EBMD's ongoing business plan and that Sanovest and 599's reasonable expectations were that the properties that comprised the Bear Mountain Assets would only be sold through lot sales or in bulk, between 2016 and 2020, the Partnership pursued a mix of lot sales, development for its own account and the exploration of a bulk sale of the Bear Mountain Assets.
37. In particular, in September, 2016, the Partnership partnered with a developer and formed a further limited liability partnership, Bear Mountain Legacy Homes LLP, for the purposes of developing a 33 townhome development project at Bear Mountain known as "Cypress Gates" (the "Cypress Gates Project"). As part of promoting the Cypress Gates Project, EBMD constructed a showroom in the Hotel and expanded its sales team to market and sell the Cypress Gate Project townhomes.
38. At around the same time, EBMD and the Partnership examined a further vertical development opportunity at Bear Mountain: the completion of a project called Highlander

that had been commenced but then aborted by the prior owners of the Bear Mountain Assets. After considering the project further, EBMD and the Partnership decided not to pursue its development; however, the Partnership eventually partnered with a third party to develop and construct the project, which ultimately became what is now known as "One Bear Mountain". This is described below.

39. Beginning in approximately 2017, EBMD and the Partnership solicited expressions of interest for the purchase of all or substantially all of the Bear Mountain Assets.
40. In a December 31, 2017 communication describing EBMD's "2018 action plan", Matthews described the Partnership's "paramount" themes for the coming year as including establishing the Partnership's position as a "masterplan developer" and creating a single family home building division for the Partnership to engage in development for its own account. Matthews described a plan for EBMD and the Partnership to create or buy a single family home building company to serve as a general contractor so that the Partnership would eventually be developing between 60% and 70% of the homes developed at Bear Mountain for its own account, with the balance being delivered by preferred third party builders through lots sold to them by the Partnership.
41. In 2019, the Partnership entered into an arrangement with a third party to develop and construct One Bear Mountain, a high-rise condominium project at Bear Mountain.
42. In approximately 2019, EBMD entered into a conditional agreement with a group of prospective purchasers for the sale of a large portion of the Bear Mountain Assets (the "Conditional Agreement"). Between 2019 and early 2021, the prospective purchasers conducted due diligence and EBMD, on behalf of the Partnership, further negotiated the terms of sale. In early 2021, negotiations ended between the parties without reaching a binding purchase agreement.

The appointment of Tian Kusumoto as a director of EBMD, the discovery of the Self-Interested Transactions and Matthews' blockade of required information.

43. On or about June 1, 2021, Tom Kusumoto resigned as director of EBMD and related companies. Tian Kusumoto was appointed as a director of EBMD.

44. Over the course of the period spanning the months preceding his appointment as a director of EBMD, and in the period thereafter, Tian Kusumoto gradually learned facts indicating that since January 2016, Matthews and Tom Kusumoto, in breach of their fiduciary duties and while having disclosable interests in the transactions for which no proper shareholder approval was sought or obtained, caused EBMD and a related company owned by the Partnership, BM Mountain Golf Course Ltd. ("BMGC") to sell, assign or transfer valuable assets to Bear Mountain Adventures Ltd. ("BMA"), a corporation that Matthews and Tom Kusumoto controlled, or to Matthews personally, for no or inadequate consideration (collectively, the "Self-Interested Transactions").
45. The Self-Interested Transactions amounted to the improper diversion of over \$14 million from the Partnership to Matthews and Tom Kusumoto, directly or indirectly.
46. The Self-Interested Transactions were conceived of, approved by and implemented by Matthews and Tom Kusumoto in their capacity as directors of EBMD and, in the case of a parcel of property that previously formed part of the Mountain Golf Course and which was intended to be used as part of the construction of a passenger gondola (the "Gondola Property"), EBMD and BMGC, and in breach of their fiduciary duties to act honestly, in good faith and in the best interests of EBMD and BMGC.
47. The details of the Self-Interested Transactions are set out in a Notice of Civil Claim commenced by Sanovest in the Supreme Court of British Columbia on May 13, 2022 under Vancouver Registry Action No. S-223937 (the "Sanovest Action").
48. On being appointed a director and thereafter, Tian Kusumoto sought, without success, to obtain full disclosure related to EBMD and the Partnership's books and records, financial position, financial records and operations. Matthews repeatedly sought to thwart Tian Kusumoto's efforts to obtain this information and related documents, going so far as to instruct EBMD's employees not to provide information to him or to limit the information or documents to which Tian Kusumoto could obtain and review.
49. On April 11, 2022, Sanovest made formal demand that EBMD comply with its reporting obligations under the Partnership Agreement and Sanovest Loan Agreement.

50. On Matthews' instructions, EBMD has, despite Sanovest's demand, refused to comply with its reporting obligations under the Partnership Agreement and Sanovest Loan Agreement.
51. EBMD and Matthews' blocking of financial and operational information is also the subject of the Sanovest Action.
52. Despite the lengthy period that has elapsed since the Partnership was formed and the Bear Mountain Assets were acquired, by reason of the conduct of Matthews, and contrary to the requirements of the Partnership Agreement, the Resort Partnership Agreement, and Sanovest's reasonable expectations, EBMD has never:
- (a) Prepared or provided to Sanovest for approval, an overall business plan for the development of the real property comprising the Bear Mountain Assets;
 - (b) Provided an annual update of the business plan;
 - (c) Prepared or provided to Sanovest for approval a development budget containing a detailed estimate of all costs and expenses for the proposed development of the Bear Mountain Assets. EBMD has occasionally prepared development budgets in respect of specific projects;
 - (d) Provided an annual update of the development budget;
 - (e) Prepared or provided to Sanovest for approval, an annual operating budget; and
 - (f) Prepared or provided to Sanovest annual, or where not waived, audited, financial statements of EBMD, the Partnership, and the Resort Partnership.
53. Further, there was also no budget approved by Sanovest in its capacity as Lender that permitted the payment of remuneration to Matthews or to Matthews' spouse, Michelle Stannard ("Stannard"), or corporations they controlled, as was required by the terms of the Sanovest Loan Agreement.
54. Matthews has in practice asserted and exercised overall management control of EBMD and is responsible for these breaches of the Partnership Agreement, the Resort Partnership

Agreement, the Sanovest Loan Agreement and of EBMD's statutory obligations respecting audited financial statements.

The EBMD directors' policy disagreements

55. In the period following the failure of the Conditional Agreement, the directors of EBMD also fell into disagreements over the appropriate business policy and strategy for EBMD and the Partnership. Matthews wished to pursue the sales of bulk sites and single family lots. Tian Kusumoto sought to examine the desirability of a broader range of options, including pursuing the construction, development, marketing and sale of the remaining portions of the Bear Mountain real property for the Partnership's own account, either alone or with partners, or exploring the sale of all or substantially all of the Bear Mountain Assets. Matthews resisted exploring these opportunities.

Sanovest did not prevent the refinancing of the Sanovest Loan, or abuse its position as Lender

56. In answer to the allegations set out in the Petition, Sanovest did not prevent the refinancing of the Sanovest Loan, or abuse its position as Lender, as alleged or at all.
57. Contrary to the allegations set out in the Petition, in August 2021, Tian Kusumoto advised Matthews that he was supportive of the Partnership obtaining external financing if the terms and conditions fit within the parameters of the Partnership's business plan and budget, which Tian Kusumoto was also seeking at the time.
58. In August 2021, Tian Kusumoto also advised Matthews that he was not supportive of external financing which was not supported by a proper financial model but which was being pursued due to liquidity concerns caused by Matthews' involvement in the Self-Interested Transactions and the resulting diversion of millions of dollars from the Partnership.
59. Thereafter, on August 19, 2021, Matthews called a meeting of EBMD's directors. Matthews proposed a "refinancing resolution" pursuant to which the board would on a priority basis seek third party debt financing to repay and replace the Sanovest Loan. Tian Kusumoto did not approve the refinancing resolution, but he did agree in

principle that the board should investigate the refinancing of the Sanovest Loan once the Partnership had audited financial statements and the board had approved a business plan that encompassed the servicing and repayment of the existing and new debt financing.

60. A month later, on September 14, 2021, Matthews responded to Tian Kusumoto's comments in his correspondence and at the August 2021 board meeting, saying:

You have noted in your email your reluctance to advance projects or entertain external financing given the lack of 2019/2020 financials statements and need to determine the financial state of Ecoasis before proceeding. We are aligned in this regard and our team has made great efforts to finalize these with the assistance of Kevin Isomura over the past two years but have continued to face obstacles.

61. In the same communication, Matthews advised that "a refinancing of Sanovest would only be considered on a non-recourse basis".
62. Despite these communications, on October 31, 2021, counsel for Matthews wrote to counsel for Sanovest, alleging that Tian Kusumoto refused to authorize EBMD to seek third party financing and had caused Sanovest to withhold additional advances under the Sanovest Loan Agreement. This allegation was inaccurate.
63. Thereafter, instead of replacing the Sanovest Loan, by an agreement dated January 26, 2022, Matthews, on behalf of EBMD and the Partnership, entered into an extension and modification of the Sanovest Loan Agreement (the "Second Modification Agreement").
64. On March 25, 2022, Matthews and Tian Kusumoto met. When Matthews asked if Tian Kusumoto and Sanovest would accept the repayment of the Sanovest Loan, Tian Kusumoto advised that Sanovest was prepared to consider this, but that the Partnership needed a process to manage its external debt, whether provided by Sanovest or another external lender, properly, with a proper business plan to service and repay the debt. Tian Kusumoto emphasized that if the Sanovest Loan was replaced by alternative financing, Sanovest did not want to be called on to fund the servicing of that debt.
65. Both before and after the Second Modification Agreement, EBMD, at Matthews' direction or with his concurrence, sought and accepted advances of the Sanovest Loan from

Sanovest. Despite Matthews' misconduct and the Partnership's breaches of the Sanovest Loan Agreement and Sanovest's reasonable expectations, Sanovest has continued to make advances under the Sanovest Loan Agreement, including as recently as June 27, 2023.

66. Despite attempts to do so, the details of which he has not disclosed to EBMD's board of directors, Matthews has attempted and failed to secure third party financing to replace the Sanovest Loan.
67. Matthews and EBMD have never presented a detailed, concrete third party financing proposal to Tian Kusumoto and Sanovest to replace the Sanovest Loan.

Part 5: LEGAL BASIS

Introduction

1. In answer to the Petition as a whole, 599 and Matthews' claims are not properly the subject of a statutory action for oppression. They seek relief for alleged harm suffered not in their capacity as shareholders of EBMD, but in other capacities, including in 599's capacity as a Partner in the Partnership. Their complaints are advanced for tactical purposes and are barred by the doctrine of laches. The remedies sought are contrary to their or EBMD's agreements, exceed their reasonable expectations, impermissibly ask the court to re-write commercial agreements and seek compensation in the absence of any loss. Their requests to remove Tian Kusumoto as a director, change the composition of EBMD's board of directors or change control of EBMD, are contrary to the parties' reasonable expectations, are an attempt to insulate Matthews from the consequences of his breaches of fiduciary duty, collaterally seek to change the control of the management of the Partnership for tactical purposes, and would result in an event of default under the Sanovest Loan Agreement.

The principles applicable to a claim for oppression

2. A claim for oppression is subject to well-established principles. In addition to the general principles summarised in the Petition, Part 3, paragraphs 112-115 and 120, the following principles apply.
3. Oppression is a statutory remedy available to shareholders who have suffered harm, in their capacity as shareholders, and not in some other capacity.
4. The focus of the oppression remedy is on the reasonable expectations of shareholders.
5. To be entitled to relief under the oppression remedy a claimant must show that it held a reasonable expectation with respect to the conduct of the affairs of the company, and that the reasonable expectation was disappointed by conduct that was oppressive or unfairly prejudicial. The reasonable expectation must be assessed on an objective and contextual basis.

6. To make out a claim for oppression, the claimant must establish wrongful conduct, causation and compensable injury.
7. The oppression action was intended to permit courts to remedy oppressive or unfairly prejudicial conduct not generally susceptible to correction by other forms of redress. A claim for oppression is not a substitute for the normal legal and equitable remedies that are available to aggrieved parties.
8. The statutory oppression remedy does not ignore the legal principles governing corporate structure, the obligations of individuals occupying roles within corporations, or other applicable legal principles. The oppression remedy supplements corporate law principles. It is not an imperial remedy that ignores or renders these principles obsolete.
9. The oppression remedy is not a means by which commercial agreements negotiated at arms length by sophisticated parties can be rewritten to accord with a court's after-the-fact assessment of what is "just and equitable" in the circumstances. The reasonable expectations of parties to commercial agreements negotiated at arms length must be those reasonable expectations that find expression in the agreements negotiated by the parties.
10. The court's discretion to grant a remedy for oppression is guided by the following principles. The oppression remedy request must in itself be a fair way of dealing with the situation. Courts apply the principle of minimal interference, which requires that any order made should go no further than necessary to rectify the oppression. A remedy for oppression may serve only to vindicate the reasonable expectations of security holders, creditors, directors or officers in their capacity as corporate stakeholders, must be responsive to the complainant's reasonable expectations, and may not serve a tactical purpose. In exercising its remedial discretion, the court should consider the general corporate law context.

The Petition does not disclose grounds to remove Tian Kusumoto as a director of EBMD

11. The Petition does not disclose grounds to remove Tian Kusumoto as a director of EBMD.

12. An order removing or appointing directors is an extraordinary remedy. Because the board of directors is elected by the shareholders and controls the corporation's policy-making and management, an order removing or appointing directors is recognised as an extreme form of judicial intervention in the affairs of a company and a measure of last resort. Where such orders are made, they often involve self-dealing, misappropriation of corporate assets, deceit or other obvious, persistent and serious breaches of duty or oppressive conduct.
13. Tian Kusumoto has not engaged in misconduct, serious or otherwise, to warrant making an exceptional order of last resort. Rather, Tian Kusumoto has sought to exercise his powers consistent with what he reasonably believed and believes is in the best interests of EBMD and the Partnership as a whole; to hold Matthews and Tom Kusumoto properly accountable for their breaches of duty; and to require Matthews to exercise his management powers in a manner consistent with his duties and to cause EBMD to perform its obligations under law and under its agreements, including the Partnership Agreement, the Resort Partnership Agreement, and the Sanovest Loan Agreement.
14. Further, this request for relief is contrary to Sanovest's reasonable expectation that, as equal partners and equal shareholders of EBMD, Sanovest and 599 would exercise shared management control of EBMD, and through EBMD, of the affairs of the Partnership and the Resort Partnership.
15. Contrary to the allegations in the Petition:
 - (a) 599 and Sanovest did not have a reasonable expectation that the Bear Mountain Assets would be managed for only the purposes of realising on bulk site and lot sales opportunities. There was no agreement, understanding or business plan to this effect. The Partnership's business expressly included development, construction, marketing and sale of its real estate assets. The Partnership Agreement specifically required a business plan for the development of the real estate portion of the Bear Mountain Assets and a development budget. And in practice, the Partnership did engage in development activities for its own account;
 - (b) Sanovest's "main responsibility" was not simply to provide financing for the "Bear Mountain Project", as alleged or at all, and rather Sanovest was an equal Partner

with equal rights and expectations to shared management decision making with 599; and

- (c) 599 and Matthews had no expectation in fact, and no reasonable expectation, of directing EBMD's overall operations – and through EBMD, control of the Partnership and the Resort Partnership -- as alleged or at all.

16. This request for relief is tactical. It is sought by 599 not qua shareholder, but qua Partner, and in an attempt to change the control of the Partnership through changing control of EBMD. It would leave Matthews, who has engaged in self-dealing, misappropriation of corporate assets and other obvious, persistent and serious breaches of duty, in sole control of EBMD and, through EBMD, the Partnership and the Resort Partnership. The policy disagreements over the direction and strategy of the Partnership are not a basis to remove Tian Kusumoto as a director, and doing so would involve the court in taking sides in that disagreement and in matters that fundamentally belong to the business judgment of the directors and the Partners of the Partnership.
17. An order removing Tian Kusumoto as a director of EBMD is not just and equitable because it would result in a change of control of EBMD, which is an event of default under the Sanovest Loan Agreement.
18. Further or in the alternative, this relief is barred by laches.

It would not be just and equitable to appoint a third director to EBMD's board of directors

19. For similar reasons to those set out above, it would not be just and equitable to appoint a third director to EBMD's board of directors. Such an order would be contrary to the parties' reasonable expectation that Sanovest and 599 would exercise shared management control of EBMD, and through EBMD, of the affairs of the Partnership and the Resort Partnership. It would result in a change of control of EBMD, which is an event of default under the Sanovest Loan Agreement. It would be impractical, costly and would not resolve the parties' fundamental disagreements over business policy. The Petitioners' materials contain no evidence of a suitable, truly independent director who would be willing to accept appointment in the present circumstances.

It would not be just and equitable to order a sale of Sanovest's shares in EBMD to 599, or order a judicial shotgun sale process

20. It would not be just and equitable to order a sale of Sanovest's shares in EBMD to 599, or order a judicial shotgun sale process.
21. This request for relief is tactical. It is sought by 599 not qua shareholder, but qua Partner, and in an attempt to change the control of the Partnership and the Resort Partnership through changing control of EBMD. As a matter of business realities, the only effect of such an order would be to give 599 control of management of the Partnership and the Resort Partnership.
22. Such an order would be contrary to the principle of minimal interference, and would be contrary to the parties' reasonable expectations that Sanovest and 599 would exercise shared management control of EBMD, and through EBMD, of the affairs of the Partnership and the Resort Partnership.
23. Orders for the sale of Sanovest's shares in EBMD, or a judicial shotgun order, would result in a change of control of EBMD, which is an event of default under the Sanovest Loan Agreement.
24. Further or in the alternative, this relief is barred by laches.

An order "authorising" EBMD to obtain third party financing to replace the Sanovest Loan is unnecessary and premature

25. An order authorising EBMD to obtain third party financing to replace the Sanovest Loan is unnecessary and premature.
26. Sanovest and Tian Kusumoto deny that they have prevented EBMD from obtaining replacement financing for the Sanovest Loan in an oppressive or unfairly prejudicial manner, as alleged or at all. No refinancing proposal at all – and certainly not one that is definite and clearly more beneficial to EBMD than the Sanovest Loan Agreement -- to replace the Sanovest Loan is offered by the Petitioners here, nor has one ever been presented by Matthews or EBMD to Sanovest or Tian Kusumoto.

27. Further, 599 could have no reasonable expectations in this regard in light of the terms of the Sanovest Loan Agreement. The Sanovest Loan Agreement granted Sanovest preferred rights to finance the business of the Partnership, and restricted EBMD from obtaining further financing in connection with the Partnership's real property without Sanovest's prior written approval, which Sanovest could withhold in its sole discretion. The Sanovest Loan Agreement was a commercial agreement, negotiated at arm's length, between sophisticated commercial parties.
28. Sanovest and Tian Kusumoto are not opposed to considering a proposal from EBMD to refinance and replace the Sanovest Loan. An order "authorising" EBMD to seek such financing is accordingly unnecessary. An order, as sought in the Petition, that EBMD "obtain" such financing is not an order that could be made, since what would be required for EBMD and Sanovest to comply is uncertain, and the court could not make a proper order, *ex ante*, requiring EBMD to accept, or Sanovest consent to, replacement financing on unknown terms. Such an order would not be in the best interests of EBMD and would be unfair to Sanovest.
29. The question of whether suitable replacement financing is available and whether the terms are in the best interests of EBMD and the Partnership is a matter of business judgment for the directors on presentation of an actual offer of financing, and for Sanovest pursuant its business judgment and the terms of the Sanovest Loan Agreement.

599 is not entitled to a compensation order for interest received by Sanovest under the Sanovest Loan Agreement

30. 599 is not entitled to a compensation order for interest received by Sanovest under the Sanovest Loan Agreement.
31. Sanovest and Tian Kusumoto deny that they acted to prevent sales from occurring or distributions from flowing to 599, as alleged or at all; that Sanovest took advantage of its position as lender under the Sanovest Loan Agreement; or that Sanovest deprived EBMD or the Partnership of operating capital, as alleged or at all.

32. Sanovest is and has been entitled to interest on the amounts outstanding on the Sanovest Loan from time to time, pursuant to the express terms of the Sanovest Loan Agreement, and 599 had no expectation in fact, and no reasonable expectation, that the Partnership could obtain the benefit of debt financing without paying interest.
33. 599 (and EBMD, the only party who could properly advance such a claim) are estopped from seeking to deny Sanovest interest due under the Sanovest Loan Agreement.
34. EBMD requested the advances of the Sanovest Loan and agreed to pay interest thereon. 599 likewise consented, directly or by its conduct, and Matthews consented and approved on behalf of EBMD and the Partnership to the Second Modification to the Sanovest Loan Agreement made as of January 26, 2022, and further, EBMD and Matthews sought, and accepted, including as recently as June 27, 2023, advances under the Sanovest Loan. 599 acquiesced in this conduct, took the indirect benefit of the Sanovest Loan advances including by avoiding the need for Partnership cash calls which 599 and Matthews lacked the capital to satisfy, and by their conduct represented that EBMD would comply with the terms of the Sanovest Loan Agreement including the payment of interest. Sanovest agreed to the Second Modification and made advances of the Sanovest Loan in the period 2021 to 2023 in reliance on the terms of the Sanovest Loan Agreement including its entitlement to interest.
35. This request for relief is not appropriate because it exceeds 599's expectations, it gives it something it never could have reasonably expected, and if granted it would result in the unjust enrichment of 599 at the expense of Sanovest.
36. Further, 599 is not entitled to relief under the oppression remedy because this claim could only be advanced derivatively, and further, it is in substance a claim by 599 in its capacity as a Partner and not qua shareholder of EBMD. Any compensation order, the entitlement to which is denied, could only be made to EBMD, and not 599, demonstrating further that this claim could only be advanced by EBMD and not 599.
37. Further, 599 cannot demonstrate causation and has not suffered any direct injury or loss in its capacity as shareholder of EBMD. EBMD never had a definite, clearly more beneficial offer for financing to replace the Sanovest Loan.

38. Further or in the alternative, this relief is barred by laches.

599 is not entitled to an order compensating it for alleged lost Partnership distributions

39. 599 is not entitled to an order compensating it for alleged lost Partnership distributions, as alleged or at all.

40. This is a claim not made in 599's capacity as a shareholder of EBMD for loss suffered in that capacity, but rather seeks relief qua Partner, for alleged lost distributions which are expressly governed by the Partnership Agreement. The Petition admits this, seeking compensation for "lost distributions through the limited liability partnerships that EBMD manages ... resulting from lost sales revenues". This cannot be the subject of a remedy for oppression.

41. Further, 599 is not entitled to relief under the oppression remedy because this claim could only be advanced derivatively, and further, it is in substance a claim by 599 in its capacity as a Partner and not qua shareholder of EBMD. Any compensation order, the entitlement to which is denied, could only be made to EBMD, and not 599, demonstrating further that this claim could only be advanced by EBMD and not 599.

42. Further, 599 cannot demonstrate causation and has not suffered any direct injury or loss in its capacity as shareholder of EBMD. The Partnership retains the real estate assets, which have appreciated in value, with the result that 599 has suffered no loss and any order made would result in overcompensation.

43. This request for relief is not appropriate because it exceeds 599's expectations, and seeks something 599 never could have reasonably expected in its capacity as shareholder of EBMD.

44. EBMD also did not have or present to Sanovest for approval, unconditional, binding offers to purchase property. 599's complaints in this regard are in reality complaints about how Tian Kusumoto exercised his business judgment as a director, and about the business policy disagreements between EBMD's directors.

45. Further or in the alternative, this relief is barred by laches.

599 is not entitled to an order re-writing the terms of the Partnership Agreement to eliminate Sanovest's distribution preference

46. 599 is not entitled to an order re-writing the terms of the Partnership Agreement to eliminate Sanovest's distribution preference.
47. The oppression remedy is not a means by which commercial agreements negotiated at arm's length by sophisticated parties can be rewritten to accord with a court's after-the-fact assessment of what is "just and equitable" in the circumstances. The reasonable expectations of parties to commercial agreements negotiated at arm's length must be those reasonable expectations that find expression in the agreements negotiated by the parties. 599 can accordingly have no reasonable expectation that is contrary to its and Sanovest's entitlements to distributions as set out in the Partnership Agreement, and any remedy altering those entitlements would exceed and be contrary to the parties' reasonable expectations.
48. This is a claim not made in 599's capacity as a shareholder of EBMD for loss suffered in that capacity, but rather seeks relief qua Partner, in the form of an after the fact re-writing of the bargain allocating the right to distributions which are expressly governed by the Partnership Agreement. The Petition admits this, seeking an order "disentitling Sanovest from receiving preferential payments on distributions to be paid through limited liability partnerships that EBMD manages". This cannot be the subject of a remedy for oppression.
49. Further, 599 cannot demonstrate causation and has not suffered any direct injury or loss in its capacity as shareholder of EBMD.
50. This request for relief is not appropriate because it exceeds 599's expectations, and seeks something 599 never could have reasonably expected in its capacity as shareholder of EBMD.
51. Further or in the alternative, this relief is barred by laches.

Matthews is not entitled to an oppression remedy in his personal capacity, and not for a disguised claim for defamation

52. Matthews is not entitled to an oppression remedy in his personal capacity, and not for a disguised claim for defamation.
53. Tian Kusumoto denies that Matthews is an “appropriate person” that may properly seek a remedy of oppression, as alleged or at all
54. Oppression is a statutory remedy available to shareholders who have suffered harm, in their capacity as shareholders, and not in some other capacity, and further, is not appropriately invoked as a substitute for the normal legal and equitable remedies that are available to aggrieved parties. Matthews’ claim for compensation for alleged “disparaging statements” is not based on any reasonable expectations in his capacity as a shareholder or beneficial shareholder (which he is not). His remedy, if there is one, must be found in the ordinary law of defamation or injurious falsehood.
55. Matthews’ claim in this regard is entirely deficient. He offers no particulars of alleged false or defamatory statements, the content of the statements, when and to whom they were made, that they were published of or concerning him, or that he suffered loss and damage. The Petition seeks compensation for alleged statements concerning not just Matthews but also “his family” (Petition, Part 1, para. 2(f)) and complains of damage to the “Ecoasis brand” (Petition, Part 3, para. 129).
56. Tian Kusumoto denies that he has defamed Matthews, as alleged or at all.
57. This claim is tactical, and is an attempt to chill bona fide communications seeking to investigate Matthews’ management of EBMD and to hold Matthews accountable for his breaches of duty and to require Matthews to use his powers in a manner consistent with his duties and to cause EBMD to perform its obligations under law and under its agreements, including the Partnership Agreement, the Resort Partnership Agreement, and the Sanovest Loan Agreement.

As a director of EBMD, Tian Kusumoto is not personally liable for any compensation orders

58. As a director of EBMD, Tian Kusumoto is not personally liable for any compensation orders that may be made.
59. In addition to the responses made above, in response to the claim for a compensation order against Tian Kusumoto personally related to the interest due or paid under the Sanovest Loan Agreement:
- (a) Tian Kusumoto exercised his powers as a director of EMBD in good faith and did not receive a personal benefit;
 - (b) No actual proposal for financing to replace the Sanovest Loan was ever presented to the EBMD board of directors for consideration, with the result that Tian Kusumoto exercised no power as a director that prevented EBMD and the Partnership from replacing the Sanovest Loan with other financing. When Matthews proposed a “refinancing resolution” that the board seek replacement financing at the August 19, 2021 EBMD board meeting, Tian Kusumoto agreed that the board should investigate refinancing once there were audited financial statements and an approved business plan;
 - (c) Whether to approve replacement financing was not merely a matter for EBMD’s board of directors, but was subject to Sanovest’s ultimate discretion as to whether to approve of the financing and its terms; and
 - (d) Sanovest, and not Tian Kusumoto, received or is entitled to receive interest under the Sanovest Loan Agreement, so an order imposing personal liability is neither fit nor equitable.
60. In addition to the responses made above, in response to the claim for a compensation order against Tian Kusumoto personally related to the alleged lost distributions resulting from lost sales revenues:
- (a) Tian Kusumoto exercised his powers as a director of EMBD in good faith and did not receive a personal benefit;

- (b) The disagreement between Matthews and Tian Kusumoto about the manner in which the Partnership's purposes and business objectives should be pursued is a disagreement about business policy. Tian Kusumoto denies that he exercised his powers as a director of EBMD oppressively or in a manner that was unfairly prejudicial to 599, as alleged or at all, or that 599 suffered any resulting loss. Further, disagreements over matters of business policy are not a basis for imposing personal liability on directors;
- (c) In the alternative, if 599 suffered a loss in its capacity as shareholder, which is denied, Tian Kusumoto derived no personal benefit from the exercise of his powers, and on this further basis, an order imposing personal liability on him in his capacity as a director would not be a fit or equitable remedy.
61. In respect of both claims for compensation orders against Tian Kusumoto personally, the relevant corporate law context includes Sanovest's position as Lender and the terms of the Sanovest Loan Agreement.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Tian Kusumoto made August 25, 2023; and
2. Such further and other material as counsel may advise.

The Petition Respondents estimate that the application will take five days.

Dated: 25-Aug-2023

Signature of 

☐ Petition Respondent ☒ Lawyer for Petition Respondents

Andrew I. Nathanson, K.C.

Petition Respondents address for service:

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, B.C. V6C 0A3

Fax number address for service (if any): n/a

- 30 -

E-mail address for service (if any): n/a

Name of the Petition Respondents' lawyer, if any: Andrew I. Nathanson, K.C./Jennifer
Francis/Oliver Verenca

This is Exhibit "F" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

Amended pursuant to Rule 6-1(1)(a) of the Supreme Court Civil Rules. Original filed May 13, 2022.



No. S-223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff Sanovest Holdings Ltd. ("Sanovest") is a corporation incorporated under the laws of Canada with an address for service care of 2900 – 550 Burrard Street, Vancouver, British Columbia.
2. The Defendant Daniel Matthews ("Matthews") is a businessperson who resides at 3480 Ripon Road, Victoria, British Columbia.
3. The Defendant Tomoson (Tom) Kusumoto ("Tom Kusumoto") is a businessperson who resides at 1727 Cedar Crescent, Vancouver, British Columbia.
4. The Defendant Ecoasis Bear Mountain Developments Ltd. ("EBMD") is a company incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, British Columbia.
5. The Defendant BM Mountain Golf Course Ltd. ("BMGC") is a company incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, British Columbia.
6. At all material times, Sanovest and 599315 B.C. Ltd. ("599"), an affiliate of Matthews, each owned 50% of the issued and outstanding common shares of EBMD.
7. At all material times, Matthews was the president and chief executive of EBMD and ~~Matthews and Tom Kusumoto were the sole directors~~ a director of EBMD and BMGC.
8. Between September, 2013 and June, 2021, Tom Kusumoto was a director of EBMD and BMGC.

9. ~~8.~~ BMGC is joined as a defendant on the basis that it is interested in the relief sought.

The Partnership

10. ~~9.~~ In or about September, 2013, EBMD, Sanovest and 599 (the “Partners”) entered into a partnership, structured as a limited liability partnership in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348 (the “Act”) and known as Ecoasis Developments LLP (the “Partnership”).
11. ~~10.~~ The Partners’ respective interests in the Partnership are as follows: Sanovest (49.75%), 599 (49.75%) and EBMD (0.5%).
12. ~~11.~~ The Partnership is governed by a written limited liability partnership agreement between EBMD, Sanovest and 599 made as of September 24, 2013 (the “Partnership Agreement”).
13. ~~12.~~ Under the terms of the Partnership Agreement, the Partners agreed that EBMD would serve as the managing partner of the Partnership (the “Managing Partner”). As Managing Partner, EBMD had and has the exclusive authority to manage and operate the Partnership’s business, and to bind the Partnership and Partners in respect of the business and assets of the Partnership. The Partnership acts only through EBMD and the Partnership’s property is held by EBMD for the benefit of the Partners, in accordance with the Partnership Agreement and the Act.
14. ~~13.~~ The Partnership was created to acquire, pursuant to a Purchase and Sale Agreement dated August 29, 2013 (the “Purchase Agreement”) between Bear Mountain Land Holdings Ltd., as vendor, and an affiliate of EBMD, Ecoasis Innovative Communities Ltd. (“EIC”), as purchaser, certain assets comprising the Bear Mountain Resort located near Victoria, British Columbia (the “Bear Mountain Assets”). The Bear Mountain Assets included, without limitation, two golf courses known as the “Mountain Course” and the “Valley Course”, together with associated practice facilities; a 156 room hotel located at Bear Mountain and operated under the name “Westin Bear Mountain Golf Resort and Spa”; and certain real property.
15. ~~14.~~ The business of the Partnership is set out in s. 2.3 of the Partnership Agreement:

2.3 Nature of Business

The business of the Partnership shall be to:

- (a) acquire and maintain a limited liability partnership interest in Ecoasis Resort and Golf LLP which shall own and operate the Golf Courses and the Hotel;
- (b) acquire, improve, develop, construct, finance, sell, operate, maintain and manage the Property and any activity or undertaking related thereto, to directly or indirectly acquire, hold, develop, construct, invest in, market and sell real property and other assets and undertake other activities or businesses which are ancillary or incidental to or in furtherance of any aspect of the operation or development of the Property, or
- (c) the direct or indirect acquisition, holding, construction, development, investment in, marketing and sale of real property or other assets and to carry on any other business approved by Extraordinary Resolution of the Partners.

The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or complementary to the accomplishment of its business and purposes including, without limitation, acquiring, owning or disposing of mortgages, partnership interests, shares or other securities.

- 16. ~~15.~~ Under the Partnership Agreement, the Partnership – acting through EBMD as Managing Partner – is required to keep proper records and books of account, and to make these documents available to Sanovest as Partner.
- 17. ~~16.~~ The Partnership Agreement also provides that EBMD is required to prepare and submit to the Partners, including Sanovest, an overall business plan, annual operating budgets, annual updates and financial reports.
- 18. ~~17.~~ At all material times, the sole registered shareholder of BMGC was Ecoasis Resort and Golf LLP (the “Resort Partnership”). The Resort Partnership is an asset of the Partnership.
- 19. ~~18.~~ The Partners are partners in the Resort Partnership in the same proportions as their interest in the Partnership, and EBMD is the managing partner of the Resort Partnership, with powers and obligations similar to those it has to the Partnership under the Partnership Agreement.
- 20. ~~19.~~ Through its interest in the Partnership and Resort Partnership, Sanovest is a beneficial shareholder of BMGC.

The Sanovest Loan Agreement

- 21. ~~20.~~ By an agreement made as of October 8, 2013 and as subsequently amended, Sanovest agreed to loan funds to the Partnership (the “Sanovest Loan Agreement”).
- 22. ~~21.~~ Sanovest has made advances (the “Loan”) to the Partnership under the Sanovest Loan Agreement.
- 23. ~~22.~~ Under the Sanovest Loan Agreement, the Partnership is required to provide Sanovest with information and documents, including but not limited to the following:

- (a) all such financial information in respect of the Bear Mountain Assets and their respective operations that Sanovest may reasonably request;
 - (b) detailed management prepared financial statements within 20 days of the end of each month and a detailed financial statement with specified information within 90 days of the end of each fiscal year. The annual financial statements are required to be audited by a chartered accountant; and
 - (c) such other documents containing such assurances, information and covenants as Sanovest's solicitors may require with regard to the Loan and Sanovest's security.
24. ~~23.~~ The Sanovest Loan Agreement also provides that the Partnership is required to carry on and conduct business in a proper, efficient and businesslike manner and in accordance with good business practices; the Partnership may not make payments to any person other than in the normal course of business; and the Partnership may not make payments or engage in financial transactions with parties who are not at arm's length from the Partners.
25. ~~24.~~ The Partnership's obligations under the Sanovest Loan Agreement are required to be performed by EBMD.

The formation of BMA by Matthews and Tom Kusumoto

26. ~~25.~~ Sometime prior to May 2017, Matthews and Tom Kusumoto incorporated a new company, Bear Mountain Adventures Ltd. ("BMA"). BMA is a company incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, British Columbia.
27. ~~26.~~ ~~At all material times~~ From the incorporation of BMA until June, 2021, Matthews and Tom Kusumoto were also the sole directors and, through their holding companies 1096501 B.C. Ltd. ("109") and SJN Holdings Ltd. ("SJN"), each held 50% of the issued and outstanding common shares of BMA.
28. On or about June 1, 2021, Tom Kusumoto resigned as director of BMA. Since such time, Matthews has continued in his role as director and the shareholding structure of BMA has remained unchanged.
29. ~~27.~~ Matthews and Tom Kusumoto incorporated BMA for the purpose of acquiring properties from EBMD to, among other uses, conduct an adventure business including the construction of a gondola to nearby Mount Finlayson, separate from the business of the Partnership.

The Self-Interested Transactions

30. ~~28.~~ Between ~~May 2017 and November 2020~~ January 2016 and June 2022, and as described below, Matthews and/or Tom Kusumoto, in breach of their fiduciary duties and while having disclosable interests in the transactions for which no proper shareholder approval was sought or obtained, caused EBMD and BMGC to sell, assign or transfer valuable assets to BMA, a corporation they controlled during the material time period, or to Matthews personally, for no or inadequate consideration.

The assignment of the CRD reimbursements to BMA

31. ~~29.~~ Prior to the Partnership's acquisition of the Bear Mountain Assets, the Capital Regional District (the "CRD") entered into an agreement with the prior owners of the Bear Mountain Assets known as the Skirt Mountain Reservoir Agreement (the "Reservoir Agreement"). Under the Reservoir Agreement, the CRD agreed to reimburse certain costs incurred by the prior owners of the Bear Mountain Assets in constructing the Skirt Mountain Reservoir as part of the overall development of the Bear Mountain community.
32. ~~30.~~ As part of its acquisition of the Bear Mountain Assets, EBMD, in its capacity as the Managing Partner of the Partnership, took an assignment of the right, title and interest of the prior owners in the Reservoir Agreement.
33. ~~31.~~ By an agreement dated as of May 1, 2017, EBMD, acting on behalf of the Partnership, entered into an assignment agreement (the "Assignment Agreement") with BMA. Under the Assignment Agreement, with the consent of the CRD, EBMD and the Partnership assigned their interest in the Reservoir Agreement to BMA.
34. ~~32.~~ In order to secure the CRD's consent to the Assignment Agreement, Matthews and Tom Kusumoto made an express or implied representation to CRD that BMA was "an entity controlled by the partners of [the Partnership]".
35. ~~33.~~ Although the Assignment Agreement was expressed as being between the Partnership and the CRD, as a matter of law, the Assignment Agreement was made by EBMD on behalf of the Partnership. In their capacity as directors of EBMD, Matthews and Tom Kusumoto caused EBMD to enter into the Assignment Agreement.
36. ~~34.~~ EBMD received no consideration from BMA for the assignment of its interest in the Reservoir Agreement from BMA.
37. ~~35.~~ Between September 2017 and January 2019, in accordance with its obligations under the Reservoir and Assignment Agreements, the CRD made three payments to BMA totalling \$3,371,524.44 (the "CRD Payments").
38. ~~36.~~ BMA distributed the funds derived from the CRD Payments to Matthews and Tom Kusumoto for their own use and benefit. Tom Kusumoto loaned some or all of these funds received from BMA to Matthews which Matthews used for his own use and benefit, with the result that Matthews obtained the immediate economic benefit of all or substantially all of the funds derived from the CRD Payments.

The sale of the Gondola Property to BMA

39. ~~37.~~ In November 2018, and for the purposes of a sale of property to BMA, Matthews and Tom Kusumoto caused BMGC to apply for and obtain a subdivision of the lands held by BMGC that formed part of the Mountain Golf Course, creating a separate title to a property legally described as PID 030-726-123, Lot A, District Lot 82, Highland District Plan EPP 70640 (the "Gondola Property").
40. ~~38.~~ The Gondola Property was so named because BMA intended to construct a passenger gondola from the site of the Gondola Property to the top of nearby Mount Finlayson and back, similar to the Grouse Mountain Skyride.
41. ~~39.~~ BMGC held the Gondola Property on trust as agent, nominee and bare trustee for EBMD on behalf of the Partnership.
42. ~~40.~~ On or about May 14, 2019, BMGC agreed to sell the Gondola Property to BMA. On the Form A transfer filed in connection with the transfer of the Gondola Property, BMGC represented the Gondola Property's market value as being \$122,820. The consideration for the sale was \$1.
43. ~~41.~~ Matthews and Tom Kusumoto caused BMGC to enter into the agreement to sell the Gondola Property to BMA and purported to approve the sale on behalf of both BMGC and EBMD, which held the beneficial interest in the Gondola Property on behalf of the Partnership.
44. ~~42.~~ Matthews and Tom Kusumoto made no effort to determine the true market value of the Gondola Property at the time of its sale to BMA, but it may have been in the millions.
45. ~~43.~~ BMGC and EBMD received no or alternatively inadequate consideration from BMA for the sale of the Gondola Property.

The diversion of the proceeds of the Pinehurst construction loan and sales to BMA

46. ~~44.~~ In or about 2019, EBMD, acting on behalf of the Partnership, decided to develop a 39 lot servicing project known as "Pinehurst" on lands adjacent to Bear Mountain Parkway (the "Pinehurst Project"). Once cleared and serviced, the Pinehurst Project lots would be sold to third parties to construct single family homes. The specific properties on which the Pinehurst Project was located were held by nominee companies as bare trustees for the benefit of EBMD, in its capacity as Managing Partner of the Partnership.
47. ~~45.~~ By an agreement dated as of October 9, 2019, EBMD, in its capacity as the Managing Partner of the Partnership, entered into an agreement with a third party financial institution (the "Pinehurst Lender") in which the Pinehurst Lender agreed to make available to the Partnership a construction loan in the principal amount of up to \$8.125 million to assist in financing the development of the Pinehurst Project (the "Credit Facility").

48. ~~46.~~ Under the terms of the Credit Facility, EBMD agreed not to use the proceeds of the Credit Facility for the benefit or on behalf of any person or entity other than EBMD and the Partnership.
49. ~~47.~~ In or about 2020, and in the course of the Pinehurst Project, Matthews and/or Tom Kusumoto caused EBMD to transfer funds advanced under the Credit Facility as well as the proceeds of the sales of certain Pinehurst Project lots to BMA without consideration or a proper accounting (the "Diverted Pinehurst Funds"). The full particulars of the Pinehurst Diverted Funds are unknown to Sanovest.
50. ~~48.~~ On or about September 9, 2020, BMA entered into an agreement to purchase the Bear Mountain Activity Centre (the "Recreation Centre" or the "BMAC") from the City of Langford for \$3.575 million. BMA used the Diverted Pinehurst Funds to fund its purchase of the Recreation Centre.

The diversion of additional funds to BMA for the Recreation Centre

51. In connection with BMA's agreement to purchase the Recreation Centre in September 2020, and following the completion of that transaction on or about December 22, 2020, Matthews and/or Tom Kusumoto caused EBMD to transfer additional funds held by EBMD for the benefit of the Partnership to BMA in order to satisfy operational and capital expenditures relating to the Recreation Centre (the "Recreation Centre Funding").
52. Following Tom Kusumoto's resignation as a director of EBMD and BMA in June 2021, Matthews, in the purported exercise of his management authority as president and chief executive officer of EBMD and without the approval of EBMD's board of directors, caused EBMD to continue the Recreation Centre Funding to BMA. This continued until approximately June 2022.
53. The amounts and particulars of the Recreation Centre Funding are known to Matthews and at least in part to Tom Kusumoto, but are unknown to Sanovest.
54. EBMD has received no consideration or benefit from BMA for the Recreation Centre Funding.

The diversion of the proceeds of the Players Peak loan to Matthews personally

55. By an agreement dated as of May 22, 2020, EBMD, in its capacity as the Managing Partner of the Partnership, entered into an agreement with a third party financial institution for the purpose of obtaining financing in relation to certain lands held for the benefit of the Partnership (the "Players Peak Loan").
56. Under the terms of the Players Peak Loan, EBMD agreed not to use the proceeds of the Players Peak Loan for the benefit or on behalf of any person or entity other than EBMD, the Partnership or its subsidiaries, and to use such proceeds only for the business purposes of those entities.

57. In or around June, 2020, almost immediately after the Players Peak Loan was advanced to the Partnership and contrary to the terms of the Players Peak Loan, Matthews and Tom Kusumoto agreed that EBMD would transfer \$1,000,000 of the loan proceeds to Matthews for his personal use and benefit, and subsequently caused EBMD to do so without a loan or other written agreement; security, interest or terms for repayment; or a proper accounting (the "Diverted Players Peak Funds").
58. EBMD received no consideration or benefit from Matthews for the Diverted Players Peak Funds.

The diversion of additional funds to Matthews personally

59. Between 2016 and 2019, Matthews and/or Tom Kusumoto caused EBMD to transfer at least \$400,000 of funds held by EBMD for the benefit of the Partnership to Matthews for his personal use and benefit, some of which related to reimbursement for home renovation expenses or other personal matters and none of which related to the business of the Partnership (the "Unauthorized Personal Expenses"). The full particulars of the Unauthorized Personal Expenses are known to Matthews but unknown to Sanovest.
60. EBMD received no consideration or benefit from Matthews for the Unauthorized Personal Expenses.
61. ~~49.~~ The Assignment Agreement, the Gondola Property sale~~and~~, the Diverted Pinehurst Funds, the Recreation Centre Funding, the Diverted Players Peak Funds, and the Unauthorized Personal Expenses are hereinafter referred to collectively as the "Self-Interested Transactions".

The Self-Interested Transactions were not disclosed and approved in the manner required by the Business Corporations Act

62. ~~50.~~ The Self-Interested Transactions were not disclosed and approved in the manner required by the Business Corporations Act, S.B.C. 2002, c. 57 (the "BCA").
63. ~~51.~~ The Self-Interested Transactions were conceived of, approved by and implemented by Matthews and Tom Kusumoto in their capacity as directors of EBMD and, in the case of the Gondola Property, EBMD and BMGC, and in breach of their fiduciary duties to act honestly, in good faith and in the best interests of EBMD and BMGC.
64. ~~52.~~ By reason of their offices as directors of EBMD, BMGC and BMA, and the 50% of the common shares of BMA that each of them held through their respective holding companies, and by reason of the personal benefit Matthews derived from the Diverted Players Peak Funds and Unauthorized Personal Expenses, at the material times Matthews and Tom Kusumoto each had a disclosable interest in the Self-Interested Transactions within the meaning of s. 147 of the BCA.
65. ~~53.~~ In respect of each of the Self-Interested Transactions, Matthews and Tom Kusumoto did not disclose the nature and extent of their interest to the shareholders of EBMD and

BMGC in writing, in the manner required by the *BCA*, or obtain approval of the Self-Interested Transactions by special resolution following such disclosure.

66. ~~54.~~ The Self-Interested Transactions were not fair and reasonable to EBMD and BMGC. In each case, the Self-Interested Transactions were for no or inadequate consideration and were not in the best interests of EBMD and BMGC.

EBMD's breach of the reporting obligations under the Partnership Agreement and Sanovest Loan Agreement

67. ~~55.~~ On April 11, 2022, Sanovest made formal demand that EBMD comply with its reporting obligations under the Partnership Agreement and Sanovest Loan Agreement.
68. ~~56.~~ On Matthews' instructions, EBMD has, despite Sanovest's demand, refused to comply with its reporting obligations under the Partnership Agreement and Sanovest Loan Agreement.
69. ~~57.~~ In particular:
- (a) EBMD has refused to make all records and books of account available to Sanovest in its capacity as Partner of the Partnership;
 - (b) EBMD has not prepared and submitted to the Partners a current business plan, annual operating budgets, annual updates or financial reports;
 - (c) EBMD has not provided all financial information in respect of the Bear Mountain Assets and their respective operations that Sanovest has reasonably requested;
 - (d) EBMD has not prepared detailed management prepared financial statements within 20 days of each month end or a detailed financial statement within 90 days of the end of each fiscal year;
 - (e) EBMD has not prepared year end financial statements for the Partnership since 2018;
 - (f) EBMD has not obtained an audit opinion on the Partnership's year end financial statements;
 - (g) EBMD has refused to make information regarding the Resort Partnership and other Partnership assets available to Sanovest in its capacity as Partner; and
 - (h) EBMD has refused to provide documents containing assurances and information requested by Sanovest's solicitors with regard to the Loan and its supporting security.
70. ~~58.~~ EBMD's failure to provide the information set out above, and its refusal, directed by Matthews, to make all books and records of the Partnership available to Sanovest, is a breach of the Partnership Agreement, the Sanovest Loan Agreement and EBMD's fiduciary duty owed to Sanovest as a Partner of the Partnership.

Part 2: RELIEF SOUGHT

1. An order that as a result of the Self-Interested Transactions, Matthews and Tom Kusumoto pay equitable compensation to EBMD and BMGC.
2. In the alternative, an order that Matthews and Tom Kusumoto account to EBMD and BMGC for any profit that has or will accrue to them as a result of the Self-Interested Transactions.
3. An order for specific performance of EBMD's reporting obligations under the Partnership Agreement and Sanovest Loan Agreement.
4. Interest.
5. Costs.
6. Such further and other relief as counsel may advise and the Court may permit.

Part 3: LEGAL BASIS

1. By reason of their position as directors and fiduciaries of EBMD and BMGC, Matthews and Tom Kusumoto owed duties of good faith, undivided loyalty and full disclosure to EBMD and BMGC.
2. At the material times, and for the reasons set out in Part 1 above, Matthews and Tom Kusumoto each had a disclosable interest in the Self-Interested Transactions.
3. Matthews and Tom Kusumoto did not make prompt and full disclosure, in writing, of the nature and extent of their interests when the Self-Interested Transactions were made, either in the manner required by the *BCA* or at all.
4. The Self-Interested Transactions were not and still have not been approved by a special resolution of the shareholders of EBMD or BMGC after full disclosure of the nature and extent of Matthews and Tom Kusumoto's interests in the transactions, in the manner prescribed by the *BCA*.
5. The Self-Interested Transactions were not fair and reasonable, procedurally or substantively, to EBMD or BMGC. They were contrary to Matthews, Tom Kusumoto, EBMD and BMGC's fiduciary and other duties. They were not commercially reasonable. They were not for fair market value or indeed, any consideration to EBMD and BMGC. They were not in the best interests of EBMD and BMGC.
6. As a result of Matthews and Tom Kusumoto's breaches of their fiduciary obligations and other obligations owed under the *BCA*, EBMD and BMGC have suffered loss and damage.
7. Sanovest pleads and relies on ss. 142 and 147-153 of the *BCA*.

8. Section 31 of the Act provides that “[p]artners are bound to render true accounts and full information of all things affecting the partnership to any partner or his or her legal representatives”.
9. On Matthews’ instructions, EBMD has, despite Sanovest’s demand and without lawful excuse, refused to comply with its reporting obligations under the Act, the Partnership Agreement and Sanovest Loan Agreement. Sanovest seeks an order for specific performance of EBMD’s and the Partnership’s reporting obligations under those agreements.

Plaintiff’s address for service: Fasken Martineau DuMoulin LLP
 550 Burrard Street, Suite 2900
 Vancouver, BC V6C 0A3
 Attention Andrew I. Nathanson, ~~Q~~K.C. and Oliver Verenca

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: ~~13-May-2022~~20-March-
2023



Signature of Lawyer for Sanovest Holdings Ltd.

Andrew I. Nathanson, ~~Q~~K.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party’s possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for statutory relief pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57 arising out of the breach of duty by directors of a corporation.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4:

The Solicitors for the Plaintiff, Sanovest Holdings Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Andrew I. Nathanson, Q.C./329480.00001)

This is Exhibit "G" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia



NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD., TOMOSON (TOM)
KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

Filed by: Daniel Matthews (the "Defendant")

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25.00

Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1, 2, 4, 5, 8, 10, 12, 16, 17, 19, 21, 22, 28 and 42 of Part 1 of the Amended Notice of Civil Claim are admitted.

2. The facts alleged in paragraphs 6, 7, 11, 13, 14, 15, 18, 20, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and 70 of Part 1 of the Amended Notice of Civil Claim are denied, except as specifically admitted below.

3. The facts alleged in paragraphs 3 and 9 of Part 1 of the Amended Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant’s Version of Facts

A. The Bear Mountain Project

1. Background

4. In or around mid-2013, Daniel Matthews (“**Matthews**”) introduced Tomoson Kusumoto (“**Tom Kusumoto**”) to an investment opportunity involving the acquisition of the assets associated with the “Bear Mountain” development in the Greater Victoria area (the “**Bear Mountain Assets**”). The Bear Mountain Assets included more than eight hundred acres of land on and adjacent to Skirt Mountain in the City of Langford and District of Highlands as well as the Westin Bear Mountain Golf Resort and Spa (the “**Hotel**”) and two golf courses located on those lands.

5. At that time, Tom Kusumoto and Matthews were involved in a land development project at Whistler Mountain (the “**Whistler Project**”). The Whistler Project involved the acquisition, site servicing, and ultimately the sale, of single-family residential lots.

6. The Whistler Project operated under the following general structure:

- (a) The project operated under the “Ecoasis” brand: a brand that Matthews had created and developed;
- (b) An operating company represented 50% by Matthews, 30% by Tom Kusumoto / Sanovest Holdings Inc. (“**Sanovest**”), and 20% by a third partner;

- (c) Matthews was responsible for all operational aspects of the Whistler Project; Sanovest's primary responsibility was to provide the capital necessary for the acquisition and site servicing work;
- (d) Sanovest was entitled to receive an 8% rate of return on the debt financing, together with a first entitlement to be repaid interest and loans from the proceeds of sales; and
- (e) The parties' objective throughout was to sell serviced lots as and when market conditions permitted, with an approximate time horizon of three to five years.

(the "**Whistler Business Terms**")

7. Matthews became aware of the potential sale of the Bear Mountain Assets through business contacts. On learning of the potential sale opportunity, Matthews conducted investigations and inquiries over a period of approximately 18 months into the assets' development potential, their potential operating and land development costs, and the feasibility of the project and its acquisition.

8. When Matthews introduced the Bear Mountain Asset sale opportunity to Tom Kusumoto, Tom Kusumoto proposed that if they were successful in acquiring the assets, they enter into a business arrangement with the financing and development obligations modeled on the Whistler Business Terms.

9. Ultimately, Matthews, through a company he controlled, entered into a purchase and sale agreement for the Bear Mountain Assets in August 2013. Matthews and Tom Kusumoto agreed to the following general business structure:

- (a) the Bear Mountain Assets would be held in a limited liability partnership structure, which would take an assignment of the purchase and sale agreement. The partnership would be owned equally by 599315 B.C. Ltd. ("**599315**"), a company controlled by Matthews, and by Sanovest, a company that Matthews understood was controlled by Tom Kusumoto;

- (b) 599315, through Matthews, would be responsible for managing the overall operations, including the land development work; Sanovest's primary responsibility was to provide the capital necessary for the acquisition, operations, and land development work;
- (c) Matthews, nominated by 599315, and Tom Kusumoto, nominated by Sanovest, would serve as directors in any companies associated with the partnership. In such companies, Matthews would serve in the role of President/CEO, reflecting 599315's responsibility for managing the overall operations;
- (d) Sanovest would receive an 8% rate of return on its debt financing, together with a first entitlement to be repaid interest and loans from the proceeds of sales and a preferred waterfall distribution based on profitability; and
- (e) Their objectives with the Bear Mountain Assets would be to: (i) service and improve the operating businesses and amenities, with a view to improving the public image and community character of the Bear Mountain development; (ii) conduct land development work, including site servicing work, with a view to selling to developers/builders for building development, thereby increasing the sale value of the land assets as a whole; (iii) generate sufficient revenues from initial sales to pay down the financing provided by Sanovest; and (iv) sell the land assets, either in tranches or *en bloc*, in an appropriate manner, once the increased land value yielded a reasonable return on their investment.

(the "Bear Mountain Business Terms")

2. Business Structure

10. 599315 and Sanovest acquired the Bear Mountain Assets through a limited liability partnership structure. The acquisition completed on October 8, 2013.

11. On September 17, 2013, Ecoasis Bear Mountain Developments Ltd. ("EBMD") was incorporated as a British Columbia company, which was to have the role of "managing partner" for the limited liability partnerships. The shares of EBMD were and are held 50% by

599315 and 50% by Sanovest. Each nominated a director to serve on EBMD's board. 599315's nominee was at all times Matthews, except for a period between 2014 and 2016. Sanovest's nominee was Tom Kusumoto until on or about June 1, 2021, when Tom Kusumoto's son, Tian Kusumoto, replaced him as Sanovest's nominee.

12. By agreement dated September 24, 2013 (the "**Partnership Agreement**"), Ecoasis Developments LLP (the "**Partnership**") was formed for the purpose of holding the Bear Mountain Assets. 599315, Sanovest and EBMD each became partners in the Partnership. The Partnership's units are held in equal proportion by 599315 and Sanovest (100 units each), and 1 unit is held by EBMD.

13. As set out in the preamble to the Partnership Agreement, the assets to be acquired included: (a) the "Mountain Course" and the "Valley Course" (the "**Golf Courses**"); (b) the Hotel; and (c) significant tracts of lands, including as described as Schedule "C" to the Partnership Agreement.

14. Section 2.3 of the Partnership Agreement specified that the Partnership would acquire and maintain a limited liability partnership interest in a second limited liability partnership, Ecoasis Resort and Golf LLP (the "**Resort Partnership**"), which would own and operate the Golf Courses and the Hotel.

15. The Resort Partnership was formed by a separate partnership agreement also dated September 24, 2013 (the "**Resort Partnership Agreement**"). The Partnership and EBMD became its partners, with the latter as "managing partner". The units of the Resort Partnership were held 100 by the Partnership and 1 by EBMD. As described in the Resort Partnership Agreement, the Resort Partnership was formed for the purpose of acquiring the assets comprising the Golf Courses and the Hotel, and to carry out the businesses of the Golf Courses and the Hotel and other activities or business ancillary to or in furtherance of those businesses.

16. In response to paragraphs 5 and 20 of Part 1 of the Amended Notice of Civil Claim:

- (a) BM Mountain Golf Course Ltd. ("**BMGC**") is a British Columbia company that owns certain assets associated with the "Mountain Course".

Its sole share was transferred to the Resort Partnership on October 8, 2013, in connection with the larger Bear Mountain Asset acquisition;

- (b) The directors of BMGC were Matthews (as nominee of 599315) and Tom Kusumoto (as nominee of Sanovest) until June 1, 2021, when Tian Kusumoto replaced Tom Kusumoto as Sanovest's nominee; and
- (c) Matthews denies that Sanovest is a "beneficial shareholder" of BMGC, or otherwise has any beneficial interest in BMGC's shares or property.

17. In response to paragraph 13 of Part 1 of the Amended Notice of Civil Claim, section 12 of the Partnership Agreement authorizes EBMD, as managing partner, to carry out the business of the Partnership. However, the Partnership Agreement does not restrict the general authority of the partners to act on behalf of the Partnership. The Partnership does not "act... only through EBMD".

3. Sanovest Loan Agreement

18. In accordance with the Bear Mountain Business Terms, Sanovest advanced the financing required for the purchase of the Bear Mountain Assets, and at that stage, made available additional funds required for the business operation and land development work (the "Sanovest Loan").

19. The terms of the Sanovest Loan were set out in a commitment letter to the Partnership dated October 8, 2013 (the "Sanovest Loan Agreement"). The terms of Sanovest's financing included, among other things, an interest rate of 8% per annum, stated to be calculated daily and compounded quarterly, in addition to a lender's fee of \$700,000 paid from the initial advance.

20. In response to paragraph 23 of Part 1 of the Amended Notice of Civil Claim, the specific contents of the reporting requirements referenced are set out at Schedule "A" to the Sanovest Loan Agreement – "Standard Terms and Conditions", sections 3(a)(viii) and 6(k) and (l), and not as paraphrased in the Amended Notice of Civil Claim.

21. In response to paragraph 24 of Part 1 of the Amended Notice of Civil Claim, the specific contents of the covenants referenced are set out in section 3 of Schedule "A" to the Sanovest Loan Agreement, and not as paraphrased in the Amended Notice of Civil Claim. Among other things, the Sanovest Loan Agreement does permit the Partnership to make payments out of the normal course, and to make payments and engage in financial transactions that are non-arm's length, with Sanovest's consent.

22. In response to paragraph 25 of Part 1 of the Amended Notice of Civil Claim, the Property (as defined in the Sanovest Loan Agreement) may be managed by someone other than EBMD, for and on behalf of the Partnership, provided that Sanovest approves the manager and the management terms.

4. Change to Sanovest Board of Directors and Nominee

23. The genesis of the claims alleged in the Amended Notice of Civil Claim is in an apparent change within the governance of Sanovest, the particulars of which are unknown to Matthews but which are known to Sanovest.

24. When the Bear Mountain Business Terms were negotiated, Tom Kusumoto represented to Matthews that Sanovest was "his" company, and that he had full authority to act on Sanovest's behalf. At various times, and from time to time, Tom Kusumoto involved Tian Kusumoto in various aspects of the Partnership. However, all decisions were made by Tom Kusumoto, who advised Matthews that Tian Kusumoto did not have authority to make decisions on Sanovest's behalf. Matthews understood and reasonably believed that Tom Kusumoto was Sanovest's sole directing mind.

25. On or around March 1, 2021, and unknown to Matthews at that time, Tian Kusumoto was added as a director of Sanovest. On June 1, 2021, Tian Kusumoto replaced Tom Kusumoto as Sanovest's nominee to EBMD. Subsequently, on or around November 4, 2021, Tom Kusumoto ceased to be a director of Sanovest.

26. The claims alleged in the Amended Notice of Civil Claim arise from Tian Kusumoto's new role as Sanovest's nominee to EBMD. As set out in more detail below, each of the matters raised against Matthews was known to and consented to by Sanovest at the material

times. Sanovest, as currently directed by Tian Kusumoto, now seeks to resile from its prior corporate acts. In response to the whole of the Amended Notice of Civil Claim, Matthews asserts that change in Sanovest's internal management does not and cannot create any viable legal claim based simply on disagreement with prior, validly authorized corporate acts. In the alternative, Matthews maintains that Tom Kusumoto had ostensible authority to act on Sanovest's behalf, such that Sanovest is bound by the authorizations and commitments Tom Kusumoto made in his capacity as Sanovest's nominee to EBMD and its representative in Partnership affairs.

B. Alleged Self-Interest Transactions

27. In response to paragraph 30 of Part 1 of the Amended Notice of Civil Claim, and as set out in more detail below, beginning in or around 2016, Matthews and Tom Kusumoto pursued a marketing strategy for the sale of the Bear Mountain project as an entire package. This strategy sought an *en bloc* transfer of the Bear Mountain Assets to a purchaser. Matthews and Tom Kusumoto considered that such a strategy would allow 599315 and Sanovest to benefit from strength in the market at that time and from the value added by the Partnership's land development, amenity improvements, strategic partnerships, and operations work to that point.

28. As part of this strategy, Matthews and Tom Kusumoto also sought to exclude certain assets from the "package" sale opportunity. Matthews understood and reasonably believed that their reasons for doing so included: (a) that certain assets may have increased sale value if sold or operated separately; (b) to exclude receivables from a "package" sale (*i.e.*, without having to negotiate such exclusions as part of a general sale of Partnership assets); and (c) to exclude operations or opportunities that did not fall within the scope of the Bear Mountain Business Terms. Matthews understood and reasonably believed that Tom Kusumoto, in his capacity as Sanovest's representative and its nominee to EBMD, shared those objectives and was authorized by Sanovest to plan and carry out the exclusion of certain assets from the Partnership.

29. In further specific response to paragraph 30 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that any such transactions were done in breach of any duty owed to EBMD or otherwise. Matthews approved all such transactions on behalf of 599315. He reasonably understood and believed that EBMD's other shareholder, Sanovest, had similarly approved and authorized all such transactions.

1. Bear Mountain Adventures

30. In November 2016, and in furtherance of the above strategy, Tom Kusumoto directed that Sanovest's legal counsel incorporate a new company for the purpose of holding land and other assets associated with the potential development of a gondola from a base near the Hotel to the peak of Mount Finlayson (the "**Gondola Opportunity**").

31. Although the Gondola Opportunity could add significant value to the surrounding lands, it would entail construction and operation costs that were not contemplated by the Bear Mountain Business Terms. In addition, the Gondola Opportunity, as conceived at that time, may have required partnerships with the City of Langford, the Province of British Columbia, and/or regional First Nations groups. Accordingly, when Tom Kusumoto proposed to Matthews in or around 2016 that assets relating to the Gondola Opportunity be placed in a new company outside of the Partnership, Matthews did not have any objections or concerns. Tom Kusumoto and Matthews discussed and agreed that the potential development of the Gondola Opportunity outside of the Partnership would enhance rather than detract from the marketing of the Partnership's assets.

32. Bear Mountain Adventures Ltd. ("**BMA**") was incorporated for this purpose on or about November 18, 2016. The shares in BMA were held equally by companies associated with Matthews and Tom Kusumoto respectively: 50% by 1096501 B.C. Ltd., associated with Matthews, and 50% by SJN Holdings Inc, associated with Tom Kusumoto.

33. Matthews and Tom Kusumoto were the directors of BMA from incorporation until June 1, 2021, when Tian Kusumoto replaced Tom Kusumoto as a director.

34. Matthews understood and reasonably believed from Tom Kusumoto's representations that Sanovest had authorized and approved the incorporation of BMA for the purpose of holding assets connected to the Gondola Opportunity. Further, the incorporation and planned transfer of assets to BMA were known to some or all of Sanovest's other shareholders, and in particular to Tian Kusumoto. When advised in January 2017 that the gondola site, among other properties, "will be placed into a new company with Dan [Matthews] and Tom [Kusumoto]'s nominated companies as owners", Tian Kusumoto did not state any objection.

35. In response to paragraph 29 of Part 1 of the Amended Notice of Civil Claim, the intention of Matthews and Tom Kusumoto in incorporating BMA was not to conduct an “adventure business” separate from that of the Partnership. In any event, the Gondola Opportunity falls outside of the Bear Mountain Business Terms and its development or operation are not Partnership opportunities.

2. Assignment of Reservoir Agreement

36. The “**Reservoir Agreement**”, as defined at paragraph 31 of Part 1 of the Amended Notice of Civil Claim, was an agreement entered into in or around 2009 between the Capital Regional District (the “**CRD**”), and Bear Mountain Development Holdings Ltd. and Bear Mountain Master Partnership (who then owned the Bear Mountain Assets). The purpose of the Reservoir Agreement was for the CRD to provide compensation for work associated with the construction of a water reservoir on Skirt Mountain (which work was necessary to service the Bear Mountain development). Under the Reservoir Agreement, the Bear Mountain Assets’ owners at that time were entitled to \$4,773,240.50 in development cost charge credits.

37. The Reservoir Agreement was assigned to the Partnership when it purchased the Bear Mountain Assets. By May 2017, the remaining amount of the development cost charge credits was \$3,371,524.44. Therefore, and in order to protect this credit in any sale of the Partnership’s assets, the Partnership assigned the Reservoir Agreement to BMA by assignment agreement made May 1, 2017 (the “**Assignment Agreement**”). Sanovest was at all material times aware of the Assignment Agreement. Tom Kusumoto executed the Assignment Agreement on behalf of the Partnership, in his capacity as Sanovest’s representative.

38. In response to paragraph 34 of Part 1 of the Amended Notice of Civil Claim, neither Matthews nor Tom Kusumoto made any personal representation, express or implied, in entering to the Assignment Agreement. In any event, the reference in the Assignment Agreement to BMA as an “entity controlled by partners of Ecoasis” referred to Matthews and Tom Kusumoto as the controlling minds of both the Partnership and BMA. Matthews denies that the specific ownership structure of either BMA or the Partnership was relevant to the CRD’s consent to the Assignment Agreement.

39. In response to paragraph 37 of Part 1 of the Amended Notice of Civil Claim, in or around December 2018, the CRD and BMA entered into a further agreement for the dissolution of the Reservoir Agreement, and for the payment to BMA in cash of the \$3,148,874.44 in remaining development cost charge credits. The CRD paid those funds to BMA in 2019.

40. In response to paragraph 38 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that Tom Kusumoto advanced any loans to him out of funds paid through the dissolution of the Reservoir Agreement. Further, or in the alternative, all amounts advanced by Tom Kusumoto to Matthews were advanced under a separate agreement between them, and cannot and do not engage Sanovest's legal interests in relation to the Reservoir Agreement, or otherwise.

3. Transfer of Gondola Property to BMA

41. As set out above, BMA was incorporated in November 2016 for the purpose of holding land and other assets associated with the Gondola Opportunity. The "**Gondola Property**", as defined in the Amended Notice of Civil Claim, was the land identified for the base of the gondola, being a vacant approximate 1-acre tract near the first tee of the Mountain Course and held, at that time, by BMGC.

42. From and after November 2016, Matthews and Tom Kusumoto took steps to assess the feasibility of the Gondola Opportunity and to seek out partnerships with local authorities and First Nations. As these efforts progressed, they made arrangements in 2018 to transfer the Gondola Property to BMA, as originally contemplated.

43. In response to paragraphs 42 and 44 of Part 1 of the Amended Notice of Civil Claim, the stated value of \$122,820 in the Form A transfer represented the Gondola Property's assessed value in 2018. Matthews denies that the Form A transfer in any way misstated the value of the Gondola Property or that its value "may have been in the millions". The Gondola Property was and is not zoned for a gondola and would require significant additional density, among other things, to be developed. Any potential increase in value to the Gondola Property that may result from the Gondola Opportunity is speculative and yet to be realized.

44. In further response to paragraph 44 of Part 1 of the Amended Notice of Civil Claim, Sanovest's allegation that the Gondola Property's value "may have been in the millions" when transferred is contradicted by Tian Kusumoto's own statements at the material time. On or around July 17, 2018, Tian Kusumoto recommended to Tom Kusumoto and Matthews that EBMD add in the Gondola Property (which he acknowledged was excluded from the Bear Mountain Assets) as an incentive to a potential purchaser during that purchaser's due diligence period, stating "[t]he gondola site has little value".

45. In response to paragraph 45 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that BMGC or EBMD suffered any loss as the result of transfer of the Gondola Property to BMA. The transfer was authorized by the Partnership and by BMGC, including through Tom Kusumoto as the director appointed by Sanovest to both BMGC and EBMD.

4. Funding and Purchase of Bear Mountain Activity Centre

46. In response to paragraphs 46 to 50 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that the proceeds of any construction loan financing were improperly diverted for BMA's purchase of the Bear Mountain Activity Centre ("BMAC"), as alleged or at all.

47. The credit facility referenced at paragraph 47 of Part 1 of the Amended Notice of Civil Claim was originally issued to the Partnership on October 9, 2019. That credit facility was increased by agreement made November 27, 2020 providing a further \$4,000,000 in financing (the "Extension Agreement"). Any use of the Extension Agreement funds for the BMAC purchase was consistent with the terms of the Extension Agreement and was approved by the lender, who had sufficient security in the Pinehurst lands.

48. In or around December 2020, Partnership funds were advanced to BMA for the purpose of it purchasing the BMAC lands and buildings. BMAC is a community centre facility, which was then known as the North Langford Recreation Centre and was owned by the City of Langford. The BMAC purchase had been a strategic priority for the Partnership, due to the access to land and facility space that it provided, sited at the core of the development.

49. Sanovest was aware of and agreed to the Extension Agreement, including by agreeing on December 3, 2020 to release its security on Pinehurst lots to permit the advance of the Extension Agreement funds. Ultimately, the Extension Agreement funds were fully repaid to the lender, reducing the total distributions payable to Sanovest in repayment of the Sanovest Loan. As a result, the BMAC purchase was effectively financed by Sanovest.

50. The BMAC purchase was structured through BMA in order to accommodate the terms of a “framework agreement” for the sale of the Bear Mountain Assets *en bloc* to a third party. Those negotiations contemplated multiple scenarios, including the potential separate purchase of BMAC, or the potential exclusion of BMAC from the assets to be purchased. Thus, BMA was used as a vehicle to maintain the BMAC assets under separate legal ownership from the Partnership. However, it was at all times understood and agreed that BMAC would be operated and funded as an asset of the Resort Partnership, and that any profits generated would be treated as Resort Partnership revenues.

5. BMAC Funding

51. In response to paragraphs 51 to 54 of Part 1 of the Amended Notice of Civil Claim, beginning when BMAC was purchased, EBMD provided the funds necessary to satisfy BMAC’s operational and capital expenditures. EBMD was indeed obligated to do so, in accordance with the agreement to operate and fund BMAC as a Resort Partnership asset.

52. In or around August 2022, Sanovest, as directed by Tian Kusumoto, and acting unilaterally, caused EBMD to cease advancing funds to BMAC, including from a BMAC-specific account held by EBMD. As a result, Matthews had to advance personal funds, by way of loan, to fund BMAC’s ongoing operations (such as staff payroll). Sanovest’s conduct in this regard is in breach of its duties to the Partnership and risks causing significant loss and damage to the Partnership’s reputation and goodwill and to the value of the BMAC asset. Matthews has suffered loss and damage as a result his expenditures taken in an effort to mitigate the effects of Sanovest’s misconduct. Sanovest has also refused to permit property taxes and other invoices to be paid, despite available funds to make such payments.

53. Matthews has repeatedly stated to Tian Kusumoto, as Sanovest's current nominee to EBMD, that the Resort Partnership should formally acquire the BMAC assets from BMA. To date, Sanovest has refused to permit any such transfer of assets.

6. Player's Peak Loan Proceeds

54. In response to paragraphs 55 to 58 of Part 1 of the Amended Notice of Civil Claim, in or around June 2020, the Partnership caused \$1,000,000 in funds to be advanced to Matthews personally (the "Advance"). The Advance was duly authorized by EBMD's board of directors at that time, including by Tom Kusumoto, who communicated that authorization to the Partnership's external accountants. The purpose of the Advance was to provide funds for Matthews' use personally as an advance on distributions to be made from the eventual sale of Partnership assets. Matthews requested, and was paid the Advance, on the basis that his role in leading the Partnership's overall operations occupied substantially all of his working time for a limited annual salary.

55. In specific response to paragraph 56 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that the Advance was made in breach of any obligation under the "Player's Peak Loan" (as defined in the Amended Notice of Civil Claim).

56. Matthews does not and has never disputed the Advance, nor his obligation to account to the Partnership for the Advance from eventual distributions from the sale of Partnership assets.

57. Although the Advance was authorized by Sanovest at the time it was made, Tian Kusumoto has more recently raised repeated complaints about the Advance. In response, Matthews has sought to engage with Tian Kusumoto with a view to more specifically documenting the Advance's terms. To date, Tian Kusumoto has refused to engage in good faith in any such discussion.

7. Amounts “Due from Shareholder”

58. In response to paragraph 59 of Part 1 of the Amended Notice of Civil Claim, from 2016, and indeed earlier, amounts due to the Partnership from Matthews personally were recorded in the Partnership’s financial statements. Such amounts included goods or services procured through the Partnership that were for uses unrelated to the Partnership business. At the same time, Matthews regularly incurred Partnership expenses from personal funds.

59. In further response to paragraph 59 of Part 1 of the Amended Notice of Civil Claim, Matthews specifically denies that any amounts were on account of any renovation work at his home.

60. Sanovest agreed to, was aware of, and accepted the “due to shareholder” balance owing by Matthews. By agreement made with Sanovest (through Tom Kusumoto), the Partnership agreed that this balance would not bear interest and, if not repaid earlier, would be payable from eventual distributions from the sale of Partnership assets.

61. Matthews does not and has never disputed that there is a “due to shareholder” balance with the Partnership. Further, Matthews has acted in reliance on Sanovest’s acknowledgment and agreement that such amounts would not bear interest and would not be immediately repayable.

7. Response to Alleged “Self-Interested Transactions”

62. In response to paragraph 61 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that any of the above-described matters constitute “self-interested transactions”, as alleged or at all. At all material times, the above facts and matters proceeded by agreement within the Partnership and in a manner consistent with the partners’ business objectives. To the extent Matthews was bound by any substantive fiduciary or corporate duties to EBMD or BMGC, which is not admitted but is expressly denied, then Matthews acted in accordance with such duties, which are constrained by the context in which EBMD and BMGC operate, as legal vehicles for the conduct of Partnership business.

C. Alleged Disclosure Obligation

63. In response to paragraphs 62 to 66 of Part 1 of the Amended Notice of Civil Claim, the referenced transactions were in relation to the property of the Partnership, in which EBMD is merely a legal vehicle. In the circumstances, the disclosure requirements of section 147 of the *Business Corporations Act*, S.B.C. 2002, c. 57 are inapplicable.

64. Further, and in any event, all of the referenced transactions were done with the knowledge and approval of Sanovest, whose nominee Tom Kusumoto provided corporate approvals on behalf of both EBMD and BMGC.

65. If, contrary to the above, Tom Kusumoto was required to but failed to seek out and obtain approvals from other Sanovest directors or shareholders, Matthews had no knowledge of any such requirement or failure to fulfill such requirement. At all times from the inception of the Partnership and until June 1, 2021, Tom Kusumoto had actual authority, or in the alternative, ostensible authority, to approve and carry out corporate and Partnership acts on Sanovest's behalf.

66. In the alternative, if Matthews held any disclosable interest under of section 147 of the *Business Corporations Act*, which is not admitted but is expressly denied, then the subject transactions were procedurally and substantively fair, entered into in good faith, and in the best interests of EBMD or BMGC, to the extent that either held any cognizable legal interest in any such transactions.

D. Reporting Obligations

67. In response to paragraphs 67 to 70 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that EBMD has refused to comply with any aspect of Sanovest's April 11, 2022 demand for documents and records, or that Matthews has directed any refusal or non-cooperation by EBMD in that regard. Sanovest has at all times had complete access to the Partnership's financial records and banking information and Matthews has never restricted or interfered with Sanovest's ability to access these records.

68. In specific response to paragraphs 69(a) – (h) of Part 1 of the Amended Notice of Civil Claim, Matthews says as follows:

- (a) EBMD has never refused to make records or books of account available to Sanovest, as alleged or at all. In particular, Sanovest has full access to Partnership financial information, including in the hands of its external accountant. This includes access to the general ledger and all financial statements, and complete access to the external accountant's services for the purpose of making EBMD-related inquiries. Further, on May 3, 2022, Tian Kusumoto, together with separate accountants he had retained, attended at the Partnership's office at Bear Mountain on short notice. They were, similarly, provided with complete access to the available Partnership records that they requested.
- (b) Matthews denies that he has directed any refusal or non-cooperation by EBMD in preparing financial reports, updates, or budgets. EBMD has regularly provided such information to Sanovest, and Sanovest has access to EBMD's full financial information, as described above. The original business plan, as developed by Matthews and Tom Kusumoto, remains the current business plan.
- (c) Matthews denies that EBMD has refused to provide financial information in respect of the Bear Mountain assets and operations in response to any reasonable request made by Sanovest.
- (d) The requirement that EBMD provide detailed management prepared financial statements was waived by Sanovest prior to its demand on April 11, 2022. Since that time, and as Sanovest is aware, the Partnership has been required to focus its efforts on reconciling past financial information. Sanovest's claim of failure to provide detailed management prepared financial statements is not advanced in good faith, as Sanovest is fully aware of the pressing focus on reconciling past financial information and the reasons for which current detailed management prepared financial statements are not yet available.

- (e) The allegation that Matthews has instructed EBMD not to prepare financial statements for the Partnership since 2018 is knowingly false. Sanovest has been advised by the Partnership's independent accountant, and is separately aware, that the delay in preparing updated financial statements is wholly outside of Matthews' control.
- (f) Sanovest had in the past waived audits of EBMD's year-end financial statements. The waiver, if any, of any subsequent year-end financial statements is a matter to be determined among 599315 and Sanovest.
- (g) Matthews denies that EBMD has refused to provide financial information in respect of the Resort Partnership or other Partnership assets in response to any reasonable request made by Sanovest.
- (h) Matthews denies that EBMD has refused to provide any documents containing assurances and information in relation to the Sanovest Loan Agreement or its supporting security.

69. In response to paragraph 70 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that he has directed EBMD to withhold provision of any information to which Sanovest is entitled, as alleged or at all.

Division 3 – Additional Facts

70. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

71. Matthews consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

72. Matthews opposes the granting of the relief sought in paragraphs 1, 2, 4, 5, and 6 of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

73. Matthews takes no position on the granting of the relief sought in paragraph 3 of Part 2 of the Amended Notice of Civil Claim.

Part 3: LEGAL BASIS**A. No Standing**

74. In response to the whole of the Amended Notice of Civil Claim, Sanovest's claim is, in substance, a claim alleging: (a) harm to the Partnership; and (b) breaches of alleged fiduciary duties said to be owed to EBMD and BMGC. Sanovest has not advanced, and has not sought to advance, any claim in the name of or on behalf of the Partnership, EBMD or BMGC in respect of the alleged harm, loss, or breach of duty. Sanovest is not at liberty to claim, in its own right, for harm done to the Partnership, EBMD or BMGC. The Amended Notice of Civil Claim should be struck out for lack of standing.

B. Claims under the *Business Corporations Act*

75. In response to paragraphs 1 to 7 of Part 3 of the Amended Notice of Civil Claim, Matthews denies that sections 142 or 147 – 153 of the *Business Corporations Act* are applicable in respect of any Partnership acts alleged to be "self-interested transactions". The acts were, in substance, acts of the Partnership and not of EBMD or BMGC, which are not operating companies but legal vehicles for the conduct of Partnership business. EBMD and BMGC did not have any "material interest", or indeed any relevant beneficial interest in the impugned transactions or underlying assets.

76. In specific response to Sanovest's alleged reliance on section 142 of the *Business Corporations Act*, section 105 of the *Partnership Act*, R.S.B.C. 1996, c. 348 expressly excludes partners (which Matthews, in any event, is not) from the duties imposed on directors of corporations at common law or under section 142 of the *Business Corporations Act*.

77. In the alternative, and in response to Sanovest's alleged reliance on the disclosure requirements and related obligations in sections 147 – 153 of the *Business Corporations Act*, the impugned transactions all occurred with the actual knowledge of and approval by both shareholders: 599315 and Sanovest, through their respective nominees. Further, and in any event, all of the impugned transactions were procedurally and substantively fair, entered into in good faith, and in the best interests of EBMD or BMGC, who consented to them. In the circumstances,

Matthews can have no equitable obligation to pay compensation or account for any profits arising from such transactions.

78. At all material times, Matthews acted honestly and reasonably, in good faith, and with a view to the best interests of EBMD, BMGC and the Partnership, and exercised due care, diligence, and business judgment that a reasonably prudent individual would exercise in comparable circumstances. Matthews reasonably relied on Tom Kusumoto's representations that he had authority to enter into and approve transactions on Sanovest's behalf, such that Sanovest is bound by Tom Kusumoto's approvals on its behalf, and is barred from asserting that Tom Kusumoto lacked authority in this regard.

C. Sanovest Not Entitled to Equitable Relief

79. Matthews denies that EBMD or BMGC have suffered any loss or damage arising from the alleged "self-interested transactions". As a matter of equity, Sanovest is not entitled to claim compensation or an accounting of profits in connection with corporate acts that it authorized. In the alternative, if Sanovest did not authorize some or all of the impugned transactions, Matthews had no knowledge of any acts taken by Tom Kusumoto without Sanovest's authorization. Based on Tom Kusumoto's position as director nominated by Sanovest, his conduct, and his representations as to his corporate authority, Matthews had no reason to know of any acts taken by Tom Kusumoto without Sanovest's authorization. As Matthews has not breached any alleged duty to EBMD or BMGC, or otherwise, he cannot be liable for the compensation claimed.

80. Further, and in any event, Sanovest does not come before this Court with clean hands. To the extent Sanovest alleges that Matthews has breached duties owed to EBMD or BMGC by authorizing transactions on behalf of 599315, Sanovest, through its nominee, participated in the conduct of which it complains. Sanovest's participation in this conduct precludes a finding that it is just and equitable that Sanovest be awarded the equitable relief it seeks in this proceeding.

D. No Breach of Reporting Obligations

81. Matthews denies that EBMD or the Partnership has refused to comply with any reporting obligations under the Partnership Agreement, the Sanovest Loan Agreement, the *Partnership Act*, or otherwise, and denies that he has directed any refusal or non-cooperation by EBMD in that regard.

E. Limitations

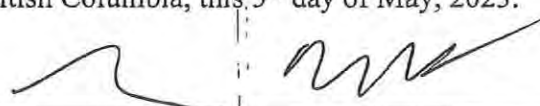
82. Sanovest is barred from seeking all, or in the alternative some, of the relief claimed in this proceeding by reason of estoppel, acquiescence, laches, or unreasonable delay, and by operation of the *Limitation Act*, S.B.C. 2012, c. 13, and any amendments thereto. Sanovest's knowledge includes all matters that were or ought to have been known to Tom Kusumoto in conducting Partnership business and in acting as Sanovest's nominee to EBMD and BMGC.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C. / Gordon B. Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com / gbrandt@lawsonlundell.com

Dated at the City of Vancouver, in the Province of British Columbia, this 5th day of May, 2023.



Lawson Lundell LLP
Solicitors for the Defendant,
Daniel Matthews

This Response to Amended Notice of Civil Claim is filed by Craig A.B. Ferris, K.C. / Gordon B. Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS ET AL.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD. ET AL.

DEFENDANTS BY WAY OF COUNTERCLAIM

**RESPONSE TO AMENDED NOTICE OF
CIVIL CLAIM**



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C. / Gordon B. Brandt

This is Exhibit "**H**" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAY 05 2023



NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD., TOMOSON (TOM)
KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

THIRD PARTY NOTICE

Filed by: DANIEL MATTHEWS (the "Claiming Party" or "Matthews")

05MAY23 2307797 ROST
21422 5223937

200.00

TO: TOMOSON (TOM) KUSUMOTO

THIS ACTION has been brought by the Plaintiff against the Defendants for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the Claiming Party claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND TO this claim against you, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a Response to Third Party Notice in Form 6 in the above-named registry of this court within the time for Response to Third Party Notice provided for below and SERVE a copy of the filed Response to Third Party Notice on the Claiming Party address for service.

YOU OR YOUR LAWYER may file the Response to Third Party Notice.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Third Party Notice within the time for Response to Third Party Notice described below.

Time for Response to Third Party Notice

A Response to Third Party Notice must be filed and served on the Claiming Party,

- (a) if you were served with the Third Party Notice anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Third Party Notice anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Third Party Notice anywhere else, within 49 days after that service, or
- (d) if the time for Response to Third Party Notice has been set by order of the court, within that time.

CLAIM OF THE CLAIMING PARTY

Part 1: STATEMENT OF FACTS

1. Matthews repeats and adopts the facts set out in the Response to Amended Notice of Civil Claim. Unless otherwise stated, capitalized terms in this Third Party Notice are as defined therein. For convenience, certain definitions are repeated in this Third Party Notice.

2. In the Amended Notice of Civil Claim, the Plaintiff claims against Matthews for alleged breaches of duty to EBMD and BMGC in relation to certain transactions (collectively, the "**Impugned Transactions**"). The Plaintiff claims equitable compensation or an accounting of profits from Matthews and Tom Kusumoto, payable to EBMD and BMGC.

3. The Impugned Transactions are summarized as follows, and are further described in the Response to Amended Notice of Civil Claim:

- (a) The assignment of the Partnership's interest in a "Reservoir Agreement" with the Capital Regional District to Bear Mountain Adventures Ltd. ("BMA"), ultimately permitting BMA to receive cash payments from the conversion of development cost charge credits;
- (b) The transfer of the Gondola Property, an approximately 1-acre tract of land, from BMGC to BMA;
- (c) The alleged use of proceeds from a construction financing loan for the purpose of BMA purchasing the Bear Mountain Activity Centre ("BMAC") land and buildings, which purchase was ultimately financed by Sanovest when the external lender's loans were fully repaid from the proceeds of lot sales;
- (d) The Partnership's funding of BMAC's operational and capital expenditures;
- (e) The advance to Matthews of \$1,000,000 from the Partnership, alleged to be in breach of obligations under the "Player's Peak Loan", which advance Matthews acknowledges he is obligated to account for from eventual distributions from the sale of Partnership assets; and
- (f) Matthews' accrual of a balance "due from shareholder".

4. Matthews has disputed all of the claims made against him in the Amended Notice of Civil Claim. With respect to the Impugned Transactions in particular, and without limiting the defences raised in the Response to Amended Notice of Civil Claim, Matthews asserts that each of them were duly authorized by the Partnership, EBMD and/or BMGC, as the case may be, by way of Matthews' approval as 599315's nominee and by way of Tom Kusumoto's approval as Sanovest's nominee. Further, Matthews asserts that Sanovest was specifically aware of and approved each of the Impugned Transactions, and is therefore now precluded from asserting that the Impugned Transactions, or any of them, were not in the best interests of EBMD or BMGC, or otherwise represented a breach of any duty owed to EBMD or BMGC. In the alternative, Matthews asserts that the Impugned Transactions were authorized by Tom Kusumoto, who had at least ostensible authority to act on Sanovest's behalf, such that Sanovest is bound by the authorizations given.

5. In proceeding with the Impugned Transactions, Matthews relied on the following representations from Tom Kusumoto made expressly, by implication, or by his conduct, on his own behalf and on behalf of Sanovest, that:

- (a) Tom Kusumoto was a principal of Sanovest, such that information provided or made available to him constituted information known to Sanovest;
- (b) Tom Kusumoto had authority to bind Sanovest in respect of all matters connected with the Partnership, EBMD and BMGC;
- (c) Sanovest had knowledge of each of the Impugned Transactions and their consequences to Sanovest's interests; and
- (d) Tom Kusumoto had, on behalf of Sanovest, authorized and consented to each of the Impugned Transactions; including by signing such documents, providing such authorizations, and otherwise participating in all matters required to effect or permit each of them.

(the "**Sanovest Representations**")

6. Further, Matthews reasonably understood and believed that Tom Kusumoto's acts and approvals, in his capacity as Sanovest's representative and the director nominated by Sanovest to EBMD and BMGC, constituted Sanovest's approval to things done and matters authorized through EBMD and BMGC, including the Impugned Transactions.

7. In response to the whole of the Amended Notice of Civil Claim, Matthews has asserted that Sanovest was aware of and authorized each of the Impugned Transactions. However, if, in the alternative, Sanovest did not authorize some or all of the Impugned Transactions, Matthews had no knowledge of any acts taken by Tom Kusumoto without Sanovest's authorization. Based on Tom Kusumoto's position as director nominated by Sanovest, his conduct, and his representations as to his corporate authority, among other circumstances, Matthews had no reason to know of any acts taken by Tom Kusumoto without Sanovest's authorization.

Part 2: RELIEF SOUGHT

1. In the alternative, if the Impugned Transactions were not duly authorized by Sanovest, then Matthews seeks the following relief:

- (a) A declaration that Tom Kusumoto misrepresented to Matthews his corporate authority to act on Sanovest's behalf in approving the Impugned Transactions;
- (b) A declaration that the claimed loss, damage or unfairness to EBMD or BMGC arising from the Impugned Transactions, if any, was caused wholly or in part by the conduct of Tom Kusumoto acting in breach of his fiduciary duties, and duties of good faith, undivided loyalty and of disclosure to Sanovest, which duties arose from Tom Kusumoto's position as a director of Sanovest and Sanovest's nominee to EBMD and BMGC.
- (c) In the further alternative:
 - (i) Judgment against Tom Kusumoto for any amounts that may be due from Matthews as claimed in the Amended Notice of Civil Claim; and
 - (ii) Contribution or indemnity from Tom Kusumoto for any amounts that may be due from Matthews as claimed in the Amended Notice of Civil Claim;
- (d) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (e) Costs; and
- (f) Such further and other relief as the Court deems just.

Part 3: LEGAL BASIS

1. Matthews disputes the Plaintiff's claim as set out in Response to Amended Notice of Civil Claim.

2. If the Plaintiff has suffered loss, damage or expense, or has any claim to compensation in relation to the Impugned Transactions, as alleged or at all, then such loss, damage or claim arises solely by reason of Tom Kusumoto's: (a) breaches of duty to Sanovest, and (b) misrepresentations to Matthews as to his corporate authority to approve the Impugned Transactions on Sanovest's behalf.

3. In the further alternative, Matthews pleads and relies upon s. 4 of the *Negligence Act*.


Address for service of Claiming Party is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A. B. Ferris, K.C./Gordon Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com / gbrandt@lawsonlundell.com

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 5th day of May, 2023.



Lawson Lundell LLP
Solicitors for the Claiming Party

This Third Party Notice is filed by Craig A.B. Ferris, K.C. and Gordon Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS ET AL.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD. ET AL.

DEFENDANTS BY WAY OF COUNTERCLAIM

THIRD PARTY NOTICE



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C. / Gordon B. Brandt

This is Exhibit "I" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAY 05 2023



NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD., TOMOSON (TOM)
KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

05MAY23 2307797 RDSO
21422 S223937

200.00

COUNTERCLAIM

Filed by: DANIEL MATTHEWS ("Matthews")

TO: SANOVEST HOLDINGS LTD., TOMOSON (TOM) KUSUMOTO and TIAN KUSUMOTO

This action has been brought by the Plaintiff against the Defendants for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the Defendant claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

Time for Response to Counterclaim

A Response to Counterclaim must be filed and served on the Defendant bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. Matthews repeats and adopts the facts set out in the Response to Amended Notice of Civil Claim. Unless otherwise stated, capitalized terms in this Counterclaim are as defined therein. For convenience, certain definitions are repeated in this Counterclaim.

A. Impugned Transactions

2. In the Amended Notice of Civil Claim, the Plaintiff claims against Matthews for alleged breaches of duty to EBMD and BMGC in relation to certain transactions (collectively, the “**Impugned Transactions**”). The Plaintiff claims equitable compensation or an accounting of profits from Matthews and Tom Kusumoto, payable to EBMD and BMGC.

3. The Impugned Transactions are summarized as follows, and are further described in the Response to Amended Notice of Civil Claim:

- (a) The assignment of the Partnership's interest in a "Reservoir Agreement" with the Capital Regional District to Bear Mountain Adventures Ltd. ("BMA"), ultimately permitting BMA to receive cash payments from the conversion of development cost charge credits;
- (b) The transfer of the Gondola Property, an approximately 1-acre tract of land, from BMGC to BMA;
- (c) The alleged use of proceeds from a construction financing loan for the purpose of BMA purchasing the Bear Mountain Activity Centre ("BMAC") land and buildings, which purchase was ultimately financed by Sanovest when the external lender's loans were fully repaid from the proceeds of lot sales;
- (d) The Partnership's funding of BMAC's operational and capital expenditures;
- (e) The advance to Matthews of \$1,000,000 from the Partnership, alleged to be in breach of obligations under the "Player's Peak Loan", which advance Matthews acknowledges he is obligated to account for from eventual distributions from the sale of Partnership assets; and
- (f) Matthews' accrual of a balance "due from shareholder".

4. Matthews has disputed all of the claims made against him in the Amended Notice of Civil Claim. With respect to the Impugned Transactions in particular, and without limiting the defences raised in the Response to Amended Notice of Civil Claim, Matthews asserts that each of them were duly authorized by the Partnership, EBMD and/or BMGC, as the case may be, by way of Matthews' approval as 599315's nominee and by way of Tom Kusumoto's approval as Sanovest's nominee. Further, Matthews asserts that Sanovest was specifically aware of and approved each of the Impugned Transactions, and is therefore now precluded from asserting that the Impugned Transactions, or any of them, were not in the best interests of EBMD or BMGC, or otherwise represented a breach of any duty owed to EBMD or BMGC. In the alternative,

Matthews asserts that the Impugned Transactions were authorized by Tom Kusumoto, who had at least ostensible authority to act on Sanovest's behalf, such that Sanovest is bound by the authorizations given.

B. Authorization and Knowledge of the Impugned Transactions

5. In proceeding with the Impugned Transactions, Matthews relied on the following representations from Tom Kusumoto made expressly, by implication, or by his conduct, on his own behalf and on behalf of Sanovest, that:

- (a) Tom Kusumoto was a principal of Sanovest, such that information provided or made available to him constituted information known to Sanovest;
- (b) Tom Kusumoto had authority to bind Sanovest in respect of all matters connected with the Partnership, EBMD and BMGC;
- (c) Sanovest had knowledge of each of the Impugned Transactions and their consequences to Sanovest's interests; and
- (d) Tom Kusumoto had, on behalf of Sanovest, authorized and consented to each of the Impugned Transactions, including by signing such documents, providing such authorizations, and otherwise participating in all matters required to effect or permit each of them.

(the "**Sanovest Representations**")

6. Further, Matthews reasonably understood and believed that Tom Kusumoto's acts and approvals, in his capacity as Sanovest's representative and the director nominated by Sanovest to EBMD and BMGC, constituted Sanovest's approval to things done and matters authorized through EBMD and BMGC, including the Impugned Transactions.

7. In response to the whole of the Amended Notice of Civil Claim, Matthews has asserted that Sanovest was aware of and authorized each of the Impugned Transactions. However, if, in the alternative, Sanovest did not authorize some or all of the Impugned

Transactions, Matthews had no knowledge of any acts taken by Tom Kusumoto without Sanovest's authorization. Based on Tom Kusumoto's position as director nominated by Sanovest, his conduct, and his representations as to his corporate authority, Matthews had no reason to know of any acts taken by Tom Kusumoto without Sanovest's authorization.

8. The full particulars of Tom Kusumoto and Tian Kusumoto's knowledge and approval of the Impugned Transactions are known to Tom Kusumoto and Tian Kusumoto. Particulars known to Matthews include those set out immediately below.

(a) Reservoir Agreement

9. Tom Kusumoto executed the Assignment Agreement made as of May 1, 2017, assigning the Partnership's interest in the Reservoir Agreement to BMA. Tom Kusumoto did so on behalf of both the Partnership and BMA, and in relation to the former, in his capacity as Sanovest's nominee.

10. Tian Kusumoto had actual knowledge of the Assignment Agreement, and knew or believed that the Assignment Agreement would result in development cost charge credits being paid out to BMA in cash. Tian Kusumoto authorized, or in the alternative, did not object, to Tom Kusumoto executing the Assignment Agreement as Sanovest's representative. He did so in the expectation of receiving, through Tom Kusumoto, a portion of that cash payment, either directly or through TRK Investments Corporation a company he controlled. The essential complaint underlying Sanovest's claim in the Amended Notice of Civil Claim is that Tian Kusumoto or TRK Investments Corporation did not receive any such payment.

(b) Transfer of the Gondola Property

11. Tom Kusumoto executed a Resolution of the Directors of BMGC effective May 10, 2019, authorizing an employee of BMGC to execute the documents necessary to transfer BMGC's interest in the Gondola Property to or as directed by BMA. Tom Kusumoto did so on behalf of BMGC, in his capacity as Sanovest's nominee.

12. Tian Kusumoto had been aware that the Gondola Property would be transferred to BMA since at least 2017, as set out in the Response to Amended Notice of Civil Claim. However, Tian Kusumoto did not state any objection to that transfer.

(c) BMAC Purchase

13. As set out in the Response to Amended Notice of Civil Claim, Matthews denies that the BMAC purchase was done in breach of any obligation under the Extension Agreement. However, and in any event, the full circumstances surrounding the Extension Agreement and the BMAC purchase were known to Tom Kusumoto, who on or about December 4, 2020, executed documents postponing Sanovest's security under the Sanovest Loan to the lender advancing the Extension Agreement funds. Prior to doing so, Tom Kusumoto had approved the Extension Agreement itself by executing an authorizing resolution on behalf of EBMD in his capacity as Sanovest's representative.

14. Tom Kusumoto was aware of and approved the ultimate purchase of BMAC's assets by BMA's nominee prior to the purchase and sale agreement closing on December 18, 2020.

(d) BMAC Funding

15. Beginning in December 2020, EBMD provided the funds necessary to satisfy BMAC's operational and capital expenditures. At all times from December 2020 and until May 31, 2021, Tom Kusumoto was aware of and approved such expenditures in his capacity as Sanovest's representative to EBMD. During this time, Tian Kusumoto was aware of these expenditures in his capacity as a shareholder of Sanovest and given his role at that time in assisting Tom Kusumoto with various financial matters relating to the Partnership. Neither Tom Kusumoto nor Tian Kusumoto expressed any objection to EBMD funding BMAC's ongoing expenditures.

16. Effective June 1, 2021, Tian Kusumoto replaced Tom Kusumoto as Sanovest's nominee to EBMD's board of directors. Tian Kusumoto requested and was appointed to the position of EBMD's "Chief Financial Officer". In that capacity, Tian Kusumoto was aware of and continued to authorize EBMD's funding of BMAC's operational and capital expenditures,

until he, abruptly and acting unilaterally, ceased doing so (knowingly interfering with the processing of a September 2022 payroll payment). Tian Kusumoto's conduct in ceasing such payments was for the improper purpose of exerting financial pressure on 599315 and Matthews, and not based on new information respecting the corporate purpose in continuing this funding.

(e) Advance of Funds to Matthews

17. Tom Kusumoto authorized the Advance to Matthews in his capacity as Sanovest's representative to EBMD's board of directors. Tom Kusumoto then communicated that authorization to the Partnership's external accountants. Tian Kusumoto was or ought reasonably have been aware of the Advance at the time it was made, and did not at that time raise any objection that the Advance was or would be contrary to the Partnership's obligations under the "Player's Peak Loan" or would otherwise be detrimental to the interests of the Partnership, EBMD or BMGC.

18. Following his appointment as Sanovest's nominee on June 1, 2021, Tian Kusumoto has raised the issue of the "Advance" in order to further his and Sanovest's private interests, including by exerting pressure on Matthews to have the debt assumed by Sanovest and repayable at a higher annual interest rate.

(f) Amounts due from Shareholder

19. The accrual of "amounts due from Shareholder" has been reflected in the Partnership's financial statements at all material times. The arrangement by which amounts have accrued without interest and without immediate repayment obligation was confirmed, *inter alia*, by email dated June 5, 2020 from Tom Kusumoto to the Partnership's external accountant.

20. Tian Kusumoto had actual knowledge of the accrual of "amounts due from Shareholder" from his regular review of EBMD's financial statements. He did not at any time object to such amounts accruing or assert that Tom Kusumoto was unauthorized to approve such accruals as Sanovest's nominee.

C. Misrepresentation

21. By virtue of their business relationship, Sanovest, Tom Kusumoto and Tian Kusumoto each owed a duty to Matthews to properly state Sanovest's authority in all matters connected to the Partnership, including the Impugned Transactions.

22. In proceeding with the Impugned Transactions, Matthews relied on the Sanovest Representations.

23. Matthews further relied on the absence of any objection by Tian Kusumoto to the Impugned Transactions at the time they occurred. In the circumstances, including Tian Kusumoto's knowledge of the Partnership's affairs, his role prior to June 1, 2021 in assisting Tom Kusumoto with various financial matters relating to the Partnership, and his position after June 1, 2021 as Sanovest's nominee and the Partnership's Chief Financial Officer, Tian Kusumoto's failure to object to the Impugned Transactions constituted a representation: a tacit confirmation that the Impugned Transactions were properly authorized.

24. If any of the Impugned Transactions proceeded without Sanovest's authorization, which Matthews does not admit but expressly denies, then the Sanovest Representations and Tian Kusumoto's additional representations were negligently made, in that they were untrue, inaccurate or misleading. Matthews' reliance on those representations in entering into the Impugned Transactions was reasonable in light of the acts taken by Tom Kusumoto to authorize and facilitate the Impugned Transactions, and the absence of any objection as to authority raised by Tian Kusumoto.

25. To the extent the Plaintiff succeeds in any of its claims in respect of the Impugned Transactions, then Matthews will have suffered harm, loss and damage by reason of his reliance on the above misrepresentations, including, without limitation, the cost of any compensation payable and the costs of these proceedings.

D. Alleged Breaches of Duty

26. As set out in the Response to Amended Notice of Civil Claim, Matthews disputes that Sanovest has standing in this Action to assert claims for: (a) alleged harm to the Partnership; and (b) breach of alleged fiduciary duties said to be owed to EBMD and BMGC.

27. In the alternative, if the Plaintiff's claims are properly brought, and to the extent they have any merit, which is denied, then Sanovest, Tom Kusumoto and Tian Kusumoto are in breach of their fiduciary and other duties to EBMD and BMGC by having authorized and approved the Impugned Transactions, or, in the alternative, by having failed to object to them. Sanovest, Tom Kusumoto and Tian Kusumoto would be liable to compensate EBMD and BMGC on the same basis as is claimed against Matthews in the Amended Notice of Civil Claim.

Part 2: RELIEF SOUGHT

1. Damages against the Defendants by way of Counterclaim for negligent misrepresentation;
2. Damages against Tom Kusumoto for breach of warranty of authority;
3. In the alternative and further alternative: orders that Sanovest, Tom Kusumoto and Tian Kusumoto pay equitable compensation to EBMD and BMGC, or account to EBMD and BMGC for any profit that has or will accrue to them as a result of the Impugned Transactions;
4. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
5. Costs; and
6. Such further and other relief as the Court deems just.

Part 3: LEGAL BASIS

1. Matthews entered into the Impugned Transactions on the basis of the Sanovest Representations and Tian Kusumoto's additional representations. To the extent those representations were untrue, inaccurate or misleading, then Sanovest, Tom Kusumoto and Tian Kusumoto are liable to Matthews for all loss, harm and damage incurred or to be incurred as a result.

2. To the extent Tom Kusumoto lacked authority to bind Sanovest, or Sanovest is otherwise not bound by Tom Kusumoto's approval of the Impugned Transactions, then Tom Kusumoto has breached the warranty of authority he provided to Matthews by failing to disclose any limits to his authority and is liable to Matthews for damages, harm and loss arising.

3. To the extent Matthews can be legally liable to compensate to EBMD and BMGC in connection with the Impugned Transactions, then Sanovest, Tom Kusumoto and Tian Kusumoto are liable to pay such compensation on the same legal basis. Such liability does not and would not give rise to any equivalent liability to Matthews, as the Impugned Transactions were all duly authorized by 599315 and Matthews had no reason to know that any acts taken by Tom Kusumoto to facilitate the Impugned Transactions were done without Sanovest's authorization.


Address for service of the Defendant bringing this Counterclaim is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A. B. Ferris, K.C./Gordon Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com / gbrandt@lawsonlundell.com

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 5th day of May, 2023.



Lawson Lundell LLP
Solicitors for the Defendant

This Counterclaim is filed by Craig A.B. Ferris, K.C./Gordon Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

This is Exhibit "J" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia



No. 223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and
BM MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Tomoson (Tom) Kusumoto (the "defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS
Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1 – 29, 31, 32, 33, 37, 38, 40, 41, 42, 55, 56, 57, 61, of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 30, 34, 39, 43 44, 45, 51, 53, 58, 62-66 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 33, 35, 36, 46, 47, 48, 49, 50, 52, 54, 59, 60, 67-70 of Part 1 of the notice of civil claim are outside the knowledge of the defendant.

Division 2 – Defendant's Version of Facts

BACKGROUND

1. The Defendant Tomoson Kusumoto ("Kusumoto") was the founder of Sanovest Holdings Ltd. ("Sanovest")
2. In or around 2001, Kusumoto transferred his interest and control of Sanovest to a family trust, with his son Tian Kusumoto as trustee.
3. Between September 2013 and June 2021, Kusumoto was a director of Ecoasis Bear Mountain Developments Ltd. ("EBMD") and Bear Mountain Golf Course Ltd. ("BMGC"), as the nominee of Sanovest.

4. Kusumoto did not receive any compensation for his work as a director for EBMD or BMGC.

KUSUMOTO LOANS TO EBMD

5. After the purchase of EBMD by the partnership of Matthews and Sanovest, Kusumoto from time to time advanced additional funds as loans to EBMD to cover operating shortfalls, and to repay debts. These amounts were tracked by EBMD on a ledger showing the amounts owing to Kusumoto (the "Kusumoto Loan Account").

THE POTENTIAL PURCHASE

6. Starting in or about 2020, EBMD was negotiating with a potential purchaser for the assets held by EBMD and BMGC (the "Proposed Asset Sale").
7. The expected closing date of Proposed Asset Sale was around April 1, 2021.
8. At all relevant times, Kusumoto expected that the sale would proceed, and that Defendant Matthews, as a shareholder of EBMD, would receive a portion of the sale proceeds (the "Proceeds").
9. The Proposed Asset Sale did not complete in April 2021 as Kusumoto expected.

CRD REIMBURSEMENTS

10. Kusumoto admits that the CRD reimbursement was assigned to BMA. However, he denies making any representation to CRD on behalf of BMA, and says that if any representations were made, they were made by the Defendant Matthews.
11. Kusumoto says that he first became aware of the assignment of the CRD reimbursement to BMA, after the funds were transferred to BMA. Matthews, and not Kusumoto, arranged for the transfer of these funds to BMA.
12. After Kusumoto learned that the funds were transferred to BMA, Kusumoto agreed that the funds could be partially loaned to Matthews, on the basis that the funds would be considered an advance against Matthews' interest in the Proposed Asset Sale.
13. Kusumoto also agreed at that time to disburse 1.1 million dollars to himself from BMA. \$700,000 of these funds were loaned to Matthews, at his request, and the remaining \$400,000 was loaned to EBMD.
14. At the time of the \$400,000 loan to EBMD, the Kusumoto Loan Account was approximately \$2,000,000, and the \$400,000 loan was added to the account.

15. The above transactions were disclosed in advance to Kevin Isomura, who is a chartered accountant, and who was hired by EBMD and Matthews to provide financial oversight for EBMD.

SALE OF GONDOLA PROPERTY

16. Kusumoto admits that the Gondola Property was transferred into BMA from BMGC, which held the property in trust for the Partnership.
17. Kusumoto says that the Gondola Property was transferred into BMA by Matthews without his knowledge.
18. Kusumoto did not know of the transfer of the Gondola Property until after the transfer occurred.

PINEHURST LOAN AND SALES TO BMA

19. Kusumoto was not aware that the funds from a construction loan related to the Pinehurst development was transferred to BMA for the purchase of the recreation centre.
20. Kusumoto was not aware of the terms of the construction loan, and whether or not they could be used outside the development of the Pinehurst project.

RECREATION CENTRE

21. Prior to the purchase of the Langford Recreation Centre Matthews represented to Kusumoto that the recreation centre was being purchased at the request of the purchaser of the Proposed Asset Sale, so that it could be included as part of the Proposed Asset Sale, and that the purchase would be carried out in the name of EBMD (the "Recreation Centre representations").
22. The Recreation Centre Representations were false.
23. Matthews misled Kusumoto, and made the Recreation Centre Representations knowing that they were false, or recklessly to whether or not they were true.
24. In reliance on the Recreation Centre Representations, Kusumoto agreed to the purchase of the Recreation Centre.
25. Kusumoto did not know until after the property was transferred, that it had not been transferred to EBMD.
26. The Recreation Centre property was not transferred to BMA, but was transferred to Bear Mountain Adventures Nominee Ltd., inc. No. 1277928.

27. Kusumoto was unaware that Matthews was transferring EBMD's funds to BMA or Bear Mountain Adventures Nominee Ltd., to satisfy the operational costs of the recreation centre.

PLAYERS PEAK LOAN

28. Kusumoto admits that he agreed that EBMD would loan \$1,000,000 from the Player's Peak Loan to Matthews.
29. Kusumoto agreed that EBMD could advance these sums to Matthews, based on representations from Matthews that he would repay the funds once the Proposed Asset Sale completed.
30. This transaction was disclosed in advance to Kevin Isomura, who was hired by EBMD to provide financial oversight for EBMD.

DIVERSION OF ADDITIONAL FUNDS

31. Kusumoto was not aware of the unauthorized personal expenses, as alleged in paragraph 59 of the Amended Notice of Civil Claim, at the time they were incurred.
32. The "Self-Interested Transactions" as that term is defined in the Notice of Civil Claim did not result in any personal gain to Kusumoto.
33. To the extent that the Plaintiffs have suffered loss or damage in relation to the alleged Self-Interested Transactions, such loss or damage is attributable solely to Matthews and not to Kusumoto.

Division 3 – Additional Facts

34. N/A.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The defendant consents to the granting of the relief sought in paragraphs NONE of Part 2 of the notice of civil claim.
2. The defendant opposes the granting of the relief sought in paragraphs ALL of Part 2 of the notice of civil claim.
3. The defendant takes no position on the granting of the relief sought in paragraphs NONE of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

1. Kusumoto did not have a disclosable interest in any of the Self-Interested Transactions, as that term is defined in the Amended Notice of Civil Claim.
2. Kusumoto did not breach a fiduciary duty to the Plaintiffs.
3. Kusumoto has not benefited from any of the Self-Interested Transactions, as that term is defined in the Amended Notice of Civil Claim.
4. No loss or damage suffered by the Plaintiff is attributable to Kusumoto.

Defendant's address for service: Velletta Pedersen Christie
4th Floor 931 Fort Street
Victoria BC V8V 3K3

Fax number address for service (if any): N/A

E-mail address for service (if any): service@victorialaw.ca

Date: 12/May/2023



Signature of W. Eric Pedersen
lawyer for defendant

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is Exhibit "K" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia



No. S-223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD., TOMOSON (TOM)
KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

RESPONSE TO COUNTERCLAIM

Filed by: Sanovest Holdings Ltd. and Tian Kusumoto (the "Responding Parties")

Part 1: RESPONSE TO COUNTERCLAIM FACTS

Division 1 - Response to Facts

1. By way of general response to Part 1 of the Counterclaim, the Responding Parties say that Part 1 of the Counterclaim contains allegations that are statements of legal positions and not allegations of fact. This response to Part 1 of the Notice of Civil Claim responds to the allegations of fact in Part 1. Further:

(a) Paragraph 1 of Part 1 of the Counterclaim is an improper pleading as it does not allow the Defendants by Counterclaim to know exactly what facts are being pleaded in support of the causes of action advanced in the Counterclaim. To the extent paragraph 1 of Part 1 of the Counterclaim does incorporate facts from the Response to Civil Claim, those facts are denied except as expressly admitted below.

(b) Paragraphs 2, 3, 4 and 26 of Part 1 of the Counterclaim are a summary of other pleadings filed in this proceeding. As to paragraphs 2 and 3, which seek to summarize the Claim (as defined below), the summary is inaccurate and incomplete.

2. The facts alleged in the following paragraphs of Part 1 of the Counterclaim are admitted: not applicable.

3. The facts alleged in paragraphs 5–25, and 27 of Part 1 of the Counterclaim are denied, except as specifically admitted below.

4. The facts alleged in the following paragraphs of Part 1 of the Counterclaim are outside the knowledge of the Responding Parties: not applicable.

Division 2 - Responding Parties' Version of Facts

1. The defined terms used herein have the meanings set out in the Amended Notice of Civil Claim (the "**Claim**"), filed by Sanovest Holdings Ltd. ("**Sanovest**") on March 20, 2023 or the Counterclaim unless otherwise indicated. For convenience, certain definitions are repeated in this Response to Counterclaim.

The Parties

2. The Plaintiff and Defendant by Counterclaim, Sanovest, is a corporation incorporated under the laws of Canada.

3. Daniel Matthews ("**Matthews**"), who is both a Defendant and the Plaintiff by Counterclaim, is a businessperson who resides at 3480 Ripon Road, Victoria, British Columbia.

4. The Defendant by Counterclaim, Tian Kusumoto, is a businessperson who resides at 1397 Matthews Avenue, Vancouver, British Columbia.

5. Tian Kusumoto became a director of Sanovest effective March, 2021 and has, since in or about June, 2021, been a director and the Chief Financial Officer of Ecoasis Bear Mountain Developments Ltd. ("**EBMD**") and Bear Mountain Golf Course Ltd. ("**BMGC**").

6. Tomoson (Tom) Kusumoto ("**Tom Kusumoto**"), who is both a Defendant and a Defendant by Counterclaim, is a businessperson who resides at 1727 Cedar Crescent, Vancouver, British Columbia.

The Claim

7. As set out in the Claim, Sanovest alleges that between January 2016 and June 2022, Matthews and/or Tom Kusumoto caused EBMD and BMGC to sell, assign or transfer valuable assets to Bear Mountain Adventures Ltd. ("**BMA**"), a corporation they controlled and owned during the material time period, or to Matthews personally, for no or inadequate consideration (the "**Self-Interested Transactions**").

8. The Self-Interested Transactions consist of the following:

- (a) the assignment of EBMD's and the Partnership's interest in the Skirt Mountain Reservoir Agreement (the "**Reservoir Agreement**") to BMA (the "**Assignment Agreement**"), pursuant to which the Capital Regional District ("**CRD**") made cash payments to BMA totalling \$3,371,524.44;
- (b) the sale of the Gondola Property from BMGC to BMA for no or alternatively inadequate consideration;
- (c) the diversion of construction loan proceeds and lot sales relating to a development project known as "Pinehurst" to BMA, for the purpose of purchasing the Bear Mountain Activity Centre ("**BMAC**") for \$3.575 million (the "**Diverted Pinehurst Funds**");
- (d) the diversion of additional funds held by EBMD for the benefit of the Partnership to BMA for operational and capital expenditures relating to BMAC (the "**Recreation Centre Funding**");
- (e) the diversion (not "advance", as characterized in the Response to Amended Notice of Civil Claim and Counterclaim) of \$1,000,000 of loan proceeds to Matthews for his personal use and benefit (the "**Diverted Players Peak Funds**"); and
- (f) the diversion (not "accrual of a balance 'due from shareholder'", as characterized in the Response to Amended Notice of Civil Claim and Counterclaim) of \$400,000 to Matthews for his personal use and benefit, none of which related to the business of the Partnership (the "**Unauthorized Personal Expenses**").

9. Sanovest alleges in the Claim that the Self-Interested Transactions were not disclosed and approved in the manner required by the *Business Corporations Act*, S.B.C. 2002, c. 57 ("**BCA**"). More particularly:

- (a) the Self-Interested Transactions were conceived of, approved by and implemented by Matthews and Tom Kusumoto in their capacity as directors of EBMD and, in the case of the Gondola Property, EBMD and BMGC, and in breach of their fiduciary duties to act honestly, in good faith and in the best interests of EBMD and BMGC;
- (b) by reason of their offices as directors of EBMD, BMGC and BMA, and the 50% of the common shares of BMA that each of them held through their respective holding companies, and by reason of the personal benefit Matthews derived from the Diverted Players Peak Funds and Unauthorized Personal Expenses, at the material times Matthews and Tom Kusumoto each had a disclosable interest in the Self-Interested Transactions within the meaning of s. 147 of the *BCA*;
- (c) in respect of each of the Self-Interested Transactions, Matthews and Tom Kusumoto did not disclose the nature and extent of their interest to the shareholders of EBMD and BMGC in writing, in the manner required by the *BCA*, or obtain approval of the Self-Interested Transactions by special resolution following such disclosure; and

(d) the Self-Interested Transactions were not fair and reasonable to EBMD and BMGC; each of them were for no or inadequate consideration and were not in the best interests of EBMD and BMGC.

10. As a result of the Self-Interested Transactions, Sanovest seeks an order in the Claim that Matthews and Tom Kusumoto pay equitable compensation to EBMD and BMGC, among other relief.

Sanovest Did Not Consent to, Authorize or Approve of the Self-Interested Transactions

11. Sanovest did not consent to, authorize or approve of the Self-Interested Transactions, as alleged or at all.

12. Sanovest denies that it made the Sanovest Representations as alleged at paragraph 5 of Part 1 of the Counterclaim or, in the alternative, that if such representations were made by Tom Kusumoto, which is not admitted but expressly denied, that the representations can be attributed to Sanovest.

13. In particular, and in response to the Counterclaim as a whole, Sanovest says that the knowledge of Tom Kusumoto and any consent, authorization or approval provided by Tom Kusumoto, or other conduct of Tom Kusumoto, cannot be attributed to Sanovest in circumstances where, as was the case with the Self-Interested Transactions, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

14. Further, to the extent Matthews relied on the Sanovest Representations or on the further understanding alleged at paragraph 6 of Part 1 of the Counterclaim that Tom Kusumoto's acts and approvals constituted Sanovest's acts and approvals, such reliance, in relation to the Self-Interested Transactions, was not reasonable.

15. For greater certainty, Sanovest denies that it had knowledge of the Self-Interested Transactions, or alternatively, that it had full knowledge of all of the relevant facts concerning the Self-Interested Transactions and the nature and extent of Matthews' and Tom Kusumoto's interest in them.

16. Sanovest's further response to the allegations concerning each of the Self-Interested Transactions is set out below.

The Assignment Agreement

17. In response to paragraph 9 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto in relation to the assignment of the Reservoir Agreement from the Partnership to BMA cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

18. In response to paragraph 10 of Part 1 of the Counterclaim, Tian Kusumoto denies that he had actual knowledge of the Assignment Agreement or knew or believed that the Assignment Agreement would result in development cost charge credits being paid out to BMA in cash, as alleged or at all. Tian Kusumoto was aware of the possibility that development cost charge credits

could be paid to EBMD by the CRD pursuant to the Reservoir Agreement, but he specifically denies having any knowledge that BMA would be the beneficiary of such payments by virtue of the Assignment Agreement or otherwise.

19. In further response to paragraph 10 of Part 1 of the Counterclaim, Tian Kusumoto denies that he authorized or failed to object to Tom Kusumoto executing the Assignment Agreement "as Sanovest's representative", as alleged or at all. The particulars of the Assignment Agreement were known exclusively to Matthews and Tom Kusumoto and unknown to Tian Kusumoto.

20. In further response to paragraph 10 of Part 1 of the Counterclaim, Tian Kusumoto denies that he had any expectation of receiving, through Tom Kusumoto or otherwise, a portion of any cash payment paid to BMA pursuant to the Assignment Agreement, as alleged or at all. This allegation of fact is wholly without foundation and Tian Kusumoto puts Matthews to the strict proof thereof.

The Gondola Property

21. In response to paragraph 11 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto in relation to the transfer of the Gondola Property from the Partnership to BMA cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

22. In response to paragraph 12 of Part 1 of the Counterclaim, the lack of objection arises from Matthews' and Tom Kusumoto's failure to make full and complete disclosure of all relevant matters. In particular, Matthews and Tom Kusumoto represented to Sanovest and to Tian Kusumoto that the Gondola Property had no development value or other value to the Partnership.

The Diverted Pinehurst Funds for BMAC purchase

23. In response to paragraphs 13 and 14 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto in relation to the Diverted Pinehurst Funds, including the use of such funds to purchase the BMAC, cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

24. As set out in the Claim, the full particulars of the Diverted Pinehurst Funds are known to Matthews and/or Tom Kusumoto and are unknown to Sanovest.

The Recreation Centre Funding

25. In response to paragraph 15 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto, including any authorizations or approvals he may have purported to give in relation to the Recreation Centre Funding, which are not admitted and are expressly denied, cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

26. In further response to paragraph 15 of Part 1 of the Counterclaim, Tian Kusumoto denies that he was aware of the Recreation Centre Funding that occurred in the period between December,

2020 and May 31, 2021. Further or in the alternative, if Tian Kusumoto was aware of the Recreation Centre Funding during this period, he expressly raised objections to it.

27. After Tian Kusumoto was appointed as CFO of EBMD in June 2021 and until approximately June 2022, Matthews refused or otherwise failed to take steps to provide Tian Kusumoto with signing authority on bank accounts held by EBMD for the benefit of the Partnership. Accordingly, Tian Kusumoto was unable to abate Matthews' continuation of the Recreation Centre Funding to BMA, despite raising objections to same. Tian Kusumoto denies that he "continued to authorize" expenditures to BMA during this period, as alleged in paragraph 16 of Part 1 of the Counterclaim or at all.

28. In further response to paragraph 16 of Part 1 of the Counterclaim, Tian Kusumoto denies that he "abruptly and acting unilaterally" ceased authorizing EBMD's funding of BMAC in or around September 2022 for the improper purpose of exerting financial pressure on Matthews or his holding company, as alleged or at all. Tian Kusumoto refused to authorize further and additional expenditures to BMA on the basis that they were not fair and reasonable to EBMD and contrary to the best interests of the company and Partnership.

The Diverted Players Peak Funds

29. In response to paragraph 17 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto in relation to the Diverted Players Peak Funds cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

30. In further response to paragraph 17 of Part 1 of the Counterclaim, Tian Kusumoto denies that he was or reasonably ought to have been aware of the Diverted Players Peak Funds, as alleged or at all. The agreement to transfer \$1,000,000 from EBMD to Matthews personally was made exclusively between Matthews and Tom Kusumoto and without the knowledge of Tian Kusumoto or Sanovest. Tian Kusumoto could not have raised an objection to a transaction of which he had no knowledge or awareness.

31. In response to paragraph 18 of Part 1 of the Counterclaim, Tian Kusumoto denies that he has raised the issue of the Diverted Players Peak Funds in order to further his and Sanovest's private interests, as alleged or at all. Rather, he has at all times raised matters of repayment of the Diverted Players Peak Funds (and indeed each of the Self-Interested Transactions), in a manner consistent with his fiduciary duties to EBMD and with a view to advancing EBMD's best interests.

The Unauthorized Personal Expenses

32. The Responding Parties deny that the Unauthorized Personal Expenses have been reflected in the Partnership's financial statements as alleged. The Partnership's financial statements have never included an entry of "amounts due from Shareholder" attributable to Matthews. Alternatively, if the Unauthorized Personal Expenses have been reflected in the Partnership's financial statements as alleged, which is denied, they were accounted for in a manner that was obscure or otherwise designed to avoid detection.

33. In further response to paragraph 19 of Part 1 of the Counterclaim, Sanovest says that the knowledge and conduct of Tom Kusumoto in relation to the Unauthorized Personal Expenses, including any authorizations or approvals he may have purported to give, which are not admitted and are expressly denied, cannot be attributed to Sanovest given that in the circumstances, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

34. For greater certainty, the Responding Parties deny any knowledge of the Unauthorized Personal Expenses or any arrangements in respect of same.

35. In response to paragraph 20 of Part 1 of the Counterclaim, Tian Kusumoto denies that he had actual or full knowledge of the Unauthorized Personal Expenses from his review of EBMD's financial statements, as alleged or at all, or that he failed to raise objections. To the contrary, Tian Kusumoto objected to the Unauthorized Personal Expenses as soon as he discovered them, and has maintained that position since.

36. The full particulars of the Unauthorized Personal Expenses are known to Matthews but are unknown to Sanovest and Tian Kusumoto.

The Response to the Alleged Misrepresentations

37. In response to paragraphs 5 and 21-24 of Part 1 of the Counterclaim, Sanovest denies that it made the Sanovest Representations, as alleged or at all, or that in law, they could amount to actionable misrepresentations.

38. In further response to paragraphs 5 and 21-24 of Part 1 of the Counterclaim, Sanovest denies that it owed a duty of care to Matthews as alleged or, in the alternative, that it breached such duty. Sanovest says further that to the extent Matthews relied on the Sanovest Representations, which is not admitted but expressly denied, such reliance was not reasonable given the circumstances of the Self-Interested Transactions.

39. In further response to paragraphs 21-24 of Part 1 of the Counterclaim, Tian Kusumoto denies that he owed a duty of care to Matthews as alleged or at all or that he breached such duty. In particular, Tian Kusumoto denies that he had knowledge of the Self-Interested Transactions, that he failed to object to such transactions or that any failure by him to raise objections in the circumstances is conduct that constitutes an actionable representation. Tian Kusumoto also expressly denies that Matthews relied on any representations by him before proceeding with the Self-Interested Transactions or, alternatively, that such reliance was reasonable in the circumstances.

40. By way of alternative, if Matthews reasonably relied on the alleged Sanovest Representations or Tian Kusumoto's additional representations, which is not admitted but expressly denied, such reliance did not result in any damage or loss, which damage or loss is not admitted but is denied.

41. In the further alternative, any such loss or damage that Matthews may suffer is solely the result of the conduct of Matthews and Tom Kusumoto in entering into transactions in which they were personally interested that were not fair and reasonable to EBMD and BMGC.

The Response to the Alleged Breaches of Duty

42. In response to paragraph 27 of Part 1 of the Counterclaim, the Responding Parties deny that they breached any fiduciary or “other duties” owed to EBMD and BMGC, as alleged or at all. In particular, the Responding Parties deny that they authorized, approved, or failed to object to the Self-Interested Transactions, as alleged or at all.

Division 3 - Additional Facts

1. Not applicable.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The responding parties consent to the granting of the relief sought in none of the paragraphs of Part 2 of the Counterclaim.
2. The responding parties oppose the granting of the relief sought in paragraphs 1 and 3–6 of Part 2 of the Counterclaim.
3. The responding parties take no position on the granting of the relief sought in paragraph 2 of Part 2 of the Counterclaim.

Part 3: LEGAL BASIS

The Counterclaim Allegations Do Not Disclose a Cause of Action

1. In answer to the Counterclaim as a whole, the allegations made in the Counterclaim do not disclose a cause of action and cannot excuse, or permit compensation for, the consequences of the Self-Interested Transactions. Under the relevant provisions of the *BCA*, approval of the Self-Interested Transactions required Matthews and Tom Kusumoto to obtain the consent of the shareholders of EBMD and, in the case of the Gondola Property, EBMD and BMGC, as evidenced in a written shareholders resolution, after full disclosure – in writing – of the nature and extent of their interest in each of the Self-Interested Transactions. They did not do this. Tom Kusumoto was not Sanovest and Matthews cannot rely on the purported consent or approval of Tom Kusumoto, including because he was similarly conflicted in respect of the majority of the Self-Interested Transactions. The Counterclaim’s allegations in respect of consent, authorization, approval and misrepresentation all disregard the fundamental principles that consent or like doctrines require full disclosure of all relevant information by Matthews and Tom Kusumoto, who were fiduciaries and owed duties of loyalty, full disclosure and the utmost good faith. The required full disclosure never occurred, and accordingly, no consent, authorization, approval – or claims for misrepresentation or breach of other duties based thereon, can be effective in law against EBMD, Sanovest or Tian Kusumoto. Such a conclusion would also be contrary to the principles of equity and public policy.

The Responding Parties Did Not Make, and are Not Liable For, the Alleged Misrepresentations

2. The Responding Parties deny that they are liable to Matthews for negligent misrepresentation, as alleged or at all.

3. Sanovest denies that it owed a duty of care to Matthews as alleged or, in the alternative, that it breached such duty. In particular, Sanovest denies that it made the Sanovest Representations, that the Sanovest Representations could in law amount to actionable misrepresentations or that if such representations were made by Tom Kusumoto, which is not admitted and is expressly denied, that the representations can be attributed to Sanovest. Sanovest says further that to the extent Matthews relied on the Sanovest Representations, which is not admitted but expressly denied, such reliance was not reasonable given the circumstances of the Self-Interested Transactions.

4. Tian Kusumoto denies that he owed a duty of care to Matthews as alleged or at all or that he breached such duty. In particular, Tian Kusumoto denies that he had knowledge of the Self-Interested Transactions, that he failed to object to such transactions or that any failure by him to raise objections in the circumstances is conduct that constitutes an actionable representation. Tian Kusumoto also expressly denies that Matthews relied on any representations by him before proceeding with the Self-Interested Transactions or, alternatively, that such reliance was reasonable in the circumstances.

5. By way of alternative, if Matthews reasonably relied on the alleged Sanovest Representations or Tian Kusumoto's additional representations, which is not admitted but expressly denied, such reliance did not result in any damage or loss, which damage or loss is not admitted but is denied.

6. In the further alternative, any such loss or damage that Matthews may suffer is solely the result of the conduct of Matthews and Tom Kusumoto in entering into transactions in which they were personally interested that were not fair and reasonable to EBMD and BMGC. The Responding Parties plead and rely on the doctrine of contributory negligence and on the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333.

The Responding Parties Did Not Breach Their Fiduciary or Other Duties

7. The Responding Parties deny that they breached any fiduciary or "other duties" owed to EBMD and BMGC, as alleged or at all or that Matthews has standing to pursue such claims.

8. In any event, the legal basis for Matthews' liability, as alleged in the Claim, is the failure by Matthews and Tom Kusumoto to disclose and obtain approvals for the Self-Interested Transactions in the manner required by the *BCA*, arising from their offices as directors of EBMD, BMGC and BMA, and the 50% of the common shares of BMA that each of them held through their respective holding companies, and by reason of the personal benefit Matthews derived from the Diverted Players Peak Funds and Unauthorized Personal Expenses. The Responding Parties owed no similar duties.

Address for service of the responding parties:

Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Fax number address for service (if any): n/a

E-mail address for service (if any):

n/a

Dated: 22-Jun-2023

Signature of
☐ Filing Party ☒ Lawyer for Filing Parties


for: Andrew I. Nathanson, K.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period;
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact; and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

The Solicitors for Sanovest Holdings Ltd. and Tian Kusumoto are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Andrew I. Nathanson, K.C./329480.00001)

This is Exhibit "L" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

Vancouver

22-Jun-23

REGISTRY

No. S-223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and BM
MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD., TOMOSON (TOM)
KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

REPLY**Filed by:** Sanovest Holdings Ltd. ("Sanovest")In reply to: the Response to Amended Notice of Civil Claim filed by Daniel Matthews (the
"Matthews Response")

1. Unless otherwise stated, capitalized terms used in this Reply have the same meaning given to them in the Amended Notice of Civil Claim or the Matthews Response.
2. Sanovest disputes and denies the facts pleaded in the Matthews Response.
3. In specific response to Part 1, paragraphs 8 and 9 of the Matthews Response, the parties' agreement regarding the acquisition and development of the Bear Mountain Assets is set out in the parties' written agreements, including the Partnership Agreement and the Sanovest Loan Agreement.
4. In response to Part 1, paragraph 24 of the Matthews Response, Tom Kusumoto is not a shareholder of Sanovest and never was a shareholder of Sanovest at any time material to this proceeding. Tom Kusumoto was one of either two or three directors of Sanovest until in or about June 2021, when he resigned as a director of Sanovest.

5. In response to Part 1, paragraph 25 of the Matthews Response, Part 3, paragraphs 80 and 82 of the Matthews Response and the Matthews Response as a whole, including the allegation that each of the matters raised by Sanovest against Matthews was known to and consented to by Sanovest or duly authorized by Sanovest, Sanovest says that the knowledge of Tom Kusumoto and any consent or authorization provided by Tom Kusumoto or other conduct of Tom Kusumoto cannot be attributed to Sanovest in circumstances where, as in the case of the Self-Interested Transactions, Tom Kusumoto was acting against the interests of Sanovest and not for the benefit of Sanovest.

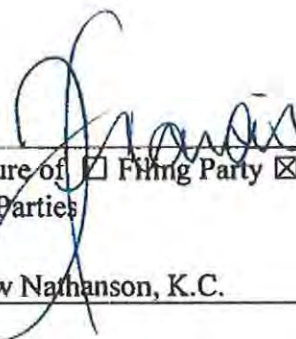
6. Further, to the extent Matthews understood that Sanovest was controlled by Tom Kusumoto, that Tom Kusumoto was the sole directing mind of Sanovest, that Tom Kusumoto had full authority to act on Sanovest's behalf or that Tom Kusumoto was authorized by Sanovest to carry out the exclusion of assets from the Partnership or to authorize any of the Self-Interested Transactions, which is not admitted but expressly denied, such understandings were not reasonably held and any reliance thereon, in relation to the Self-Interested Transaction, was not reasonable. The Self-Interested Transactions were so out of the ordinary as to require Matthews to inquire into the actual authority of Tom Kusumoto. Having failed to do so, Matthews is not entitled to rely upon any apparent or ostensible authority.

7. In specific response to paragraphs 34 and 44 of Part 1 of the Matthews Response, the lack of objection arises from Matthews' and Tom Kusumoto's failure to make full and complete disclosure of all relevant matters. In particular, Matthews and Tom Kusumoto represented to Sanovest and to Tian Kusumoto that the Gondola Property had no development value or other value to the Partnership.

8. By way of further answer to the Matthews Response, Tom Kusumoto was not Sanovest and Matthews cannot rely on the purported consent or approval of Tom Kusumoto to excuse or avoid the obligation to account or provide compensation for the Self-Interested Transactions, including because Tom Kusumoto was similarly conflicted in respect of the majority of the Self-Interested Transactions. The allegations in the Matthews Response in respect of consent, authorization, approval and misrepresentation all disregard the fundamental principles that consent or like doctrines require full disclosure of all relevant information by Matthews and Tom Kusumoto, who were fiduciaries and owed duties of loyalty, full disclosure and the utmost good faith. The required full disclosure never occurred, and accordingly, no consent, authorization or approval can be effective in law against Sanovest. Such a conclusion would also be contrary to the principles of equity and public policy.

9. Under the relevant provisions of the *BCA*, approval of the Self-Interested Transactions required Matthews and Tom Kusumoto to obtain the consent of the shareholders of EBMD and, in the case of the Gondola Property, EBMD and BMGC, as evidenced in a written shareholders resolution, after full disclosure – in writing – of the nature and extent of their interest in each of the Self-Interested Transactions. They did not do this.

Dated: 22-Jun-2023


Signature of ☐ Filing Party ☒ Lawyer for
Filing Parties

for: Andrew Nathanson, K.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any part at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

The Solicitors for the Plaintiff Sanovest Holdings Ltd are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Andrew Nathanson, K.C./329480.00001)

This is Exhibit "M" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia



No. 223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and
BM MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND: TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND: SANOVEST HOLDINGS LTD.,
TOMOSON (TOM) KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

RESPONSE TO COUNTERCLAIM

Filed by: Tomoson (Tom) Kusumoto (the "Responding Party")

Part 1: RESPONSE TO COUNTERCLAIM FACTS

Division 1 – Response to Facts

1. The facts alleged in the following paragraphs of Part 1 of the Counterclaim are admitted: 2 and 3
2. The facts alleged in the following paragraphs of Part 1 of the Counterclaim are denied: 1, and 4 – 27.
3. The facts alleged in the following paragraphs of Part 1 of the Counterclaim are outside the knowledge of the Responding Parties: n/a

4. Except as expressly admitted, the Responding Party denies each and every allegation of fact contained in the Counterclaim, and puts the Defendant (Plaintiff by Counterclaim) Daniel Matthews ("Matthews") to the strict proof thereof.

Division 2 – Responding Party's Version of Facts

1. The Responding Party was the founder of Sanovest Holdings Ltd. ("Sanovest"), but transferred his interest and control of Sanovest to a family trust, in or about 2001. The trustee of the family trust is Tian Kusumoto.
2. The Responding Party was a director of Ecoasis Bear Mountain Developments Ltd. ("EBMD") and Bear Mountain Golf Course Ltd. ("BMGC"), as the nominee of Sanovest, from September 2013 until his resignation in June, 2021.
3. The Responding Party did not approve the Impugned Transactions as Sanovest's nominee, nor was he acting, or purporting to act, at any time with actual or ostensible authority on behalf of Sanovest with respect to any of the Impugned Transactions.
4. The Responding Party made no representations to Matthews as alleged in the Counterclaim, or at all.
5. More specifically, neither expressly, nor by implication, nor by conduct, did the Responding Party represent that:
 - a. he was a principal of Sanovest such that information provided or available to him would constitute notice to Sanovest of such information;
 - b. that he had authority to bind Sanovest in respect of all matters connected with the Partnership, EBMD and BMGC;
 - c. that Sanovest had knowledge of each of the Impugned Transactions and their consequences to Sanovest's interests; nor
 - d. that he had, on behalf of Sanovest, authorized and consented to each of the Impugned Transactions.
6. With respect to the Impugned Transactions, the Responding Party says, and the facts are, that:
 - a. Matthews, and not the Responding Party, arranged for the transfer of the CRD reimbursement from the reservoir agreement to BMA. The Responding

Party only became aware of the assignment of these funds after they were transferred to BMA.

- b. The Gondola Property was transferred to BMA by Matthews without the Responding Party's knowledge or approval. Any purported resolution of the directors of BMGC, allegedly executed by the Responding Party, authorizing an employee of BMGC to execute the documents necessary to transfer BMGC's interest in the Gondola Property to, or as directed by, BMA was not intended to authorize the Impugned Transaction, and was misused by Matthews to carry out the transfer without the Responding Party's knowledge or approval.
- c. The Responding Party was not aware that the funds from a construction loan or revenue from lot sales relating to the Pinehurst development was transferred to BMA for the purchase of the recreation centre; nor was the Responding Party aware of the terms of the construction loan.

Furthermore, Matthews misrepresented to the Responding Party that the recreation centre was to be purchased by EBMD, at the request of a **proposed purchaser of the Bear Mountain assets**, as more fully particularized in the Response to Civil Claim filed by the defendant Tomoson (Tom) Kusumoto in this action.

Matthews misled the Responding Party about the purchase of the recreation centre and the Responding Party was not notified, and did not know, until after the property was transferred, that it had not been transferred to EBMD, but to Bear Mountain Adventures Nominee Ltd. (Inc. No. 1277928).

- d. While the Responding Party was aware that Matthews drew down \$1,000,000 from EBMD's Bank of Montreal account for BMAC's operating costs, this was an operating loan for the recreation centre. The Responding Party did not authorize an outright transfer of EBMD's funds to BMA or Bear Mountain Adventures Nominee Ltd., to pay operating costs, or capital expenditures, relating to the recreation centre.
- e. The Responding Party agreed that EBMD would loan \$1,000,000 to Matthews, as an advance, on Matthews' representation that he would repay the funds advanced out of revenue from the sale of the Bear Mountain assets which, at the time, was expected to occur in or about April, 2021.
- f. The Responding Party was not aware of, nor did he authorize, any diversion of funds to Matthews, out of the \$400,000 loaned to EBMD, or otherwise. The Responding Party became aware, in 2020, through David Clarke, the former

CFO of EBMD, that Matthews had charged personal expenses to the company between 2016 and 2019. These expenses were hidden from the Responding Party by Matthews until the disclosure by David Clarke in 2020.

7. The Responding Party denies he owed Matthews a duty as alleged in paragraph 21 of the Counterclaim, or at all, and says that even if such a duty was owed, which is denied, it was fulfilled by the Responding Party, and Matthews had knowledge of Sanovest's authority in all matters at issue. There was no act or omission, nor any misrepresentation, nor failure by the Responding Party to disclose any fact or matter that would lead to any misunderstanding by Matthews in regard to Sanovest's authority.
8. The Responding Party further denies that he took any acts to authorize or facilitate the Impugned Transactions, as alleged in paragraph 24 of the Counterclaim, that could reasonably have been relied upon by Matthews.
9. The Responding Party denies that Matthews suffered any harm, loss, or damage by reason of his reliance on any misrepresentations, or otherwise.
10. The Responding Party denies that he breached any fiduciary or other duty owed to EBMD and BMGC, or that he is liable to compensate EBMD and BMGC on the same basis as is claimed against Matthews.

Division 3 – Additional Facts

1. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Responding Party consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Counterclaim.
2. The Responding Party opposes the granting of the relief sought in ALL of the paragraphs of Part 2 of the Counterclaim.
3. The Responding Party takes no position on the granting of the relief sought in the following paragraphs of Part 2 of the Counterclaim: n/a

Part 3: LEGAL BASIS

1. The Responding Party did not make any representations to Matthews on his own behalf or on behalf of Sanovest, and is therefore not liable to Matthews for any allegedly untrue, misleading, or inaccurate representations, as alleged or at all.
2. The Responding Party did not provide any warranty of authority to Matthews, expressly or by implication or conduct; he did not breach any purported warranty of authority allegedly so provided; and he did not fail to disclose any limits to his authority. There is no basis for the counterclaim made by Matthews in regard to any purported warranty of authority.
3. Having provided no warranty of authority to Matthews, the Responding Party is not liable to Matthews for damages, harm or loss.
4. Matthews has suffered no damage, harm or loss, and has no claim for any such alleged damage, harm or loss.
5. The Responding Party denies that he is liable to pay compensation on the same legal basis as Matthews. It was Matthews, not the Responding Party, that orchestrated, facilitated or carried out the Impugned Transactions, without the Responding Party's knowledge, consent, approval, or authorization, and the Responding Party is not liable to Matthews, or any other person, under any legal theory, for any compensation which Matthews may be liable to pay as a result of his own acts or omissions.


Address for service of the responding party:

Velletta Pedersen Christie Lawyers
4th Floor - 931 Fort Street
Victoria, BC V8V 3K3

Fax number address for service (if any): N/A

E-mail address for service (if any): service@victorialaw.ca

Date: 01/Aug/2023



Signature of W. Eric Pedersen
lawyer for filing party

Rule 7-1(1) of the Supreme Court Civil Rules states:

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 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is Exhibit "N" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia



No. 223937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD

PLAINTIFF

AND:

DANIEL MATTHEWS, TOMOSON (TOM) KUSUMOTO,
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD. and
BM MOUNTAIN GOLF COURSE LTD.

DEFENDANTS

AND: TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND: SANOVEST HOLDINGS LTD.,
TOMOSON (TOM) KUSUMOTO and TIAN KUSUMOTO

DEFENDANTS BY WAY OF COUNTERCLAIM

RESPONSE TO THIRD PARTY NOTICE

Filed by: Tomoson (Tom) Kusumoto (the "Third Party")

Part 1: RESPONSE TO THIRD PARTY NOTICE FACTS

Division 1 – Response to Facts

1. The facts alleged in paragraphs 2 – 3 of Part 1 of the of the third party are admitted.
2. The facts alleged in paragraph(s) 1, and 4 – 7 of Part 1 of the third party notice are denied.
3. The facts alleged in NONE of the paragraphs of Part 1 of the third party notice are outside the knowledge of the third party.

Division 2 – Third Party's Version of Facts

1. The Third Party denies that he authorized the Impugned Transactions as Sanovest's nominee. Further, the Third Party denies that he authorized the Impugned Transactions with actual or ostensible authority to act on Sanovest's behalf; or that he ever represented to Matthews that he had such authority to authorize the transactions.
2. In response to paragraph 5 of the Third Party Notice, the Third Party denies that he made the representations alleged, or any representations, to Matthews, either expressly, or by implication, or by his conduct, either on his own behalf or on behalf of Sanovest.
3. In response to paragraph 6 of the Third Party Notice, while the Third Party does not know what Matthews understood and believed, no action taken, nor representation made, by the Third Party could in any way be the basis for Matthews' alleged reasonable understanding or belief that the Impugned Transactions were done with the Third Party's, or Sanovest's, approval.
4. In answer to the whole of the Third Party Notice, the Third Party says, and the facts are, that it was Matthews who orchestrated, facilitated or carried out the Impugned Transactions. Any involvement the Third Party may have had was as a result of Matthews' misrepresentations or subterfuge, and Matthews is solely liable for any losses which may be assessed as a result of the Impugned Transactions.

Division 3 – Additional Facts

1. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The third party consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the third party notice.
2. The third party opposes the granting of the relief sought in paragraphs 1 (a) – (f) of Part 2 of the third party notice.
3. The third party takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the third party notice.

Part 3: LEGAL BASIS

1. The Third Party did not breach any duty to Sanovest as alleged, or at all, and did not cause or contribute to any loss or damage claimed by the Plaintiff. The Third Party is not liable to contribute to any loss or damage which the Plaintiff claims against Matthews.


2. The Third Party made no misrepresentations to Matthews as to his corporate authority to approve the Impugned Transactions on Sanovest's behalf and therefore, if any compensable loss or damage was suffered by the Plaintiff as a result of the Impugned Transaction, there is no claim for contribution or indemnity for any such loss against the Third Party.

Address for service of third party: Velletta Pedersen Christie Lawyers
4th Floor - 931 Fort Street
Victoria, BC V8V 3K3

Fax number address for service (if any): N/A

E-mail address for service (if any): service@victorialaw.ca

Date: 01/Aug/2023



Signature of W. Eric Pedersen
lawyer for filing party

Rule 7-1(1) of the Supreme Court Civil Rules states:

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 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is Exhibit "O" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia

Court File No. **VLC-S-S-226218**NO. _____
VANCOUVER REGISTRY**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL MATTHEWS

DEFENDANT

NOTICE OF CIVIL CLAIM**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the plaintiff(s),

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The plaintiff, Tom Kusumoto is a business person with an address for service at 2000 – 250 Howe Street, Vancouver, BC, V6C 3R8.
2. The defendant, Daniel Matthews is a business person with an address for service at 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2
3. The plaintiff provided three (3) demand loans to the defendant between July 22, 2019 and February 10, 2020, documented by way of promissory notes made at Victoria, B.C., signed by both the plaintiff and the defendant.
4. The particulars of each of the loans are as follows:
 - (a) On July 22, 2019, the plaintiff loaned the defendant \$250,000.00 CDN with a date of recall of October 31, 2019, at an interest rate of 5% per annum (the “**First Loan**”). Interest on the First Loan, calculated to July 31, 2022, amounts to \$25,610.61 CDN.
 - (b) On October 28, 2019, the plaintiff loaned the defendant \$700,000.00 CDN with a date of recall of January 15, 2020, at an interest rate of 5% per annum (the “**Second Loan**”). Interest on the Second Loan, calculated to July 31, 2022, amounts to \$97,427.42 CDN.
 - (c) On February 10, 2020, the plaintiff loaned the defendant \$635,000.00 CDN with a date of recall of May 31, 2020, at an interest rate of 5% per annum (the “**Third Loan**”). Interest on the Third Loan, calculated to July 31, 2022, amounts to \$79,414.20 CDN.(collectively, the “**Loans**”)
5. The promissory notes require the defendant to pay to the plaintiff all reasonable costs of collection and attorney’s fees if he defaulted on the Loans.
6. The plaintiff has made a formal demand for repayment of the Loans and a plan for repayment from the defendant.
7. The defendant has not provided a plan for repayment and has refused or neglected to repay the Loans in spite of demand being made and it now in default.

Part 2: RELIEF SOUGHT

8. Judgment against the defendant for the Loans in the amount of \$1,787,451.90 CDN.
9. Judgment against the defendant for interest at a rate of 5% per annum, compounded annually, with respect to the Loans from the dates of recall, up to and including the date of judgment.
10. An order for payment of the costs of collection on the loans including attorney's fees.
11. In the alternative, interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, on the amount of the judgment from and the dates of recall, up to and including the date of judgment.
12. Such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

13. The promissory notes are a valid and binding contract between the plaintiff and the defendant.
14. The plaintiff is entitled to repayment on the Loans and accrued interest in accordance with the promissory notes and the demand made.
15. The plaintiff is entitled to full legal fees in accordance with the promissory notes and the demand made.

Plaintiff's address for service: Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Attn: David Wotherspoon

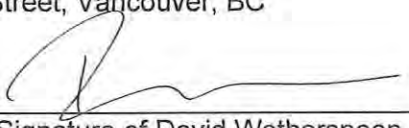
Fax number address for service (if any): 604-683-5214

E-mail address for service (if any): N/A

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: August 2, 2022



Signature of David Wotherspoon
Lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Debt claim.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☒ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4:

This is Exhibit "P" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia



NO. VLC-S-S-226218
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL MATTHEWS

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Daniel Matthews (the “Defendant”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in paragraphs 1 and 2 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 3 – 7 of Part 1 of the Notice of Civil Claim are denied, except as specifically admitted below.
3. The facts alleged in none of the paragraphs of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant’s Version of Facts

A. The Parties

4. The Defendant, Daniel Matthews is a businessperson resident in British Columbia, with an address for service in this proceeding c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, V6C 3L2.

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5. At all material times, Matthews has been, and he remains, the president and a director of 599315 B.C. Ltd. ("**599 Ltd.**"), a private, family-held company incorporated under the laws of British Columbia.

6. The Plaintiff, Tom Kusumoto ("**Kusumoto**"), is the elder member of the Kusumoto family, which conducts business through Sanovest Holdings Ltd. ("**Sanovest**"), among other entities. Sanovest is a company incorporated pursuant to the laws of Canada and registered extraprovincially in British Columbia. Kusumoto is the founder and was the long-time president of Sanovest and acted as Sanovest's representative in all dealings with Matthews and 599 Ltd. until in or around April 2021, when Matthews learned that Kusumoto's role as Sanovest's president and representative would be assumed by his son, Tian Kusumoto.

7. Matthews and Kusumoto had a long history of business dealings together, since at least 2010. Their business relationship was built on mutual trust and respect. They have worked closely together and have been successful in their shared endeavours.

B. Bear Mountain Project and Loan Arrangement

8. In or around September 2013, 599 Ltd. and Sanovest went into business together on the "Ecoasis" project at Bear Mountain in the Greater Victoria area (the "**Ecoasis Project**"). The Ecoasis Project involved, among other things, the development of a resort community and related amenities, including private residences, a hotel, golf courses, and other recreational facilities. The Ecoasis Project has operated through various companies, partnerships and Limited Liability Partnerships.

9. Under the business arrangement, Sanovest and 599 Ltd. have equal ownership and control in the Ecoasis Project. Sanovest agreed to provide financing, in the form of a mortgage loan, to fund the acquisition, development work and operations. Matthews was to lead the Ecoasis Project's overall operations. While Matthews would receive an agreed-upon salary for this work, that salary would be substantially less than his customary annual earnings. Matthews (and indeed 599 Ltd. and Sanovest) expected that far more substantial earnings would be realized from the sale of land and buildings in the Ecoasis Project.

10. In order to induce Matthews to lead the Ecoasis Project's overall operations for a limited salary, Kusumoto promised to lend funds to Matthews, upon Matthews' request, in such amounts as Matthews would reasonably require (the "**Loan Arrangement**"). The Loan Arrangement mirrored similar prior arrangements between Matthews and Kusumoto in relation to other development projects. Matthews agreed to the Loan Arrangement. It was expected, or in the alternative, agreed, that Matthews would repay these loans as and when profits were distributed from the Ecoasis Project or from other development projects involving Matthews and Kusumoto. At various times, and from time to time, between 2013 and 2018, Kusumoto loaned funds to Matthews in accordance with the Loan Arrangement. On some or, in the alternative, all of these occasions, the advances were documented with a promissory note that indicated a date for repayment. However, such dates were only notional; and the repayment was in fact subject to the terms of the broader Loan Arrangement. The promissory notes were only used to memorialize the amounts and dates of the loans. All funds advanced under the Loan Arrangement were repaid in accordance with that arrangement.

C. The Umbrella Agreement

11. In or around November 2018, Kusumoto and Matthews agreed to revise and replace the Loan Arrangement. In particular, they entered into an agreement having the following terms:

- (a) Kusumoto would advance Matthews a loan or loans in the aggregate amount of up to \$5,000,000, fundable in full once real estate sales in Sanovest-involved projects, including the Ecoasis Project, reached \$25,000,000;
- (b) Once the sales threshold had been met, Kusumoto would advance such amounts as Matthews requested from time to time (up to the \$5,000,000 maximum); and
- (c) Matthews would repay to Kusumoto the amounts advanced from profits distributed to 599 Ltd. in a "**Liquidity Event**". The parties understood and agreed that a Liquidity Event would mean a substantial disposition of the Ecoasis Project's land and business, allowing for retirement of the project's debt and the realization of profits from the project.

(the “**Umbrella Agreement**”)

12. The Umbrella Agreement was made by way of a series of written communications between Kusumoto and Matthews, or, in the alternative, was made partially in writing and partially orally.

13. In 2019, real estate sales reached the \$25,000,000 amount and Matthews requested that Kusumoto advance funds under the Umbrella Agreement. Kusumoto advanced an aggregate amount of \$1,585,000 to Matthews in three tranches, as follows:

- (a) \$250,000 advanced on or about July 22, 2019 (the “**First Advance**”);
 - (b) \$700,000 advanced on or about October 28, 2019 (the “**Second Advance**”); and
 - (c) \$635,000 advanced on or about February 10 – 12, 2020 by two successive payments (the “**Third Advance**”);
- (collectively the “**Advances**”).

14. The Advances were each documented using promissory notes signed by both parties (the “**Promissory Notes**”).

15. The promissory note for the First Advance states “[t]his loan is a demand loan and is due Oct 31, 2019”. The promissory note for the Second Advance states “the loan will be repaid by Jan 15, 2020”. The promissory note for the Third Advance states “the loan will be repaid by May 2020”.

16. The parties intended the Advances to be subject to the Umbrella Agreement and not demand loans, nor subject to the specific repayment dates stated on the respective Promissory Notes.

17. Kusumoto did not advance the remaining \$3,415,000 available under the Umbrella Agreement. Ultimately, following Matthews requests, Kusumoto advised Matthews in or around February 2021 that he would not be advancing further funds under the Umbrella Agreement. Kusumoto’s failure to do so has caused and is causing loss and damages to Matthews.

18. October 31, 2019, January 15, 2020, and May 2020 each passed by without Kusumoto making any demand for, or otherwise inquiring about, repayment of any of the Advances, or making any reference to the Promissory Notes.

19. To date, and for reasons entirely outside of Matthews' control, there has been no Liquidity Event triggering Matthews' repayment obligation under the Umbrella Agreement.

20. In or about early January 2022, Kusumoto demanded repayment of the Advances, purporting to rely on the repayment dates stated on the Promissory Notes. In response, Matthews confirmed receipt of the Advances and that repayment was not yet required pursuant to the Umbrella Agreement. This remains the case.

Division 3 – Additional Facts

1. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.

2. The Defendant opposes the granting of the relief sought in ALL of the paragraphs of Part 2 of the Notice of Civil Claim.

3. The Defendant takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Umbrella Agreement is a binding contract between the parties and its terms supersede any repayment dates stated on the Promissory Notes.

2. The Umbrella Agreement was in force at the time each of the Advances was made.

3. In the alternative, each of the Promissory Notes documents a contract that is collateral to and subject to the Umbrella Agreement. In the further alternative, the Umbrella

Agreement and the Promissory Notes must be considered as a unified contract consisting of a total package of interrelated rights and obligations.

4. Further, the Promissory Notes must be interpreted in light of the Umbrella Agreement and of the prior Loan Arrangement between the parties.

5. Pursuant to the terms of the Umbrella Agreement, the Advances are not due until the occurrence of a Liquidity Event, which has not yet occurred.

6. In the alternative, the recall dates stated on the Promissory Notes are subject to the requirement that a Liquidity Event have occurred by such date, failing which the Promissory Notes cannot be recalled until the occurrence of a Liquidity Event.

7. In the further alternative, there is an implied condition precedent in each of the Promissory Notes that a Liquidity Event have occurred before Matthews is required to repay any of the Advances.

8. As no Liquidity Event has occurred since the Advances were made, Matthews cannot be in default under the Umbrella Agreement or the Promissory Notes. Kusumoto's purported demand is invalid, and he is not currently entitled to repayment.

9. In the alternative, Kusumoto is prevented by the doctrine of estoppel from demanding repayment of the Advances at this time. In particular, but without limiting the generality of the foregoing, Kusumoto is estopped from demanding repayment of the Advances in circumstances where no Liquidity Event has occurred.

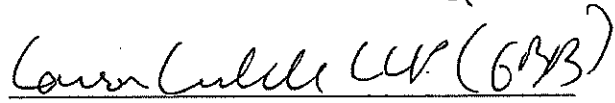
10. In any event, the Promissory Notes do not entitle Kusumoto to have his legal fees of this proceeding paid by Matthews.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C./Gordon Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com; gbrandt@lawsonlundell.com

Dated at the City of Vancouver, in the Province of British Columbia, this 23rd day of March, 2023.



Lawson Lundell LLP
Solicitors for the Defendant,
Daniel Matthews

This Response to Civil Claim is filed by Craig A.B. Ferris, K.C. and Gordon Brandt of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

NO. VLC-S-S-226218
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL
MATTHEWS

DEFENDANT

RESPONSE TO CIVIL CLAIM



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C.

GBB

This is Exhibit "Q" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia

MAR 23 2023

NO. VLC-S-S-226218
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL MATTHEWS

DEFENDANT

AND:

TOM KUSUMOTO

DEFENDANT BY WAY OF COUNTERCLAIM

COUNTERCLAIM

Filed by: Daniel Matthews

TO: Tom Kusumoto

This action has been brought by the Plaintiff against the Defendant for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the Defendant claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

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Time for Response to Counterclaim

A Response to Counterclaim must be filed and served on the Defendant bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. Matthews, the Defendant and Plaintiff by way of Counterclaim, repeats and relies upon the allegations of fact set out in Part 1 of the Response to Civil Claim. Unless otherwise stated herein, capitalized terms are as defined in the Response to Civil Claim.

2. As set out in the Response to Civil Claim, Kusumoto advanced \$1,585,000 to Matthews between July 2019 and February 2020 under the Umbrella Agreement.

3. Between June 2020 and February 2021, Matthews made further requests to Kusumoto under the Umbrella Agreement, for advances up to the \$5,000,000 ceiling of that agreement. Ultimately, Kusumoto advised Matthews in or around February 2021 that he would not be advancing further funds under the Umbrella Agreement.

4. As a result of Kusumoto's failure to advance the full \$5,000,000 under the Umbrella Agreement, despite Matthews' requests, Matthews has suffered loss and damages, including, but not limited to, financial losses, loss of business opportunities, and time and expense (including financing charges and interest) incurred in obtaining financing from other sources.

Part 2: RELIEF SOUGHT

1. Damages for breach of the Umbrella Agreement.
2. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.
3. Costs.
4. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Umbrella Agreement is a binding contract between Kusumoto and Matthews.
2. Kusumoto's failure to advance additional funds under the Umbrella Agreement, beyond the Advances of \$1,585,000, despite Matthews' requests for same, constitutes a breach of the Umbrella Agreement.
3. Matthews has suffered loss and damages, and is continuing to suffer loss and damages, as a result of Kusumoto's breach of the Umbrella Agreement.

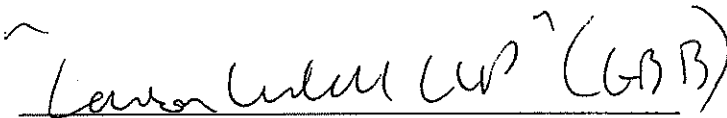
Address for service of the Defendant bringing this Counterclaim is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C., and Gordon Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com; gbrandt@lawsonlundell.com

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 23rd day of March, 2023.


 Lawson Lundell LLP
 Solicitors for the Defendant,
 Daniel Matthews

This Counterclaim is filed by Craig A.B. Ferris, K.C., and Gordon Brandt of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is Exhibit “**R**” referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.



A Commissioner for taking Affidavits within British Columbia



No. 226218
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL MATTHEWS

DEFENDANT

RESPONSE TO COUNTERCLAIM

Filed by: The Plaintiff, Tom Kusumoto (the “responding party”)

Part 1: RESPONSE TO COUNTERCLAIM FACTS

Division 1 – Response to Facts

1. The facts alleged in paragraphs **nil** of Part 1 of the counterclaim are admitted.
2. The facts alleged in paragraphs **all** of Part 1 of the counterclaim are denied.
3. The facts alleged in paragraphs **nil** of Part 1 of the counterclaim are outside the knowledge of the responding party.

Division 2 – Responding Party’s Version of Facts

1. The Plaintiff Tom Kusumoto (“**Kusumoto**”) denies each and every allegation in the Counterclaim, unless specifically admitted, and puts the Defendant Daniel Matthews to the strict proof thereof.
2. Kusumoto repeats the allegations of fact, and adopts the terms defined, in the Notice of Civil Claim, including any amendments thereto.
3. Kusumoto denies entering into the Loan Arrangement as alleged in the Response to Civil Claim and incorporated into the Counterclaim, or at all, and puts the Defendant to the strict proof thereof.
4. Kusumoto further denies that the Defendant accepted a lower salary for his work on the Ecoasis development, in exchange for receiving loans from Kusumoto. Rather, the Defendant has been well compensated for his work on the Ecoasis development.

5. Kusumoto pleads, and the facts are, that at various times prior to 2019, Kusumoto lent funds to the Defendant and these loans were recorded in written promissory notes. From time to time the Defendant was late in repaying loans and Kusumoto, voluntarily and without obligation, extended forbearance to the Defendant. The Defendant ultimately repaid the funds he borrowed from Kusumoto prior to 2019.
6. In response to the whole of the Response to Civil Claim and Counterclaim, Kusumoto denies entering into the Umbrella Agreement as alleged in the counterclaim, or at all, and puts the Defendant to the strict proof thereof.
7. In particular, Kusumoto denies having an ongoing obligation to advance funds to the Defendant. Rather, all funds loaned by Kusumoto to the Defendant were voluntarily advanced, subject to the specific terms agreed upon between Kusumoto and the Defendant at the time of each respective loan.
8. Kusumoto denies that the Loans documented in the promissory notes were intended to be subject to the alleged Umbrella Agreement, which does not exist, or to any collateral agreement at all.
9. The deadlines for repayment of the Loans set out in the promissory notes represented the due date for each respective loan, and any forbearance beyond the due date was solely at the discretion of Kusumoto. Kusumoto gave no assurance of ongoing forbearance.
10. There are no conditions precedent, or other contractual terms, which prevent the Loans from being due and owing in full. In particular, Kusumoto denies that repayment of the Loans was due only on occurrence of a "Liquidity Event" as defined in the Response to Civil Claim.
11. Kusumoto denies that the Defendant has suffered loss or damage as a result of actions of Kusumoto as alleged in the Counterclaim, or at all, and puts the Defendant to the strict proof thereof.
12. The Defendant is indebted to Kusumoto as set out in the promissory notes documenting the Loans, for the sum of \$1,787,451.90, contractual interest, and solicitor client costs incurred in collection. These amounts are now due and owing.

Division 3 – Additional Facts

1. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The responding party consents to the granting of the relief sought in paragraphs **nil** of Part 2 of the counterclaim.
2. The responding party opposes the granting of the relief sought in paragraphs **all** of Part 2 of the counterclaim.
3. The responding party takes no position on the granting of the relief sought in paragraphs **nil** of Part 2 of the counterclaim.

Part 3: LEGAL BASIS

1. Kusumoto never entered into the Loan Agreement or the Umbrella Agreement with the Defendant, and was not obliged to continue advancing funds to the Defendant.
2. If Kusumoto ever indicated an intention to loan the Defendant further funds beyond the Loans, which is not admitted and is denied, then such statements were gratuitous, were not intended to be contractual, did not involve any consideration provided by the Defendant, and did not involve sufficient certainty of terms. Kusumoto denies that there was any enforceable agreement between him and the Defendant that obliged Kusumoto to loan further amounts to the Defendant.
3. In the alternative, if Kusumoto had any obligation to advance funds to the Defendant, which is not admitted and is expressly denied, then Kusumoto denies that the Defendant has suffered any loss or damage as a result of Kusumoto not advancing further funds, beyond the amount of the Loans, to the Defendant, and puts the Defendant to the strict proof thereof.
4. In the further alternative, if the Defendant suffered loss and damage, which is expressly denied, then the Defendant failed or refused to take reasonable steps to mitigate such damages.
5. The Defendant's counterclaim is frivolous, vexatious, and an abuse of process, and ought to be dismissed with an award of special costs against the Defendant.

Address for service of the responding party: Velletta Pedersen Christie
4th Floor - 931 Fort Street
Victoria, BC V8V 3K3

Fax number address for service (if any): none

E-mail address for service (if any): service@victorialaw.ca

Date: June 16, 2023



Signature of **CADEYRN N. CHRISTIE**
lawyer for filing party

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is Exhibit "S" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.




A Commissioner for taking Affidavits within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

NO. S 234047
VANCOUVER REGISTRY

JUN 8 1 2023 IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN


ECOASIS DEVELOPMENTS LLP
ECOASIS RESORT AND GOLF LLP
599315 B.C. LTD.

PLAINTIFFS

AND:

SANOVEST HOLDINGS LTD.
TIAN KUSUMOTO
TRK INVESTMENTS CORPORATION
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a Counterclaim, you or your lawyer must

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- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-noted registry of this court within the time for Response to Civil Claim described below, and

serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiffs and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiffs,

- (b) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

if the time for Response to Civil Claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

A. The Parties

1. The Plaintiff Ecoasis Developments LLP (the “**Partnership**”) is a limited liability partnership registered in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348, having an address for service in this proceeding c/o 1600 – 925 West Georgia Street, Vancouver B.C., V6C 3L2.

2. The Plaintiff Ecoasis Resort and Golf LLP (the “**Resort Partnership**”) is a limited liability partnership registered in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348, having an address for service in this proceeding c/o 1600 – 925 West Georgia Street, Vancouver B.C., V6C 3L2. The units of the Resort Partnership are wholly owned by the Partnership, except one unit held by the Defendant Ecoasis Bear Mountain Developments Ltd. (“**EBMD**”).

3. The Plaintiff 599315 B.C. Ltd. (“**599315**”) is a corporation incorporated under the laws of British Columbia with an address for service in this proceeding of 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2.

4. The Defendant Sanovest Holdings Ltd. (“**Sanovest**”) is a corporation incorporated under the laws of Canada, and registered extraprovincially in British Columbia with a head office located at 224 West 5th Avenue, Vancouver, B.C., V5Y 1J4, and an attorney in British Columbia of Tian Kusumoto (“**Kusumoto**”) having an address of 228 West 5th Avenue, Vancouver, B.C., V5Y 1J4.

5. The Defendant Kusumoto is an individual resident in British Columbia with an address of 228 West 5th Avenue, Vancouver, B.C., V5Y 1J4.

6. The Defendant TRK Investments Corporation (“**TRK**”) is a corporation transitioned under the laws of British Columbia from the previous foreign jurisdiction of Alberta, having a registered and records office of 228 West 5th Avenue, Vancouver, B.C., V5Y 1J4. Kusumoto is the sole director and officer of TRK.

7. The Defendant EBMD is a corporation incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, B.C., V6C 2Z7.

8. 599315 and Sanovest are equal shareholders in EBMD. Kusumoto is the director of EBMD appointed by Sanovest; 599315 has appointed Daniel Matthews (“**Matthews**”) to EBMD’s board. EBMD is the “managing partner” of the Partnership and the Resort Partnership. It holds a single partnership unit in each. The balance of the units in the Partnership and Resort Partnership are held in equal numbers by 599315 and Sanovest.

9. This Action is commenced by 599315 in the name of and on behalf of the Partnership and Resort Partnership for wrongs done to the Partnership and Resort Partnership. Further, 599315 claims directly against Sanovest and EBMD (to the extent Sanovest has controlled or inhibited EBMD’s actions as “managing partner”) for wrongs done as partner in the Partnership and Resort Partnership.

B. Facts

1. The Bear Mountain Project

10. In or around September 2013, Sanovest and 599315 entered into a business relationship involving the intended acquisition, management, and ultimately the sale of assets associated with the Bear Mountain project (the “**Bear Mountain Project**”), a resort community that was under development near Victoria on Vancouver Island. At that time, Matthews, through a company he controlled, had entered into a purchase and sale agreement for the Bear Mountain Project’s assets (the “**Bear Mountain Assets**”).

11. In entering into this business relationship, 599315's principal, Matthews, and Sanovest's principal at that time, Tom Kusumoto, discussed and agreed on the following business terms:

- (a) the Bear Mountain Assets would be held in a limited liability partnership structure, which would take an assignment of the purchase and sale agreement. The partnership would be owned equally by Sanovest, which Matthews understood Tom Kusumoto controlled, and 50% by 599315, which Matthews controlled;
- (b) 599315, through Matthews, would be responsible for managing the overall operations, setting strategic direction and managing relationships with stakeholders at Bear Mountain and in the broader community, including the land development work; Sanovest's primary responsibility was to provide the funding necessary for the acquisition, operations, and land development work;
- (c) Matthews, nominated by 599315, and Tom Kusumoto, nominated by Sanovest, would serve as directors in any companies associated with the partnership. In such companies, Matthews would serve in the role of President/CEO, reflecting 599315's responsibility for managing the overall operations;
- (d) Sanovest would receive an 8% rate of return on its debt financing, together with a first charge on assets, and a preferred waterfall distribution based on profitability; and
- (e) Their objectives with the Bear Mountain Assets would be to: (i) service and improve the operating businesses and amenities, with a view to improving the public image and community character of the Bear Mountain development; (ii) conduct land development work, including site servicing work, with a view to selling bulk sites to developers with vertical construction expertise and single family lots to high quality home builders, thereby increasing the sale value of the land assets as a whole; (iii) generate sufficient revenues from initial sales to pay down the financing provided by Sanovest; and (iv) sell the land assets, either in

tranches or *en bloc*, in an appropriate manner, once the increased land value yielded a reasonable return on their investment.

(the “**Bear Mountain Business Terms**”)

12. In order to implement the Bear Mountain Business Terms, EBMD was incorporated on September 17, 2013 for the purpose of acting as the “managing partner” in the limited liability partnerships to be formed. 599315 and Sanovest each owned 50% of EBMD’s issued and outstanding shares. Matthews and Tom Kusumoto were each directors. Matthews was appointed President and CEO of EBMD and Tom Kusumoto was appointed secretary.

13. The Partnership was then formed by partnership agreement dated September 24, 2013 (the “**Partnership Agreement**”) for the purpose of holding the Bear Mountain Assets. 599315, Sanovest and EBMD each became partners in the Partnership. In accordance with the Partnership Agreement, EBMD subscribed for one Class A Unit, 599315 subscribed for 100 Class B Units, and Sanovest subscribed for 100 Class C Units.

14. The Resort Partnership was formed by a separate partnership agreement also dated September 24, 2013 (the “**Resort Partnership Agreement**”). The Partnership and EBMD became its partners, with the latter as “managing partner”. The units of the Resort Partnership were held 100 by the Partnership and 1 by EBMD. As described in the Resort Partnership Agreement, the Resort Partnership was formed for the purpose of acquiring the assets comprising two golf courses, and a hotel, and to carry out their businesses and other activities or business ancillary to or in furtherance of those businesses.

15. It was an express or implied term of the agreement between 599315 and Sanovest in the formation of the Partnership and Resort Partnership that these partnerships would operate in accordance with the Bear Mountain Business Terms.

16. Sanovest provided funding in accordance with the Bear Mountain Business Terms under a commitment letter dated October 8, 2013 (the “**Sanovest Loan Agreement**” and the “**Sanovest Loan**”). The terms of the Sanovest Loan Agreement include, *inter alia*: funding of up to \$35,000,000, an interest rate of 8%, and a maturity date of November 30, 2017. The Sanovest

Loan was secured by, *inter alia*, a mortgage over real property held by nominee companies on behalf of the Partnership, as well by guarantees from the Resort Partnership.

17. The Sanovest Loan Agreement was modified by agreement dated June 15, 2016 2016 (the “**First Modification Agreement**”), increasing the loan limit to \$70,000,000 and extending the term of the Sanovest Loan to November 1, 2021. As set out further below, a second modification agreement subsequently extended the Sanovest Loan to May 1, 2024.

2. Breaches of Bear Mountain Business Terms

18. From October 2013 to June 2021, the Partnership and Resort Partnership operated in accordance with the Bear Mountain Business Terms. The Partnership and Resort Partnership’s business was carried out through EBMD in its capacity as managing partner. Decisions that required approval of the Partnership were made by Tom Kusumoto on Sanovest’s behalf and by Matthews on behalf of 599315. At all times, and until approximately April 2021, Matthews understood and reasonably believed that Tom Kusumoto had full authority to act for Sanovest in all matters relating to the Partnership, the Resort Partnership, and Sanovest’s position as a shareholder in EBMD.

19. On June 1, 2021, following an internal change within Sanovest, Sanovest appointed Kusumoto (who is Tom Kusumoto’s son) to replace Tom Kusumoto on EBMD’s board of directors. Following this appointment, Kusumoto has prevented EBMD from effectively carrying out its role as managing partner and has prevented the Partnership and Resort Partnership from operating in accordance with the Bear Mountain Business Terms.

20. In particular, Sanovest and Kusumoto have:

- (a) Prevented Matthews from effectively carrying out his role as CEO and President of EBMD;
- (b) Prevented EBMD from carrying out the Bear Mountain Business Terms;
- (c) Attempted to seize control of the Partnership’s banking;

- (d) Claimed, but concealed from 599315, improper and unauthorized fees under the Sanovest Loan Agreement, including, in particular, claiming in 2019 but concealing until June 2021, an unauthorized fee of \$100,000 on reaching an alleged \$70,000,000 loan threshold under the Sanovest Loan;
- (e) Prevented the progress of planned and previously approved land development work, including with respect to the “Shadow Creek” site;
- (f) Blocked commercially reasonable bulk sales, and indeed sales for unprecedented value, of lands comprising the Bear Mountain Assets, which sales were contemplated by and consistent with the Bear Mountain Business Terms;
- (g) Acted to improperly entrench Sanovest’s position as lender, including by preventing sales, and by refusing to subordinate or replace the Sanovest Loan on terms that would be commercially advantageous to the Partnership and Resort Partnership;
- (h) In the absence of alternative financing, failed to advance funding under the Sanovest Loan Agreement for operational and land development purposes contemplated by the Sanovest Loan Agreement, thereby depriving the Partnership and Resort Partnership of funds necessary to pay debts and to invest in land development, that would increase the value of the Bear Mountain Assets;
- (i) Prevented the Partnership and Resort Partnership from retaining incoming revenues to the extent required for cash reserves;
- (j) After blocking sales, refusing alternative financing and failing to advance funds under the Sanovest Loan Agreement, conditioned any further advance of funds on entry into a second modification to the Sanovest Loan Agreement (the “**Second Modification Agreement**”), signed January 26, 2022, the terms of which are manifestly unfair to the Partnership and Resort Partnership and provide for profit and interest in excess of what a third-party lender could obtain in providing similar financing; and

- (k) Acted contrary to the interests of the Partnership and Resort Partnership in litigation and arbitration matters for the purpose of extracting separate advantages for Sanovest.

(collectively, the “**Partnership Breaches**”)

21. As a result of the Partnership Breaches, individually and collectively, the Partnership and Resort Partnership, and 599315 as unit-holder, have suffered loss and damages. Without limiting the generality of the foregoing, this loss and damage includes, *inter alia*, the following:

- (a) Lost appreciation of the value of the Bear Mountain Assets, including due to impaired land development;
- (b) Reputational harm and damage, and impaired business relationships;
- (c) Lost value of sales, such amount in excess of \$164,000,000 in 2022 alone, and in the context of a uniquely favourable market during that period;
- (d) Avoidable and improper interest charges and fees accrued to Sanovest under the Sanovest Loan Agreement, including as modified in the Second Modification Agreement; and
- (e) Impaired litigation outcomes and additional litigation costs.

22. In executing and persisting in the Partnership Breaches, notwithstanding the loss and damages to the Partnership, the Resort Partnership and 599315, Sanovest and Kusumoto have acted in their own self-interest and to the detriment of the Partnership, the Resort Partnership and 599315. Advantages improperly gained by Sanovest and Kusumoto in this regard include:

- (a) Interest and fees claimed under the Sanovest Loan Agreement, including as modified in the Second Modification Agreement;

- (b) Kusumoto, personally or through TRK, earning management fees in managing the Sanovest Loan on Sanovest's behalf, including fees on the advancing and re-advancing of funds to the Partnership and Resort Partnership;
- (c) Private arrangements with the adverse parties in the litigation and arbitration matters, the particulars of which are unknown to the Plaintiffs but are known to Sanovest and Kusumoto.

23. Sanovest has carried out the Partnership Breaches through Kusumoto in his role as its nominee to EBMD's board. Sanovest appointed Kusumoto knowing that he would carry out the Partnership Breaches, or, in the alternative, acted recklessly or negligently in making that appointment.

24. At all material times, Kusumoto was aware of Sanovest's partnership obligations to 599315, to the Partnership and to the Resort Partnership, and knowingly assisted Sanovest in breaching those obligations, including to obtain improper advantages, personally, through TRK, or through his interest in Sanovest.

Part 2: RELIEF SOUGHT

1. As against Sanovest and EBMD (to the extent Sanovest has controlled or inhibited EBMD's actions as "managing partner"):
 - (a) Damages for breach of the terms of the Partnership and the Resort Partnership; and
 - (b) Damages for breach of its duties of fairness and good faith, and breach of fiduciary duties to the Partnership, the Resort Partnership and 599315;
2. As against Kusumoto, damages for knowingly assisting Sanovest in its breaches of duty to the Partnership, the Resort Partnership and 599315;
3. As against Kusumoto and TRK, damages for knowing receipt of fees earned under the Sanovest Loan Agreement (including as extended and modified) in breach of Sanovest's obligations to the Partnership, the Resort Partnership and 599315;

4. An accounting of all proceeds or payments received by Sanovest, Kusumoto and TRK in relation to Sanovest's breach of its duties to the Partnership, the Resort Partnership and 599315, and/or the knowing assistance and knowing receipt of such proceeds or payments, and an order for restitution or disgorgement, or in the alternative, equitable damages;
5. A declaration that Sanovest, Kusumoto and TRK hold all such funds in trust, as constructive trustee, for the Partnership and Resort Partnership, and an order for an accounting and tracing of all such funds;
6. In the alternative, damages for unjust enrichment;
7. Aggravated and/or punitive damages;
8. Interest pursuant to the *Court Order Interest Act*, R.S.B.C., 1996, c. 79;
9. Special costs, or in the alternative, costs; and
10. Such further and other relief as this Court may deem just.

Part 3: LEGAL BASIS

A. Action in the Name of and on Behalf of the Partnership and Resort Partnership

11. At common law, a partner may bring an action in the name of and behalf of a partnership for harms done to a partnership. The Plaintiffs further plead and rely upon Rule 20-1 of the *Supreme Court Civil Rules*.

B. Breach of Partnership Agreement and Resort Partnership Agreement

12. It was an express or implied term of the agreement between 599315 and Sanovest in the formation of the Partnership and Resort Partnership that these partnerships would operate in accordance with the Bear Mountain Business Terms. Sanovest has breached these terms, and caused EBMD to breach those terms, by carrying out the Partnership Breaches. As a result of the Partnership Breaches, the Partnership, the Resort Partnership and 599315 have suffered loss and damage.

C. Breach of Partnership Duties

13. As partner, Sanovest owes statutory and common law duties to 599315, the Partnership and the Resort Partnership. These duties include a fiduciary duty and duty of good faith, which requires Sanovest to place the interests of the partnerships ahead of its private interests and to account to the partnerships for benefits gained in breach of a duty to the partnerships or to another partner. Further, Sanovest is under an express or implied obligation to carry out the business of the partnerships honestly and in good faith and with a view to fulfilling the business objectives expressed in the Bear Mountain Business Terms.

14. Sanovest has breached these fiduciary and other duties to the Partnership, the Resort Partnership and 599315 by carrying out the Partnership Breaches. Further, Sanovest appointed Kusumoto knowing that he would carry out the Partnership Breaches, or acted recklessly or negligently in making that appointment, and is liable for his conduct. As a result of its misconduct, Sanovest has realized improper gains at the expense of the Partnership, the Resort Partnership and 599315, who have suffered loss and damages as a result.

15. The Plaintiffs plead and rely upon the common law of partnerships and s. 22 of *Partnership Act*, R.S.B.C. 1996, c. 348.

D. Knowing Assistance and Knowing Receipt

16. Kusumoto, as a principal of Sanovest and a director of EBMD, has knowingly directed the Partnership Breaches, and has permitted himself to carry out the Partnership Breaches on behalf of Sanovest. As such, he may be held personally liable for the Partnership Breaches.

17. Further, Kusumoto, personally, and through TRK, has benefitted from the Partnership Breaches by earning fees in connection with the Sanovest Loan Agreement, which fees were earned by the wrongful preservation of the Sanovest Loan, the improper negotiation of the Second Modification Agreement, and Sanovest's conduct in preventing the Partnership and Resort Partnership from retaining cash reserves. Kusumoto and TRK received these payments knowing they were earned in breach of Sanovest's fiduciary and other duties to the Partnership,

the Resort Partnership and 599315, and are accordingly liable to account to the Partnership, the Resort Partnership and 599315 for those fees.

E. Unjust Enrichment

18. In the alternative, Sanovest, Kusumoto and TRK have been enriched through the Partnership Breaches while the Partnership, the Resort Partnership and 599315, have suffered a corresponding detriment. There is no juristic reason for Sanovest, Kusumoto and TRK to retain such benefits at the expense of the Partnership, the Resort Partnership and 599315.

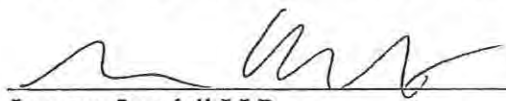
Plaintiffs' address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Gordon Brandt).

Fax number address for service is: (604) 669-1620.

Place of Trial: Vancouver

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 1st day of June, 2023.


Lawson Lundell LLP
Solicitors for the Plaintiffs

This Notice of Civil Claim is filed by Craig A.B. Ferris, K.C. and Gordon Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for breach of fiduciary duty and breach of contract

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

PART 4:

N/A

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ECOASIS DEVELOPMENTS LLP
ECOASIS RESORT AND GOLF LLP
599315 B.C. LTD.

PLAINTIFFS

AND:

SANOVEST HOLDINGS LTD.
TIAN KUSUMOTO
TRK INVESTMENTS CORPORATION
ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

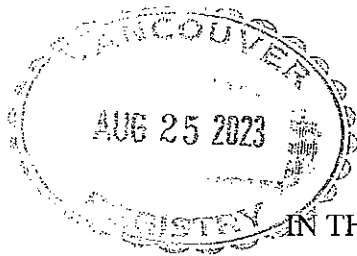


Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C. and Gordon Brandt

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This is Exhibit "T" referred to in the affidavit of Zhao (Vivienne) Zhang affirmed before me at Vancouver this 3rd day of July 2025.


A Commissioner for taking Affidavits within British Columbia



No. S234047
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ECOASIS DEVELOPMENTS LLP, ECOASIS RESORT AND
GOLF LLP and 599315 B.C. LTD.

PLAINTIFFS

AND:

SANOVEST HOLDINGS LTD., TIAN KUSUMOTO, TRK
INVESTMENTS CORPORATION and ECOASIS BEAR
MOUNTAIN DEVELOPMENTS LTD.

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Sanovest Holdings Ltd., Tian Kusumoto and TRK Investments Corporation
(the "**Defendants**")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendants' Response to Facts

1. The facts alleged in paragraphs 1–7, 14, and 17 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 8, 10, 11–13, 15–16, and 18–24 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in none of the paragraphs of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendants.
4. The Defendants say that paragraph 9 of Part 1 of the Notice of Civil Claim contains no allegation of fact.

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Division 2 - Defendants' Version of Facts

1. The Defendants deny each and every allegation of fact contained in Part 1 of the Notice of Civil Claim except as expressly admitted herein.

The Parties

2. The Plaintiffs, Ecoasis Developments LLP (the "**Partnership**") and Ecoasis Resort and Golf LLP (the "**Resort Partnership**"), are each limited liability partnerships created in accordance with Part 6 of the *Partnership Act*, R.S.B.C. 1996, c. 348 (the "**Act**").

3. The Plaintiff, 599315 B.C. Ltd. ("**599**"), is a company incorporated under the laws of British Columbia and is a partner in the Partnership. 599 is controlled by Daniel Matthews ("**Matthews**").

4. The Defendant, Sanovest Holdings Ltd. ("**Sanovest**"), is a company incorporated under the laws of Canada with an address for service in this proceeding at 2900 – 550 Burrard Street, Vancouver, British Columbia. Sanovest is a partner in the Partnership.

5. The Defendant, Ecoasis Bear Mountain Developments Ltd. ("**EBMD**"), is a company incorporated under the laws of British Columbia with a registered and records office located at 2800 – 666 Burrard Street, Vancouver, British Columbia. EBMD is a partner in the Partnership and the Resort Partnership, and is the managing partner of each.

6. The respective interests of the parties in the Partnership are as follows: Sanovest (49.75%), 599 (49.75%) and EBMD (0.5%). The units in the Resort Partnership are held entirely by the Partnership with the exception of one unit, which is held by EBMD.

7. Sanovest and 599 each own 50% of the issued and outstanding common shares of EBMD. The directors of EBMD are Matthews and the Defendant Tian Kusumoto ("**Tian Kusumoto**"), who is a businessperson, with an address for service in this proceeding at 2900 – 550 Burrard Street, Vancouver, British Columbia. While Matthews has been a director of EBMD since its incorporation, Tian Kusumoto was appointed as a director of EBMD in June, 2021.

8. The Defendant, TRK Investments Corporation ("**TRK Investments**"), is a company transitioned under the laws of British Columbia from the previous foreign jurisdiction of Alberta, with an address for service in this proceeding at 2900 – 550 Burrard Street, Vancouver, British Columbia.

9. Tian Kusumoto is the sole director and officer of TRK Investments.

Acquisition of the Bear Mountain Assets by the Partnership

10. The Partnership was created to acquire certain assets comprising the Bear Mountain Resort located near Victoria, British Columbia (the "**Bear Mountain Assets**"), including two golf courses known as the "Mountain Course" and the "Valley Course" (the "**Golf Courses**"), a 156 room hotel located at Bear Mountain (the "**Hotel**") and other real property holdings.

Denial of the Alleged Bear Mountain Business Terms

11. Sanovest, 599, and EBMD agreed that the Partnership and Resort Partnership would operate on the terms set out in the partnership agreements entered into in writing between the parties. More particularly:

- (a) as it relates to the Partnership: by a written limited liability partnership agreement between EBMD, Sanovest and 599 made as of September 24, 2013 (the **"Partnership Agreement"**); and
- (b) as it relates to the Resort Partnership: by a limited liability partnership agreement between the Partnership and EBMD, also made as of September 24, 2013 (the **"Resort Partnership Agreement"**).

12. Further, the terms on which Sanovest agreed to provide funding to the Partnership are set out in an agreement made as of October 8, 2013, as subsequently amended, by which Sanovest, as "Lender", agreed to loan the Partnership, as "Borrower", up to \$35 million, which was later increased to \$70 million (the **"Sanovest Loan"**), secured by a first mortgage on certain of the Bear Mountain Assets and other security (collectively, the **"Security"**), on terms and conditions set out in the agreement, including as to the payment of interest (originally and as amended, the **"Sanovest Loan Agreement"**).

13. Sanovest denies that it agreed through Tom Kusumoto, or otherwise, to the Bear Mountain Business Terms (as defined at paragraph 11 of Part 1 of the Notice of Civil Claim) and denies further that Sanovest and 599 expressly or impliedly agreed that such terms would govern the operation of the Partnership or Resort Partnership or the provision of funding by Sanovest.

14. Sanovest pleads and relies on the Partnership Agreement, the Resort Partnership Agreement and the Sanovest Loan Agreement in their entirety.

15. In specific response to paragraphs 11(b), (c) and (e) and paragraph 15 of Part 1 of the Notice of Civil Claim, the Defendants say that:

- (a) It was agreed that as equal partners in the Partnership and equal shareholders of EBMD, Sanovest and 599 would, through the board of directors of EBMD, exercise shared management control of EBMD, and through EBMD, of the affairs of the Partnership and the Resort Partnership;
- (b) Sanovest's "main responsibility" as partner was not to provide financing, as alleged; the Sanovest Loan Agreement is a contractual agreement between Sanovest, qua Lender, and the Partnership;
- (c) In any event, under the terms of the Sanovest Loan Agreement, Sanovest was not required to advance funds to the Partnership as and when requested, but rather, advances under the Sanovest Loan Agreement were always subject to the satisfaction of the conditions precedent to advances and the Partnership's satisfaction of the other terms and conditions of the Sanovest Loan Agreement and the Security; and

- (d) There was no agreement, understanding or business plan as alleged at paragraph 11(e) of the Notice of Civil Claim. In particular, there was no understanding or agreement that the Partnership's land development work would be limited in the nature alleged at paragraph 11(e)(ii) or that the Partnership would sell its assets as alleged in paragraph 11(e)(iv). The Partnership Agreement defines the Business of the Partnership and required the preparation of a business plan for the development of the real estate portion of the Bear Mountain Assets. Despite the terms of the Partnership Agreement and Sanovest and Tian Kusumoto's demands, Matthews did not prepare, or cause EBMD to prepare, a business plan in this respect, and no business plan was approved by the directors of EBMD or by the partners of the Partnership, as contemplated by the Partnership Agreement.

16. In specific response to paragraph 16 of Part 1 of the Notice of Civil Claim, Sanovest has made and, at the Partnership's request, has continued to make advances under the Sanovest Loan Agreement, including as recently as approximately June 27, 2023. In making the advances, and in agreeing to amendments to the Sanovest Loan Agreement, Sanovest was relying on the terms of the Sanovest Loan Agreement, including its entitlement to interest thereunder.

Tian Kusumoto's appointment as a director of EBMD in 2021 and discovery of the Self-Interested Transactions

17. In early June 2021, Tian Kusumoto was appointed as a director of EBMD by resolution of the shareholders of EBMD.

18. Over the course of the period spanning the months preceding his appointment as a director of EBMD, and in the period thereafter, Tian Kusumoto gradually learned facts indicating that between January, 2016 and June, 2021, Matthews and Tom Kusumoto, in breach of their fiduciary duties and while having disclosable interests in the transactions for which no proper shareholder approval was sought or obtained, caused EBMD and a related company owned by the Partnership, to sell, assign or transfer valuable assets to Bear Mountain Adventures Ltd. ("BMA"), a corporation that Matthews and Tom Kusumoto controlled, or to Matthews personally, for no or inadequate consideration (collectively, the "Self-Interested Transactions").

19. The details of the Self-Interested Transactions are set out in a Notice of Civil Claim commenced by Sanovest in the Supreme Court of British Columbia on May 13, 2022 under Vancouver Registry Action No. S-223937.

20. In defence to the Self-Interested Transactions, Matthews pleads and relies on the authority and consent of Tom Kusumoto, certain aspects of which are repeated in the Notice of Civil Claim. Contrary to those allegations, Tom Kusumoto was not the principal of Sanovest. He divested himself of his shares in Sanovest years before the Partnership and Resort Partnership were formed. Further, from September 2013 to March 2021, Tom Kusumoto was one of two directors of Sanovest. He ceased to be a director of Sanovest in the fall of 2021. To the extent Matthews held any different understanding, which is not admitted but expressly denied, such understanding was not reasonably held.

Denial of the claims of breach against the Defendants

21. Tian Kusumoto denies that, following his appointment as a director of EBMD, he acted in a manner to prevent EBMD from effectively carrying out its role as managing partner of the Partnership or the Resort Partnership or that he acted to prevent the Partnership or the Resort Partnership from operating in accordance with the terms upon which the parties agreed they would act, as set out in the Partnership Agreement and the Resort Partnership Agreement.

22. In response to paragraphs 19 and 20 of Part 1 of the Notice of Civil Claim, Sanovest and Tian Kusumoto deny that they have committed the “**Partnership Breaches**” (as defined therein), or any one of them, as alleged or at all. At all material times, Sanovest and Tian Kusumoto have acted in accordance with the duties owed by them, including such statutory, contractual, common law and equitable obligations as were owed by them respectively. More specifically:

- (a) Sanovest and Tian Kusumoto deny that they have acted to prevent Matthews from carrying out his role as CEO and President of EBMD, as alleged at paragraph 20(a);
- (b) Tian Kusumoto says that steps taken by him in relation to the Partnership’s banking were undertaken in furtherance of his duty as a director of EBMD to ensure the existence of proper financial controls, not in an effort by him or Sanovest to seize control of the Partnership’s banking as alleged at paragraph 20(c), which **allegations are expressly denied by Sanovest and Tian Kusumoto;**
- (c) Sanovest and Tian Kusumoto deny that any fees claimed by Sanovest were improper or unauthorized or that any such matters were concealed from 599, as alleged at paragraph 20(d) of the Notice of Civil Claim;
- (d) Tian Kusumoto says that the steps taken by him in considering development work were undertaken in furtherance of his duties as a director of EBMD, including acting to ensure that a business plan, including appropriate arrangements as to financing, were in place before approving the commencement of work;
- (e) Sanovest and Tian Kusumoto deny that they have blocked commercially reasonable bulk sales, as alleged or at all. Since Tian Kusumoto’s appointment to the board of EBMD in June, 2021, the directors have fallen into disagreements over the appropriate business policy and strategy for EBMD and the Partnership, including with respect the disposition of the Bear Mountain Assets. Matthews wishes to pursue the sales of bulk sites and single family lots, whereas Tian Kusumoto wishes to examine the desirability of a broader range of options, including pursuing construction, development, marketing and sales for the Partnership’s own account, either alone or with partners, or exploring the sale of all or substantially all of the Bear Mountain Assets; and
- (f) Sanovest and Tian Kusumoto deny that they have acted contrary to the interests of the Partnership and Resort Partnership in litigation and arbitration matters, as alleged at paragraph 20(k), and in particular, deny any interference in such matters with a view to extracting advantages for Sanovest.

23. In specific response to paragraphs 20(g), 20(h), and 20(j) of Part 1 of the Notice of Civil Claim, Sanovest and Tian Kusumoto deny that they have acted to “improperly entrench Sanovest’s position as Lender”, “refused to subordinate or replace the Sanovest Loan on terms that would be commercially advantageous to the Partnership and Resort Partnership”, “failed to advance funding under the Sanovest Loan Agreement”, or “conditioned any further advance of funds on entry into a second modification to the Sanovest Loan Agreement”. In answer to these allegations generally:

- (a) Sanovest has preferred status as Lender to the Partnership pursuant to the terms of the Sanovest Loan Agreement;
- (b) No actual proposal for financing to replace the Sanovest Loan has ever been presented to the EBMD board of directors for consideration, with the result that Tian Kusumoto has exercised no power as a director that has prevented EBMD and the Partnership from replacing the Sanovest Loan with other financing. Tian Kusumoto has previously agreed in principle that the board of EBMD should investigate the refinancing of the Sanovest Loan once the Partnership has audited financial statements and the board has approved a business plan that encompasses the servicing and repayment of the existing and new debt financing;
- (c) Instead of replacing the Sanovest Loan, by an agreement dated January 26, 2022, Matthews, on behalf of EBMD and the Partnership, entered into an extension and modification of the Sanovest Loan Agreement (the “**Second Modification Agreement**”); and
- (d) Both before and after the Second Modification Agreement, EBMD, at Matthews’ direction or with his concurrence, sought and accepted advances of the Sanovest Loan from Sanovest. Despite Matthews’ misconduct and breaches by the Partnership of the Sanovest Loan Agreement, Sanovest has continued to make advances under the Sanovest Loan Agreement, including as recently as June 27, 2023.

24. In further response to paragraph 20 of Part 1 of the Notice of Civil Claim, the Partnership Breaches, or a substantial portion thereof, lack particulars and are accordingly deficient. The Defendants reserve the right to make further response to such matters upon the provision of further and better particulars.

25. In response to paragraph 21 of Part 1 of the Notice of Civil Claim, Sanovest and Tian Kusumoto deny that the Partnership, Resort Partnership, or 599 have suffered any loss or damages as a result of the alleged Partnership Breaches.

26. Further, and in specific response to paragraph 21(d) of Part 1 of the Notice of Civil Claim, Sanovest and Tian Kusumoto deny that the Partnership has suffered any loss or damage arising from interest charges and fees accrued to Sanovest under the Sanovest Loan Agreement. Sanovest is and has been entitled to interest on the amounts outstanding on the Sanovest Loan from time to time, and to fees in connection therewith, pursuant to the express terms of the Sanovest Loan Agreement.

27. In response to paragraph 22 of Part 1 of the Notice of Civil Claim, Sanovest and Tian Kusumoto deny that they have acted at any material time in their own self-interest and to the detriment of the Partnership, Resort Partnership, or 599. As set out above, Sanovest and Tian Kusumoto have complied with their statutory, common law, and equitable duties. In further response:

- (a) Any interest or fees earned by Sanovest are proper and flow from the express terms of the Sanovest Loan Agreement, which was a commercial agreement negotiated at arm's length between sophisticated commercial parties; and
- (b) Neither Sanovest nor Tian Kusumoto have "private arrangements" with adverse parties in ongoing litigation and arbitration matters involving the Partnership or Resort Partnership. This allegation is made entirely without foundation and Sanovest and Tian Kusumoto put 599 to the strict proof thereof.

28. In response to paragraph 23 of Part 1 of the Notice of Civil Claim, Sanovest denies that it carried out the Partnership Breaches, as alleged or at all or that it acted knowingly, negligently or recklessly in approving the appointment of Tian Kusumoto as a director of EBMD.

29. In response to paragraph 24 of Part 1 of the Notice of Civil Claim, Tian Kusumoto denies that he knowingly assisted Sanovest in breaching any duties to the Partnership, Resort Partnership, or 599, in order to "obtain improper advantages" or for any purpose, as alleged or at all.

Division 3 - Additional Facts

1. Not applicable.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendants consent to the granting of the relief sought in none of the paragraphs of Part 2 of the Notice of Civil Claim.
2. The Defendants oppose the granting of the relief sought in paragraphs 1-10 of Part 2 of the Notice of Civil Claim.
3. The Defendants take no position on the granting of the relief sought in none of the paragraphs of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. In answer to the whole of the Notice of Civil Claim, 599 does not have standing to advance any, or alternatively all, of the claims alleged therein. Sanovest pleads and relies on s. 3.3(c) of the Partnership Agreement.

2. Further, the claims advanced by the Plaintiffs, which seek to attribute liability to Sanovest for the conduct of Tian Kusumoto in discharging his duties as a director of EBMD and for the conduct of EBMD, disclose no cause of action against Sanovest. Tian Kusumoto, when discharging his duties as a director of EBMD, was not acting for or on behalf of Sanovest.

3. Alternatively, if Sanovest is liable for the conduct of Tian Kusumoto or of EBMD, which is not admitted but expressly denied, Sanovest did not breach the Partnership Agreement, the Resort Partnership Agreement or any other agreement between the parties and did not breach any statutory or common law duties owed by Sanovest to 599, the Partnership or the Resort Partnership, as alleged.

4. In particular, Sanovest and 599 did not expressly or impliedly agree that the Bear Mountain Business Terms would govern the operation of the Partnership or the Resort Partnership. Sanovest specifically denies that it is under any obligation, express or implied, to "carry out the business of the partnerships...with a view to fulfilling the business objectives expressed in the Bear Mountain Business Terms". Rather, Sanovest, 599, and EBMD agreed that the Partnership and the Resort Partnership would be governed by the Partnership Agreement and the Resort Partnership Agreement. Sanovest did not breach the Partnership Agreement, or cause EBMD to breach either the Partnership Agreement or the Resort Partnership Agreement, or any other agreement between the parties. Further, Sanovest did not commit the Partnership Breaches or cause EBMD to commit said breaches.

5. In further answer to the Notice of Civil Claim, Sanovest denies that it breached any duty of fairness and good faith or that it breached any fiduciary duty owed to the Partnership, the Resort Partnership or 599. In particular, Sanovest denies that it placed its private interests ahead of the interests of the Partnership or the Resort Partnership, except as permitted by the terms of the Sanovest Loan Agreement or that it derived any improper gains as a result of its conduct.

Tian Kusumoto is Not Personally Liable

6. Tian Kusumoto is not personally liable for the Partnership Breaches or for knowing assistance and knowing receipt. Tian Kusumoto denies that he or Sanovest committed the Partnership Breaches, as alleged, or that he knowingly directed or permitted the same. At all material times, Tian Kusumoto has exercised his powers as a director of EBMD in good faith and in the best interests of EBMD and the partnerships that it manages.

7. Further, and in response to paragraph 17 of Part 3 of the Notice of Civil Claim, Tian Kusumoto and TRK deny that they have benefitted from the alleged Partnership Breaches, as alleged. Neither Tian Kusumoto nor TRK Investments are liable to account to the Partnership, the Resort Partnership, or 599 on the basis of knowing receipt or knowing assistance.

No Loss or Damage

8. In the alternative, Sanovest and Tian Kusumoto deny that the Partnership, Resort Partnership, or 599 have suffered any loss or damages as alleged.

No Unjust Enrichment

9. The Defendants are not liable in unjust enrichment. In particular, and in response to paragraph 18 of Part 3 of the Notice of Civil Claim, the Defendants deny that they or any one of them have been enriched through the "Partnership Breaches", as alleged or otherwise. The Defendants further deny that the Plaintiffs have suffered a corresponding detriment in relation to said breaches.

Defendants' address for service:

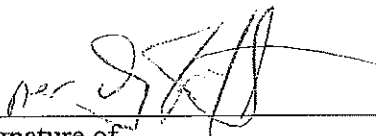
Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Attention : Andrew I. Nathanson, K.C./Jennifer Francis

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

Dated: August 25, 2023



Signature of
☐ Defendant ☒ Lawyer for Defendants

Andrew I. Nathanson, K.C./Jennifer Francis

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any part at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

The Solicitors for the Defendants Sanovest Holdings Ltd., Tian Kusumoto and TRK Investments Corporation are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Andrew I. Nathanson, K.C./329480.00001)

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

A F F I D A V I T

OWEN BIRD LAW CORPORATION

PO Box 1, Vancouver Centre II
2900-733 Seymour Street
Vancouver, B.C. V6B 0S6

Attention: Scott H. Stephens and Lily Y. Zhang
File No. 42018-0000
