



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

**APPLICATION RESPONSE
(RE: AMENDMENT TO RECEIVERSHIP ORDER)**

Application Response of: 599315 B.C. Ltd. ("**599**") and Daniel Matthews ("**Matthews**")

THIS IS A RESPONSE TO the Notice of Application of Sanovest Holdings Ltd. ("**Sanovest**")
filed June 16, 2025.

The application respondents estimate that the application will take 1 day.

PART 1: ORDERS CONSENTED TO

The application respondents consent to the granting of the orders set out in the following
paragraphs of Part 1 of the notice of application: NONE

PART 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in the following paragraphs
of Part 1 of the notice of application: ALL

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in the paragraphs of Part 1 of the notice of application: NONE

PART 4: FACTUAL BASIS

Background

1. Matthews is a principal of 599.
2. In October 2013, 599 and Sanovest went into business together to acquire assets associated with the Bear Mountain project, located in the Greater Victoria area (the “**Bear Mountain Project**” and the “**Bear Mountain Assets**”). Bear Mountain is a master-planned resort community near Victoria, spread over 1,100 acres, and today is home to more than 3,000 residents.
3. The Bear Mountain Assets were acquired by 599 and Sanovest out of proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 through two limited liability partnerships:
 - a. the respondent, Ecoasis Developments LLP (the “**Development Partnership**” or “**Developments**”); and
 - b. Ecoasis Resort and Golf LLP (the “**Resort Partnership**, or “**Resorts**” and together with the Development Partnership, the “**Partnerships**”).
4. At the time of the acquisition, Sanovest was represented by Tian Kusumoto’s father, Tom Kusumoto. The Bear Mountain Assets at that time included, *inter alia*:
 - a. two golf courses and associated practice facilities (which the Resort Partnership continues to own and operate today);
 - b. a 156-room hotel (i.e., the Hotel, which was sold by the Resort Partnership to a third party in 2019); and
 - c. extensive real property holdings, the majority of which the Partnerships continue to hold today.
5. The respondent, Ecoasis Bear Mountain Developments Ltd. (the “**Company**” or “**EBMD**”) was incorporated to act as the “managing partner” of the Partnerships and acquired one partnership unit in each.
6. The Company has at all times occupied the role of managing partner under the Partnerships’ respective partnership agreements. As such, the Company manages and operates the Partnerships’ respective businesses.
7. Upon incorporation, Matthews and Tom Kusumoto were each appointed directors of the Company, and per the partners’ prior agreement, Matthews was appointed as the

Company's President and Chief Executive Officer, responsible for managing the Bear Mountain Project's overall day-to-day operations.

8. The remaining partnership units in the Development Partnership were, and continue to be, held in equal measure by 599 and Sanovest. The Development Partnership holds all partnership units of the Resort Partnership, other than the single unit held by the Company.

The Sanovest Loan

9. The Partnerships' acquisition of the Bear Mountain Assets completed on October 8, 2013.
10. The acquisition was financed by Sanovest under a commitment letter dated October 8, 2013 (the "**Sanovest Loan Agreement**").
11. The terms of Sanovest's financing for the Bear Mountain Project (the "**Sanovest Loan**") 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. Further, under the Sanovest Loan Agreement, Sanovest was required to advance funds to the Development Partnership, as and when requested, for Partnership activities, including development of the Bear Mountain Assets and to fund ongoing operations.
12. The Sanovest Loan Agreement set a maturity date of November 30, 2017.

Matthews #1 (Oppression), para. 21, Ex. J

13. By agreement dated June 15, 2016 (the "**First Modification Agreement**"), Sanovest and the Development Partnership agreed to extend and increase the amount of the Sanovest Loan. To that point, according to the First Modification Agreement, Sanovest had advanced \$40M under the Sanovest Loan. Pursuant to the First Modification Agreement, Sanovest agreed to increase the loan limit to \$70M and to extend the term to November 1, 2021.

Matthews #1 (Oppression), para. 23, Ex. K

14. By agreement dated January 26, 2022, Sanovest and the Development Partnership extended the Sanovest Loan to May 1, 2024, with an extension fee of \$700,000 accruing to Sanovest (the "**Second Modification Agreement**").

Matthews #1 (Oppression), para. 76, Ex. GG

15. As discussed in more detail below, Sanovest and Tian Kusumoto utilized the Sanovest Loan as part of their long pattern of oppressive conduct towards 599 and Matthews.

The Receivership and Other Bear Mountain Proceedings

16. On May 3, 2024, Sanovest issued a formal demand for payment on the Sanovest Loan.

17. On May 23, 2024, Sanovest brought the within petition for receivership (the “**Receivership Petition**”) seeking the appointment of a receiver and manager over all assets, undertakings and property of the Partnerships, the nominee entities that own real property comprising part of the Bear Mountain Assets and others.
18. In addition to the Receivership Petition, there are four extant actions (the “**Bear Mountain Proceedings**”) involving the ownership, financing, development and management of the Bear Mountain Project:
 - a. Matthews and 599’s oppression action [S-234048], initially brought as a petition but converted to an action, wherein Matthews and 599 allege that, since June 1, 2021, Sanovest and Tian Kusumoto have stymied the operation of the Company and the Bear Mountain Project, and, *inter alia*, wrongfully and oppressively prevented the sale of development land in order to gain control, benefit financially and erode 599’s equity position (the “**Oppression Action**”);
 - b. a claim by the Partnerships and 599, naming Sanovest, Tian Kusumoto, the Company, and TRK Investments Corporation, a company held by Tian Kusumoto, as defendants [S-234047] (the “**Partnership Action**”);
 - c. a claim brought by Sanovest, naming the Company, Tom Kusumoto, BM Mountain Golf Course Ltd., and Matthews as defendants [S-223937] (the “**Sanovest Action**”); and
 - d. a debt claim brought by Tom Kusumoto against Matthews and counterclaim brought by Matthews [S-226218] (the “**Tom Debt Action**”).
19. By order of Associate Judge Nielsen dated April 18, 2024, the Oppression Action, Partnership Action and the Sanovest Action were consolidated on certain terms.

Ecoasis Developments LLP v. Sanovest Holdings Ltd., 2024 BCSC 635
20. By order of the Honourable Madam Justice Morellato dated May 16, 2025, the Tom Debt Action, the Partnership Action, the Oppression Action and the Sanovest Action were ordered to be heard together.

Ecoasis Developments LLP v. Sanovest Holdings Ltd., 2025 BCSC 991
21. On September 18, 2024, by consent, Alvarez & Marsal Canada Inc. was appointed as receiver of certain assets of the certain assets of certain respondents herein (the “**Receivership Order**”).
22. The Receivership Order excluded, *inter alia*, the operations and business of the Resort Partnership, which continues to be managed by EBMD, the Bear Mountain Proceedings, and the arbitration between the Resort Partnership and Bear Mountain Resort & Spa Ltd., BM Management Holdings Ltd., and BM Resort Assets Ltd. (the “**Hotel Arbitration**”), subject to further order of the court.

The Bear Mountain Project up to May 2021

23. When the Bear Mountain Assets were acquired by the partners in 2013, the Bear Mountain Project was in creditor protection and considered a troubled development within the community on south Vancouver Island.
24. Between October 2013 and late 2016, the Development Partnership accomplished key objectives with respect to increasing land value, infrastructure development, community engagement, and raising the profile of the resort development's golf courses and other sporting amenities.
25. During this period, Matthews also worked to successfully rebuild local support for the Bear Mountain Project and strengthen its reputation within the community and region.
26. In late 2016 and early 2017, Matthews and Tom Kusumoto agreed to a marketing strategy designed to effect bulk sales or a global sale of the Bear Mountain Assets. The Development Partnership's engagement of real estate marketing firm JLL was publicly announced in February 2017. More advanced discussions were held with purchaser groups in 2019 and 2020, with Tian Kusumoto entering the picture.

Matthews #1 (Oppression), paras. 27 to 39

Oppressive Conduct by Sanovest and Tian Kusumoto

27. In early 2021, a sales strategy was initiated through Colliers International ("**Colliers**"), using an approach of creating distinct "sites" on the Bear Mountain lands. However, on or about May 17, 2021, this process was halted through unilateral communications from Tian Kusumoto to Colliers. Around this time, Matthews learned that Tom Kusumoto was being removed as Sanovest's president and no longer had full authority to act for Sanovest in respect of the Company and the Development Partnership.

Matthews #1 (Oppression), paras. 43 to 47

28. In June 2021, Tian Kusumoto formally replaced his father Tom Kusumoto as Sanovest's nominee to the Company and other related companies. Tian Kusumoto was also appointed as the Company's Chief Financial Officer — a role that continues today.

Matthews #1 (Oppression), para. 49

29. Since this time, Sanovest and Tian Kusumoto have engaged in a consistent pattern of conduct contrary to 599/Matthews' reasonable expectations as a 50/50 shareholder of EBMD and an equal partner, including blocking development land sales; refusing to advance funding under the Sanovest Loan Agreement; and refusing to sign off on expenditures that can and should be paid from existing and available Partnership funds.

Delay Marketing and Blocking Sales

30. After replacing his father in June 2021, Tian Kusumoto consistently impeded or delayed the marketing and sales process of various parcels or larger sales of the Bear Mountain Project to third parties.

See, e.g.: Matthews #1 (Oppression), paras. 50-105;
Matthews #2 (Receivership), paras. 6-9.

31. An early example of Tian Kusumoto's disruptive and combative approach came within days of his appointment as a director of EBMD. In the morning on June 7, 2021, just hours after Colliers' approved rescheduled launch of the Players Peak site, Tian Kusumoto wrote to Colliers' representative asking to place the marketing "on hold".

Matthews #1 (Oppression), para. 51 and Ex. V.

32. Tian Kusumoto ultimately let the marketing process for Players Peak move forward, which resulted in three letters of intent from three separate purchaser groups providing a non-binding dollar value for the intended offer. All three letters of intent were within the appraised value and the valuation that Colliers had projected for the site.

Matthews #1 (Oppression), paras. 56-57.
See also: Matthews #2 (Receivership), paras. 7-8.

33. In response, Tian Kusumoto proposed to Colliers that the Development Partnership seek a revised letter of intent for a higher price and remain as a partner in future development.

Matthews #1 (Oppression), paras. 58-59.

34. As of August 2021, two candidates remained for Players Peak. 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.

Matthews #1 (Oppression), para. 60;
Matthews #2 (Receivership), para. 8(b) and Ex. F.

35. Nonetheless, Tian Kusumoto disagreed with Colliers' recommendation and repeated a version of his prior proposals wherein the Development Partnership partnered with the purchaser in "vertical development". This had not been contemplated by Colliers' offering memorandum. Matthews did not agree with Tian Kusumoto's approach and advised him that he was not entitled to unilaterally reject the offer. Nonetheless, Tian Kusumoto refused Matthews' suggestion to discuss the matter further at an upcoming meeting of EBMD's board of directors and instead informed Colliers, on August 12, 2021, that the Partnership would not accept the offer to purchase "as the price and terms are unacceptable".

Matthews #1 (Oppression), para. 60 and Ex. AA, BB.

36. In October 2021, Tian Kusumoto similarly interfered in the sale of a different portion of the Bear Mountain Project. On October 4, 2021, Tian Kusumoto wrote to a purchaser group, without consulting with Matthews, advising that “I believe Dan [Matthews] has told you we are on 'pause' ... as we finish reviewing the development strategy.” (This was untrue: referring to Tian Kusumoto’s October 4, 2021 email, counsel for 599/Matthews noted by letter that “[w]e are instructed that this communication was not authorized by or coordinate with Mr. Matthews, and that the statement that Mr. Kusumoto believed Mr. Matthews had delivered a similar message was knowingly false”.)

Kusumoto #1 (Oppression), Ex. PP;
see also: Matthews #1 (Oppression), para. 61 (noting that this October 4, 2021 email from Tian Kusumoto was sent without Matthews’ agreement).

37. As a result of Tian Kusumoto’s unilateral (and falsely premised) intervention, the discussions with the prospective purchaser did not proceed further. On October 31, 2021, counsel for 599/Matthews issued a letter to Tian Kusumoto’s and Sanovest’s counsel, objecting to this incident, among other things.

Matthews #1 (Oppression), para. 61;
Kusumoto #1 (Oppression), Ex. PP.

38. Tian Kusumoto continued this pattern of conduct and continued to refuse to authorize the sale of lands associated with the Bear Mountain Project (unless Matthews agrees to concessions involving Partnership and corporate affairs). Tian Kusumoto’s efforts to extract concessions from Matthews are illustrated by an exchange between Mr. Kusumoto and the Development Partnership’s lawyers in July 2022.

Matthews #5 (Oppression), para. 7 and Ex. C.

39. Yet another example of Tian Kusumoto’s obstructive conduct involves the Partnership’s negotiations with Mike Geric Construction Ltd. (“**Geric**”). Discussions with Geric had been ongoing in various forms since November 2021. In June 2022, Geric provided a letter of intent to partner with the Development Partnership for the development of all Development Partnership lands at Bear Mountain.

Matthews #5 (Oppression), paras. 5-6 and Ex. A, B;
Kusumoto #3 (Oppression), Ex. F.

40. In August 2022, Tian Kusumoto delivered a response proposal that significantly increased the sale price.

Matthews #5 (Oppression), para. 9.

41. When Geric responded in a well-considered email, raising the increased purchase price, along with other issues requiring further discussion, Tian Kusumoto refused to maintain the engagement.

Matthews #5 (Oppression), para. 9 and Ex. E.

42. Notably, in relation to negotiations with Geric, Tian Kusumoto again sought to extract further concessions with Matthews.

Matthews #5 (Oppression), para. 8 and Ex. D.

43. In summary, from 2021 to September 2023, the Partnership received various letters of intent to purchase sites for land development at Bear Mountain. Sanovest and Tian Kusumoto did not permit any of these to proceed to a sale. The offered prices were record breaking.

Matthews #2 (Receivership), paras. 7-9 and Ex. E to P.

44. As discussed above, Tian Kusumoto at times refused to entertain offers or did not respond to Matthews' correspondence regarding LOIs. At other times, Tian Kusumoto allowed certain processes to proceed to a certain point, only to unilaterally collapse the sales process when it was sufficiently advanced that it might yield a sale. Moreover, while Matthews has sought alternate financing options from various financial institutions and lenders, EBMD could not obtain reasonable refinancing while Tian Kusumoto and Sanovest continued to block the sale of land (i.e., because, absent sales, there was no available means of repayment).

45. The impact of accrued interest as a result of blocked sales opportunities is also notable:

- a. On June 30, 2021, the amount outstanding on the Sanovest Loan was stated to be \$46,269,451.12. On Sanovest's calculations (which are in part disputed), the outstanding loan amount is recorded as \$67,899,709.85 as of May 26, 2025. Meaning, the debt has grown by over \$21 million. In contrast, between June 30, 2019 and May 15, 2024 (i.e., just prior to the commencement of this proceeding), Sanovest only advanced approximately \$6M in total.

Kusumoto #1 (Receivership), Ex. M;
Matthews #1 (Receivership), para. 60.

- b. Accepting the certain offers from 2021 and 2022 and closing those transactions would have retired the Sanovest Loan as it then was, leaving excess sale proceeds to pay any corporate taxes outstanding, commissions, and costs on sales, as well as operational costs of the Partnerships moving forward.

Matthews #2 (Receivership), para. 8(b), Ex F and
para. 8(c), Ex L.

- c. Suffice to say, if even just some of the claims in the Oppression Action are made out, a significant amount of the accrued interest claimed by Sanovest will not be payable.

Funding and finances as a further tool of oppression and unfair prejudice

46. Sanovest's and Tian Kusumoto's attempts to apply pressure and exert control over Matthews and 599 have included refusals to advance funding under the Sanovest Loan (despite available room), and refusals to sign off on expenditures that clearly should have been paid.
47. One example concerns property taxes:
- a. In connection with 2021 property taxes, Matthews has deposed to discussions with Tian Kusumoto in which Tian Kusumoto stated, among other things — on the very eve of the Development Partnership's deadline to pay 2021 property taxes — that Sanovest would not allow replacement of the Sanovest Loan, but would only provide financing at the 18% cash call rate (not at the 8% rate as contemplated under the Sanovest Loan Agreement). In that same conversation, Tian Kusumoto stated that Matthews and 599 could pay Sanovest market price for its half interest in the Bear Mountain Assets, but that Sanovest would only pay for Matthews' half interest at a "distressed" value.

Matthews #1 (Oppression), paras. 69-70.

- b. Ultimately, the Partnership's 2021 property taxes were only paid in February 2022 (incurring a 10% penalty of approximately \$140,000) — and only after 599 and Sanovest agreed to a further extension to the Sanovest Loan Agreement (at the same 8% interest rate, for a term to May 1, 2024, with a \$700,000 extension fee to Sanovest). These property taxes were paid from the proceeds of closing on a vendor-takeback mortgage of \$8M.

Matthews #1 (Receivership), para. 59(c);
Matthews #1 (Oppression), paras. 67-76 and Ex. GG;
Kusumoto #1 (Oppression), Ex. Y.

- c. On June 30, 2022 — again on the very eve of the Partnership's deadline to pay 2022 property taxes — Tian Kusumoto wrote to Matthews as follows:

As discussed today, the resolutions/ agreements I am interested in are

- A managing partner resolution giving Tian authority to act on behalf of the managing partners and the partnerships to instruct, close, transact and administer all the bank/ credit card accounts of managing partners and the partnerships. (This should include the ability for Tian to appointing himself sole signing authority if he deems it to be in the best interest of the managing partner and the partnership. Initially, accounts will be setup for Tian and Dan (or staff) signature required if HSBC can correct the current signatory problem ...

Matthews refused to entertain any such resolution.

Matthews #1 (Oppression), Ex. HH.

- d. Ultimately, on August 18, 2022, Sanovest funded property taxes for the Development Partnership equal to \$1,398,646.17. As a consequence of this late payment, the Development Partnership incurred a 5% penalty of approximately \$70,000.

Matthews #1 (Receivership), para. 59(d).

- e. In connection with other property taxes, on August 26, 2022, Sanovest funded property taxes for the Gondola Lands (owned by Bear Mountain Adventures Ltd. (“BMA”)), but only did so in the context of Tian Kusumoto seeking to extract concessions from Matthews. Further, even while paying the Gondola Lands’ taxes, Sanovest refused to fund taxes for the Bear Mountain Activity Centre (“BMAC”) (also owned by BMA) – a community and recreation centre in Bear Mountain’s community core (including gym facilities, year-round outdoor heated pool and hot tub, available to paid members and the general public.

Matthews #1 (Receivership), para. 59(e).

- f. In 2023, Sanovest again refused to fund property taxes for the BMAC property, despite Matthews’ exhortation that BMAC is a Resort Partnership asset and should be formally integrated with the Resort Partnership.

Matthews #1 (Receivership), para. 59(f).

See also regarding formal integration of BMAC: Kusumoto #1 (Oppression), Ex. LLL (pp. 696-697).

48. A second example arises in the context of BMAC’s operations:

- a. Prior to 2021, Matthews and Tom Kusumoto had agreed to treat BMAC as an asset of the Development Partnership. Accordingly, a bank account had been set up within the Resort Partnership for the deposit of BMAC revenues and for payment of BMAC expenses, including BMAC’s payroll.

Matthews #1 (Oppression), para. 97.

- b. In August 2022, Tian Kusumoto stated that he would not allow any further payments for BMAC from the Resort Partnership’s dedicated BMAC account and wanted to set up a separate bank account for BMAC within BMA.

Matthews #1 (Oppression), para. 98.

- c. As this separate bank account was being set up, payroll for September 2022 was soon coming due. On September 27, 2022, Tian Kusumoto advised Matthews that he would only continue to authorize the end-of-month payroll for BMAC if Matthews agreed before 9:00 a.m. the following day to make certain concessions and sign certain agreements. Matthews refused to negotiate in this way, and made the payroll payment for BMAC out of his own pocket (i.e., Tian risked the employees going unpaid to manufacture leverage for himself despite the Resort Partnership holding significant BMAC funds, including from membership fees).

Matthews #1 (Oppression), para. 98 and Ex. OO.

- d. Since that time, BMAC's revenues have been retained in BMA (not transferred to the Resort Partnership). Those funds have generally been sufficient to maintain BMAC's operations; however, Tian Kusumoto has used this separation to contend, falsely, that Partnership funds were "diverted" to BMA.

Matthews #1 (Oppression), paras. 99-100.

49. Another example concerns management fees:

- a. In January 2023, Tian Kusumoto rejected payment of what the Partnership's controller described as Matthews' "standard monthly management fee of \$15,750". Tian Kusumoto asserted that he would not be "signing any cheques for signature" until the controller's payment authorization was revoked and the management fee payment cancelled.

Matthews #1 (Oppression), Ex. NN.

- b. Although Tian Kusumoto has sworn affidavit evidence that he only "learned" of the management fee upon becoming a director of EBMD in 2021, and did not know the purpose of the fee, that evidence is implausible given Tian Kusumoto's long-time knowledge of the fee and its purpose. The only reasonable conclusion to be drawn is that depriving Matthews of his pay is simply a further pressure tactic on the part of Sanovest and Tian Kusumoto.

Kusumoto #1 (Receivership), para. 14;
Matthews #1 (Receivership), Ex. R;
Matthews #1 (Oppression), para. 95.

50. Yet another example concerns Tian Kusumoto's refusals to authorize ordinary course expenditures for the Partnerships more generally. On August 2, 2023, counsel for 599 and Matthews wrote to counsel for Tian Kusumoto and Sanovest outlining the following harms arising from Tian Kusumoto's refusal to approve a transfer of funds from the Resort Partnership to the Development Partnership:

We write to object Mr. Kusumoto's refusal to authorize ordinary course payments for the ongoing operations of the Partnership and Resort Partnership. The effect of Mr. Kusumoto's conduct will be to, quite literally, turn out the lights on their operations. The harm to the Partnership and Resort Partnership's credit and their relationships with customers, suppliers, and revenue streams and business will be irreparable. Imminent risks include, among many other things, eviction from the hotel due to non-payment of rent. Already, certain supplies have run out (e.g., liquor for restaurant sales) and HSBC has advised that the Partnership's operating account is overdrawn. Approximately \$32,000 in cheques will have "bounced" by the end of day due to insufficient funds. All of this has created chaos for staff. Mr. Kusumoto is aware, in particular, that the

controller, Mr. Dondoyano, is on the verge of a breakdown as a result of the stress placed upon him.

Kusumoto #1 (Oppression), Ex. JJJ.

51. Ultimately, Tian Kusumoto relented and authorized the transfer request.

Kusumoto #1 (Oppression), Ex. JJJ and KKK.

52. To the extent that Tian Kusumoto justified these refusals by a stated desire to implement financial controls, that desire did not prevent him from acting unilaterally and without Matthews' authorization. Between approximately December 2023 and March 2024 (i.e., the slower season), Tian Kusumoto, without any prior authorization or discussion with Matthews, effected payments of \$165,000 to CRA. The payments were reckless in that they were made without regard to the Partnership's immediate cash flow needs.

Kusumoto #2 (Oppression), Ex. LL.

Refinancing attempts to retire the Sanovest Loan

53. In view of Sanovest's and Tian Kusumoto's oppressive and unfairly prejudicial conduct towards 599/Matthews — including the corporate stranglehold that Sanovest and Tian Kusumoto sought to impose through their dual status as shareholder/director/partner and the Development Partnership's primary lender — Matthews made efforts to obtain alternate financing for the Development Partnership, to fully retire the Sanovest Loan.
54. Tian Kusumoto interfered with those efforts too. As Matthews deposed in response to the within petition:

43. Since the fall of 2023, I have been going to market in an effort to secure third-party financing for the Partnership. In response, there has been serious interest among investors, but only provided that the Partnership has the ability to carry out land sales.

44. My counsel described these efforts to Sanovest's and Tian Kusumoto's counsel in a letter dated October 19, 2023 regarding financing, among other matters. That letter noted, among other things, that a potential lender was "interested in principle in advancing financing secured by the Bear Mountain lands" but that it had "reviewed the pleadings in the various litigation matters, and is not prepared to proceed under the current structure, where all land sales are effectively frozen", and the lender was "justifiably concerned that the Partnership will not have access to the cash flow required to service and ultimately repay a loan at maturity". That letter accurately reflected my discussions with the potential lender at the time.

Matthews #1 (Receivership), paras. 43-44;
Kusumoto #2 (Oppression), Ex. DD.

55. Early in 2024, Sanovest presented a term sheet of its own (the “**Sanovest Term Sheet**”).

Kusumoto #2 (Oppression), Ex. HH.

56. The Sanovest Term Sheet provided for a loan of \$85,000,000, at a rate of prime plus 3.05% (i.e., prime being 7.20% at that time) for the first eleven months, increasing to prime plus 6.05% thereafter, with a floor of 9.50%, or the rate at the time of first advance (i.e., which would have been 10.25%). The Sanovest Term Sheet provided for a fee of 1.00% of the loan amount payable at closing but earned on execution of the Term Sheet. The term of the loan was for 12 months only. In sum, the Sanovest Term Sheet would have put \$850,000 in Sanovest’s pocket immediately and increased the interest rate from 8% to 10.25%, with a need to renegotiate in 12 months’ time.
57. On March 26, 2024, Matthews presented a term sheet from Timbercreek Capital to replace the Sanovest financing in full. The term sheet was for a \$65 million loan, 24-month term, lower interest rates than Sanovest’s term sheet, and a lower lender’s fee that was only payable on closing. The Timbercreek term sheet required payment down of \$30 million from lot sales or cash equity within 14 months; or monthly minimum payments of \$3 million for the last 10 months of the term.

Matthews #1 (Receivership), Ex. L;
Kusumoto #2 (Oppression), Ex. MM.

58. On April 5, 2024 Sanovest and Tian Kusumoto requested, among other things, to negotiate with Timbercreek to eliminate the “additional covenant” regarding land sales and repayment. When Matthews attempted to do so, Timbercreek viewed this as a non-starter and did not agree to continue negotiations.

Matthews #1 (Receivership), para. 45, Ex. N.

59. In sum, replacement financing could not proceed because Sanovest refused conditions necessary for a replacement lender to be eventually repaid.

Matthews #1 (Receivership), para. 46.

60. Sanovest’s objections stated in the April 5, 2024 letter are telling: Sanovest objected to the requirement to pay down principal over the two-year term of the loan, that the loan would be sufficient to fully retire the Sanovest Loan, pay down the Development Partnership’s current liabilities and provide the Development Partnership with operating funding. As a result of Sanovest’s objections, the Development Partnership could not pursue this refinancing. Sanovest then promptly issued a demand and brought these enforcement proceedings.
61. On April 22, 2024, Matthews and 599 confirmed that they support effectively any reasonable means of separating the parties’ business interests and paying off the Sanovest Loan. Counsel’s letter of that date stated as follows:

As set out in our March 26, 2024 email, Mr. Matthews continues to support an orderly sale of assets as a means to pay out the Sanovest Loan.

To date, Mr. Kusumoto has refused to entertain any such options. Nonetheless, Mr. Matthews supports, in principle, any of the following options if carried out in an orderly and prudent manner:

- (a) Land and lot sales at market price (an approach that Mr. Tian Kusumoto emphatically supported prior to his new role with Sanovest and as a director of EBMD);
- (b) An en bloc listing and sales process for substantially all of the Partnership's land assets;
- (c) Land sales to development partners, with Sanovest but not 599315 participating in any vertical development partnerships;
- (d) Sanovest purchasing land from the Partnership for fair market value – e.g., in order to pursue partnerships or other plans that deviate from the existing business plan;
- (e) An enforceable buy-sell process that would result in one partner purchasing the other partner's interest in the Partnership, preferably to close on or before June 25, 2024; and/or
- (f) An equitable partition of Partnership assets.

Mr. Matthews is prepared to discuss any of the above-noted options as an alternative to pursuing refinancing at this stage. In such a scenario, there is likely to be a limited overholding period under the existing Sanovest Loan Agreement.

Matthews #2 (Oppression), Ex. F.

62. Tian Kusumoto and Sanovest did not respond to any of these options. Instead, on May 3, 2024, Sanovest formally demanded payment of the Sanovest Loan.

Matthews #2 (Oppression), Ex. C.

63. Sanovest and Tian Kusumoto were also unwilling to engage with 599/Matthews in their efforts to purchase Sanovest's interest in the Bear Mountain Project. On May 10, 2024, 599 delivered a letter of intent to Sanovest, expressing 599's intent to purchase Sanovest's interest.

Matthews #2 (Receivership), para. 6 and Ex. C, D.

64. Sanovest did not respond.

The Resort Partnership

65. As noted above, the Development Partnership holds all units in the Resort Partnership (apart from one unit held by EBMD) and therefore the "Resort Partnership" falls under

the general umbrella of assets belonging to the Development Partnership. However, since their inception in 2013, the Partnerships have always operated in distinct spheres, with the Resort Partnership carrying on the golf, tennis and recreation business, and the Development Partnership carrying on the real estate holding and development business.

Matthews #1 (Receivership), para. 5.

66. This division is set out in the “Background Section” to the Resort Partnership Agreement, which describes its role and purpose.

Matthews #1 (Receivership), para. 6;

See also: Matthews #1 (Oppression), Ex. H, s. A.

67. On a day-to-day basis, the Resort Partnership owns and operates the sporting and recreational facilities at Bear Mountain. These include:

- a. Bear Mountain’s two Nicklaus Design golf courses: the “Mountain Course” and the “Valley Course” (together, the “**Golf Courses**”); and
- b. the Bear Mountain Tennis Centre, a facility with Canada’s largest indoor/outdoor red clay courts, available to paid members, resort guests and the general public.

Matthews #1 (Receivership), paras. 8(a), 8(b).

68. It was also intended that the Resort Partnership operate the BMAC (the community and recreation centre in Bear Mountain’s community core). However, Tian Kusumoto refused to formally transfer the BMAC into the Resort Partnership.

Matthews #1 (Receivership), paras. 8-10, Ex. B-D.

See also: Matthews #1 (Oppression), paras. 97-100.

69. Bear Mountain’s recreational core is displayed at Images 1 through 3 of Matthews #1 (Receivership).

Matthews #1 (Receivership), para. 11.

70. Matthews has overseen the entirety of the Resort Partnership’s overall operations since 2013. His duties in this regard, include, among other things:

- a. overseeing current resort operations, including golf, tennis and retail operations, along with all future resort operating components;
- b. leading and working collaboratively with the Resort Partnership’s dedicated group of professionals, including golf and tennis managers, agronomy team, horticulture team, and administration team;
- c. leading golf and tennis membership engagement to ensure a positive membership experience and program development; and
- d. overseeing the maintenance and renovation of all Resort Partnership assets.

Matthews #1 (Receivership), para. 14.

71. Matthews has deposed that golf is central to the Bear Mountain community, and that his personal involvement in golfing organizations has been an essential ingredient in the growth of the Bear Mountain community.

Matthews #1 (Receivership), paras. 16-18.

72. One of the Resort Partnership's large recurring expenses has been the \$360,000 annual cost of leased space at the Hotel.

Matthews #1 (Receivership), para. 42(c).

73. As discussed below, the Resort Partnership has not renewed its lease at the Hotel and, as of July 1, 2024, effected a transition of operations away from the leased facilities.

Matthews #1 (Receivership), paras. 38-41;
Larocque #1 (Receivership), paras. 13-17;
Matthews #4 (Oppression), paras. 10-13;
Larocque #1 (Oppression), para. 3.

Relationship with Hotel and the Hotel Arbitration

74. When the Partnerships purchased the Bear Mountain Assets in 2013, the acquisition included the "Westin Bear Mountain Hotel" (the "**Hotel**").

Matthews #1 (Receivership), para. 6

75. The Hotel's current owners purchased the Hotel from the Resort Partnership in 2019. The parties' arrangements included a commercial lease and operations agreement, by which the Resort Partnership was to continue to operate from the Hotel premises, including office space, a pro shop, lockers rooms, and storage space.

Matthews #1 (Oppression), para. 19.

Matthews #1 (Receivership), para. 23, Ex. F, G.

76. As a result of the various court proceedings brought in connection with the Hotel Arbitration, the arbitral awards and certain evidence in the Hotel Arbitration has become public.
77. The Hotel Arbitration was commenced on September 16, 2020 between the Resort Partnership on the one hand, and Bear Mountain Resort & Spa Ltd; BM Management Holdings Ltd. and BM Resort Assets Ltd. (the "**Hotel Entities**"), on the other. The issues in the Hotel Arbitration included various matters relating to the commercial lease and operations agreement, as well as ancillary agreements.
78. A partial final award determining liability in favour of Resorts was issued on February 26, 2021 (the "**Liability Award**").

Matthews #1 (Receivership), paras. 29, 31 and Ex. I.

79. Some of the background to the acrimony between the Resort Partnership and the Hotel Entities can be explained by the following findings in the Liability Award:

28. The CFO for Ecoasis was David Clarke. He was involved in finding a purchaser for the hotel and in negotiating the details of the purchase agreement, operations agreement and lease-back agreement. Mr. Clarke entered into personal negotiations with the principal of the purchaser, Raoul Malak, as early as May of 2019. In those negotiations it was agreed that Mr. Clarke would ultimately be employed by Hotel, potentially as CEO. No disclosure was made to Ecoasis of this arrangement, nor of the fact that after the sale Mr. Malak retained the services of Mr. Clarke's wife in purchasing strata units. Over the next year, Mr. Clarke's wife was paid approximately \$27,000.

...

308. Hotel breached the Non-Competition and Non-Solicitation Agreement by working with Mr. Clarke behind the back of Ecoasis after July 11, 2019 and by entering into a consulting agreement with him in 2020. Mr. Clarke was the key person in the sale of the hotel and in the ongoing operation of the hotel and golf and tennis business. It is impossible to gauge the extent to which this duplicity contributed to the breakdown in relations between the parties.

309. Both Mr. Malak and Mr. Clarke were sophisticated businessmen who were aware of the serious breach of trust inherent in their business dealings. The duty of loyalty owed to Ecoasis by an employee in the position of Mr. Clarke is one of the most significant obligations recognized in law...

...

312. Within a year of having purchased the hotel, Mr. Malak gave notice of termination of the Operations Agreement and the Commercial Lease and sought to have Ecoasis removed from the premises. The impact of the terminations was devastating on the golf and tennis business....

Matthews #1 (Receivership), Ex. I.

80. Raoul Malak continues to serve as President and CEO for the Hotel. David Clarke continues to work in the Hotel's finance department.

Matthews #1 (Receivership), para. 34.

81. In parallel to the Hotel Arbitration, the Resort Partnership had also been dissatisfied with the Hotel's provision of rental space and services under the relevant agreements. For example, Matthews wrote to Mr. Malak on December 19, 2023, summarizing outstanding

repair and deficiency issues with respect to the leased premises (some of which had been outstanding for three years). These issues included, among others:

- a. a dysfunctional heating system in the real estate office, making it impossible to regulate the temperature in that space;
- b. missing and loose door handles on the exterior doors for the pro shop;
- c. dysfunctional door closing apparatus and damage to the exterior door and trim of the members' lounge, which was caused by hotel contractors during renovations more than two years ago;
- d. inoperative light receptacles in the men's locker room;
- e. rusted and stained ceiling tiles, and metal partitions and lights in the men's locker room;
- f. damage to the steam room, caused during the Hotel's 2021 renovations;
- g. a dysfunctional sauna (due to a broken sauna heater element); and
- h. failure to replace the interior staircase access to the leased premises.

Matthews #1 (Receivership), para. 26;
Matthews #2 (Receivership), para. 4, Ex. A.

82. Mr. Larocque has detailed the negative effects on guests and staff of what he described as the Hotel's failure to cooperate with the Resort Partnership and to provide appropriate facilities.

Larocque #1 (Receivership), paras. 8-12.

83. On January 4, 2024, Matthews emailed Tian Kusumoto to communicate his decision that the Resort Partnership should not renew its lease with the Hotel and provided him with a history of correspondence with the Hotel regarding service and space complaints.

Matthews #1 (Receivership), paras. 26-27, 35;
Matthews #2 (Receivership), para. 5, Ex. B.

84. Nevertheless, Tian Kusumoto, Mr. Malak and Mr. Clarke each deposed that they opposed the Resort Partnership's transition away from the Hotel, and that the Hotel was prepared to renew a lease to the Partnership on "commercial terms", provided that Matthews was not involved. The affidavits were prepared by Tian Kusumoto's lawyers – i.e., evidencing a close working relationship. Tian Kusumoto working and finding common cause with Mr. Clarke, who has now been determined to have wilfully breached his duties of trust and loyalty, is notable.

Kusumoto #1 (Receivership), para. 73.
 Kusumoto #2 (Oppression), para. 26;
 Clarke #1 (Oppression), Para. 29;
 Malak #1 (Oppression), paras. 5-6.

85. The unsettling relationship between the Hotel Entities and Tian Kusumoto is further illustrated by correspondence he sent to the Resort Partnership's counsel at DLA Piper following Sanovest's filing of the Receivership Petition.

Matthews #2 (Receivership), para. 16, Ex. S.

86. Mr. Clarke's affidavit filed in support of the receivership application was particularly concerning – Clarke #1 contradicted his signed witness statement in the Hotel Arbitration on key issues, including: the reasons for his departure as CFO of Ecoasis; and the nature of certain transactions that occurred while Mr. Clarke still remained in that role.

See: Matthews #3 (Oppression), para. 21, Ex. F
 (Witness Statement of David Clarke at p. 2ff).

87. It also came to light that Mr. Clarke was the source of a golf cart image, taken in early July 2024, which Tian Kusumoto attached as an exhibit to an affidavit (made on August 8, 2024). In that affidavit, Tian Kusumoto did not identify the source of the image. Despite counsel for 599/Matthews' requests and demands for the image source and related documents, it was only in early September 2024 — on the morning of an application brought by Matthews and 599 to compel disclosure — that Tian Kusumoto's counsel identified Mr. Clarke as the source of the image. So, Tian Kusumoto was clearly working in concert with an individual who had breached his duties of trust and loyalty to the Resort Partnership – and sought to conceal same.

Kusumoto #3 (Oppression), Ex. Q

88. Strikingly, the very same image is one that surfaced, some two months earlier, as an attachment to an anonymous email from 2024BMinfo@protonmail.com to Isle Golf Cars, a local golf cart dealer and servicer; and a company with which the Resort Partnership has a long-standing business relationship.

Matthews #4 (Oppression), paras. 15-16.

89. The anonymous email read: "Nice way the golf cart fleet is being kept at Bear Mountain. These will be worth nothing after a few months of being kept outside [sic] and uncovered. The garbage can covered chargers is a nice touch too..."

Matthews #4 (Oppression), para. 15 and Ex. A.

90. All three of the images attached to the anonymous email were attachments to an email sent from Mr. Clarke to Tian Kusumoto.

Celiz #3 (Oppression), Ex. D.

91. In the circumstances, it is difficult to draw a conclusion other than that Mr. Clarke and Tian Kusumoto worked together, including to engage in a concerted effort to further hamper the Resort Partnership's success and operations. (Even doing so in circumstances where Tian Kusumoto had deposed that "[g]olf carts are critical to the golf course operations since the length and hilly terrain would deter guests from golfing without carts".)

Kusumoto #1 (Receivership), para. 72.

Hotel Arbitration

92. Following the Liability Award, the Hotel entities filed two legal proceedings challenging that decision: (i) on March 30, 2021, an application for leave to appeal in BCCA File No. CA47361, alleging that the arbitrator had committed various errors of law; and (ii) on March 31, 2021, a petition, seeking an order setting aside the Liability Award (the "**Hotel Petition**").

Matthews #1 (Receivership), para. 29

93. The Hotel Entities' application for leave to appeal was dismissed by the Court of Appeal (indexed as *Ecoasis Resort and Golf LLP v. Bear Mountain Resort & Spa Ltd.*, 2021 BCCA 285). On January 19, 2022, the Hotel entities filed a notice of discontinuance of the Hotel Petition.

Matthews #1 (Receivership), paras. 30-31 and Ex. H, I.

94. On April 15, 2025, the arbitrator issued the damages award (the "**Damages Award**"). After setting off the money found owing, the arbitrator ordered the Hotel Entities to pay the Resort Partnership \$2,058,017.63 by April 29, 2025 and post-award interest at prime plus 1%, compounded and adjusted semi-annually.

Matthews #4 (Receivership), para. 52

95. On May 13, 2025, the Hotel Entities filed an application seeking to a stay of execution and leave to appeal the Damages Award in BCCA File No. CA50676 and a petition in BCSC File No. S-253638 seeking to set aside the Damages Award on the basis of bias.

Matthews #4 (Receivership), para. 53

96. On May 30, 2025, the Hotel Entities' application for stay and leave to appeal was heard, and on June 4, 2025, the Court of Appeal dismissed the application in its entirety.

Matthews #4 (Receivership), para. 54

97. On June 23, 2025, the Resort Partnership filed a petition in BCSC File No. S-254741 seeking to enforce the Damages Award.

Matthews #4 (Receivership), para. 55, Ex. F and G

98. Resorts' counsel in the Hotel Arbitration has continued to act. Resorts has now filed its submissions for an award of costs in the Hotel Arbitration.

Matthews #4 (Receivership), para. 58

99. When the Hotel Arbitration began to move forward in 2023 to the damages portion, Tian Kusumoto made additional efforts to obstruct the proceedings by refusing to allow Resorts to pay the outstanding legal bills of its counsel and at the same time refusing to allow Resorts to fund legal fees and expenses for the damages portion of the Hotel Arbitration. He also represented to Resorts' counsel that counsel may never get paid.

Matthews #4 (Receivership), para. 61

100. As noted above, the Hotel Entities recently sought leave to appeal the Damages Award and petitioned to have the Damages Award set aside for bias. Resorts needed to respond in those court proceedings. Further, Resorts was required to make costs submissions to the arbitrator by an ordered deadline. Resorts' counsel had requested retainers for the leave application and for preparing costs submissions. Matthews asked Tian Kusumoto to authorize Resorts to pay the retainers. He again refused to authorize payment unless Matthews agrees to not oppose a receivership over Resorts.

Matthews #4 (Receivership), para. 62

101. Over the last 18 months, to ensure the Hotel Arbitration continued without disruption, that an award on damages would be rendered by the arbitrator, and that Resorts would not lose this asset, Matthews personally advanced considerable sums (more than was reported by the Receiver) on behalf of Resorts to pay the arbitrator, Resorts' counsel, and expert fees.

Matthews #4 (Receivership), paras. 63

102. The exclusion of the Hotel Arbitration from the Receivership Order was one of the negotiated terms and of paramount importance to Matthews/599 in consenting to the receivership order, in particular given the legitimate concern that Tian Kusumoto was and is actively working with the Hotel operators to disrupt and derail the arbitration proceedings.

Matthews #4 (Receivership), para. 64

Resorts Business and Operations Since the Appointment of the Receiver

103. Since the appointment of the Receiver in September 2024, Matthews has continued to operate and manage the Resort Partnership's business as President and CEO of EBMD.

Matthews #4 (Receivership), para. 5

104. The Resorts business has operated through the most recent slow season and is currently in the midst of the busy season with increased revenues.

Matthews #4 (Receivership), paras. 23, 25

105. Despite the challenges created by Developments' receivership, which have led to loss of membership sales and revenue, the largest area of the golf business, which contributes to over 60% of the revenue, has continued to increase. The green fee and cart revenue year over year for the period from January 1 to May 31 has steadily increased with a large bump in revenues in May. Notably, May 2025 was Resorts' best month since 2019 for green fees and carts revenue.

Matthews #4 (Receivership), paras. 23, 31

106. As well, destination travel revenues year to date for the period from January 1 to May 31 were up over 53%. Resorts also made progress in significantly reducing the payables despite the confusion and disruption caused by the Developments Partnership's receivership.

Matthews #4 (Receivership), para. 32

107. Staffing needs have been addressed to fully meet operational and budgetary parameters. Notably, the golf head pro and agronomy superintendent positions were recently filled with extremely qualified personnel with collectively 45 years of experience in the golf industry.

Matthews #4 (Receivership), para. 26

108. The Resort Partnership continues to work on filling the controller and food and beverage manager positions. In the interim, Resorts has dedicated available internal and external resources to fulfill the duties of those roles.

Matthews #4 (Receivership), paras. 14, 15

109. The pro shop, members facilities, and food and beverage services have been operated from the BMAC without interruption since the transition from the Hotel on July 1, 2024. Lease arrangements with the BMAC are now in place at \$3,500 per month, which will save Resorts over \$300,000 in rent per year compared to the lease with the Hotel.

Matthews #4 (Receivership), para. 26

110. DMCL is managing all financial and reporting obligations of Resorts, all statutory filings are current, and payment arrangements have been established for certain statutory obligations. Resorts' finances are stable, with the exception of outstanding accounts payable, which are being reduced with excess cash flow. It is true that Resorts is experiencing liquidity challenges for the reasons discussed herein and by Matthews, however, Resorts has successfully managed those challenges for a number of years now (since Tian Kusumoto took his father's place as the controlling mind of Sanovest). Resorts is managing its liabilities as they come due and, furthermore, Resorts' value greatly exceeds its liabilities.

Matthews #4 (Receivership), para. 23

111. In parallel, Resorts management and staff have worked diligently and tirelessly to address operational and financial issues identified by the Receiver and to implement the Receiver's recommendations.

Matthews #4 (Receivership), para. 12;
Receiver's third report, para. 5.2, Appendix A (Resorts Response, and Appendix C to the
Resorts Response (Memo from DMCL));
Receiver's fourth report, paras. 6.2 and 6.3, Appendix C (Progress Update Reports);
Receiver's supplement to the fourth report, para. 2.2, Appendix A (May 2025 Progress
Report)

112. Resorts has provided every financial deliverable it is possible to deliver and has also provided additional financial information outside of the Receiver's requests, including a proforma budget through to 2037. However, historical financial statements are incapable of being finalized at the time due to disagreements raised by Tian Kusumoto and unresolved matters that are the subject of ongoing litigation.

Matthews #4 (Receivership), paras. 16 to 20

113. Any other persisting challenges are due to Sanovest/Tian Kusumoto's:
- a. continued refusal to advance funds to Resorts; in combination with its
 - b. more recent but ongoing objection to Resorts receiving financing from any other source.

Sanovest/Tian Kusumoto's Refusal to Permit a Resort Advance

114. Leading up to the receivership order of September 18, 2024, the Partnerships had significant outstanding payables due to the following:
- a. the Partnerships' lender, Sanovest, refusing to advance any funds while also objecting to the Partnership's securing funds from another source; and
 - b. Sanovest/Tian Kusumoto simultaneously obstructing the Development Partnership's other means of generating revenue, i.e., through sales of real estate in accordance with the business plan that was agreed to in 2013 when Bear Mountain was acquired.

Matthews #4 (Receivership), para. 36

115. The natural consequence of the foregoing was that Resorts, as the only revenue generating entity, had to support the Development Partnership, and managing both Partnerships' finances became more challenging. This was extensively detailed in the original receivership affidavits and formed one of the reasons that Sanovest argued in support of a full receivership over Resorts.

Matthews #4 (Receivership), para. 37

116. After a few days of hearing of competing applications brought by Matthews/599 and Sanovest, the Receivership Order was granted by consent. The key items Matthews/599 negotiated in exchange for consenting to a receivership over all of the Partnerships' lands were as follows:

- a. Exclusion of the Bear Mountain Proceedings and the Hotel Arbitration from receivership (paragraphs 2(a) and 13 of the Receivership Order);
- b. Exclusion of the Resorts business and operations from the receivership (paragraph 2(b) of the Receivership Order); and
- c. Exclusive authority on the part of the Receiver to provide an advance of funds to Resorts for which the Receiver was granted a charge over all Resorts' assets as security for repayment of the advance (paragraph 32 of the Receivership Order).

Matthews #4 (Receivership), para. 38

117. The fundamental purpose of giving the Receiver unfettered discretion to make advances to Resorts was, of course, to remove the longstanding issue of Sanovest refusing to fund its operations. The parties were aware at that time that in order for the Resorts business to continue to operate, a resort advance from the Receiver's borrowings, or an alternative source, would be required. The topic was discussed by counsel throughout the hearings and was specifically addressing as they were formulating the consent order.

Matthews #4 (Receivership), para. 39

118. At the hearing on September 17, 2024, the following exchange occurred between Savovest's counsel, Kibben Jackson, and Justice Walker during Mr. Jackson's submissions on the consent receivership order:

26 CNSL K. JACKSON: Now, this was that part we had some
 27 discussion about, because the resort's business
 28 and management is not going to be in the
 29 receivership.

30 THE COURT: Right.

31 CNSL K. JACKSON: As I said, it would be unusual for
 32 the receiver to loan funds from an estate to a
 33 non-receivership entity. But I can get my head
 34 around it by consent and with a court order that
 35 protects everyone.

36 And so this is the unusual part here about
 37 this. So:

38

39 The receiver is authorized and empowered, but
 40 not required, to advance funds to EBMD and
 41 Resorts, and the receiver is hereby granted a
 42 charge over all the assets and undertakings
 43 of EBMD and Resorts as security for repayment
 44 of any such advances with interest and

45 charges.

46

47 So the receiver may negotiate an advance of funds
 1 with Resorts. So I assume that's a negotiation,
 2 really, between the receivers and Mr. Matthews --
 3 receiver and Mr. Matthews.

4 THE COURT: And if there is a loan, it has priority.

5 CNSL K. JACKSON: Pardon me, Justice?

6 THE COURT: If there is a loan, then it ranks in
 7 priority.

8 CNSL K. JACKSON: It ranks in priority to all the other
 9 interests of anyone else over the -- over the
 10 assets of Resorts and EBMD.

11 THE COURT: Because your point is the receiver may
 12 decide the business is quite viable but needs
 13 financial assistance, and in its view, it
 14 should --

15 CNSL K. JACKSON: Well, that's right. So, you know,
 16 within the \$2.5 million, some part of that may
 17 need to be advanced to Resorts, and if so -- you
 18 know, the way it will happen, to my mind, is
 19 resorts is going to have to come -- I'm using
 20 Resorts. Mr. Matthews will have to come to the
 21 receiver and say, look, we need some money to go
 22 through some purpose, and the receiver will
 23 decide, A, am I satisfied this is -- is it a
 24 prudent loan; right? And that's the question. If
 25 it is, it has good security for it if it can get
 26 repaid. That's part of the question too. Is it
 27 satisfied with the security? But this is all
 28 within the discretion of the receiver as, you
 29 know, frankly, the person managing the estate,
 30 which our client is content to put that in the
 31 hands of the receiver.

32 THE COURT: All right. And if Mr. Matthews wanted to
 33 go out and try to arrange his own financing, at
 34 least for the Resorts, he could. There's nothing
 35 that stops him.

36 CNSL K. JACKSON: For Resorts.

Matthews #4 (Receivership), Ex. A

119. The above quoted submissions accurately reflect 559/Matthews' understanding and the parties' agreement. Paragraph 32 of the Receivership Order states as follows:

32. The Receiver is authorized and empowered, but not required, to advance funds to EBMD and Resorts, and the Receiver is hereby granted a charge over all of the assets, undertakings and properties of EBMD and Resorts (the "**Resorts Funding Charge**") as security for the repayment of

any such advances, together with any interest and charges thereon. The Resorts Funding Charge shall rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the mortgage registered against certain of the Ecoasis Entities' real property in favour of HSBC Trust Company (Canada) under Charge No. CA3393750. For greater clarity, such advances shall be within the borrowing limits set by paragraph 28.

120. In the Receiver's First Report at paragraph 8.72, the Receiver noted that the Resorts management has requested that the Receiver fund certain amounts totalling \$1.26 million. At paragraph 9.3, the Receiver wrote: "Funding is required in the near term for the Resorts Business with a recent funding request of approximately \$1.26 million submitted to the Receiver (the Resorts Loan), and the unfunded Transition Plan of approximately \$367,000. As part of the Resorts Plan, EBMD should provide its plan to fund its liquidity needs. If a path to fund the Resorts Business from the Receiver's borrowings is set after consultation with Sanovest, the Receiver would need to ensure that appropriate monitoring and reporting protocols are established to ensure the stability of the Resorts Business" [emphasis added].
121. Shortly after this Report, Sanovest began putting up roadblocks to a Resorts advance.
122. On November 22, 2024, counsel for Sanovest wrote to counsel for Matthews/599 claiming that, notwithstanding Mr. Jackson's submissions in open court, Sanovest was concerned that a request for an advance was made to the Receiver allegedly without proper authorizations required for such a loan. Counsel for Sanovest wrote that while Sanovest was opposed to EBMD obtaining funding from the Receiver for certain of Resorts' operational requirements, Sanovest expected to participate in any discussions and negotiations as it relates to the scope and terms of such loans.

Matthews #4 (Receivership), Ex. B

123. On November 24, 2024, counsel for Matthews/599 responded to counsel for Sanovest noting that it was a necessary corollary of the parties' consent to the order granting lending authority to the Receiver that EBMD also consented to such borrowing. Counsel noted that this was precisely what Mr. Jackson had explained to the court regarding the consent receivership order, with Sanovest agreeing to place the extent of borrowings in the Receiver's hands through its discussions with Matthews.

Matthews #4 (Receivership), Ex. C

124. On December 18, 2024, Sanovest's counsel responded stating that they disagreed.

Matthews #4 (Receivership), Ex. D

125. By January 2025, Tian Kusumoto, the CFO and a director, continued to block payment of costs by the Resort Partnership for the Hotel Arbitration and the Receiver had yet to respond on the funding request. As discussed, Matthews advanced personal funds on

behalf of the Resort Partnership to ensure the Hotel Arbitration could continue without interruption.

Matthews #4 (Receivership), paras. 44

126. In mid-March 2025, in response to Matthews' inquiry for an update on the advance, the Receiver advised that it had reached out to Sanovest regarding that issue and, given Sanovest's opposition, the Receiver could not move forward.

Matthews #4 (Receivership), para. 44, Ex. E

127. On March 27, 2025, Receiver's counsel advised that Sanovest was not prepared to advance funds to the Receiver and would oppose any funding advance by the Receiver to Resorts. While Receiver's counsel acknowledge that the Receiver has authority to fund the loan, it was noted that the Receiver would prefer to avoid a dispute with a 50% shareholder and largest creditor as it could be disruptive and expensive.

Matthews #4 (Receivership), Ex. E
Receiver's Fourth Report, paras. 8.1 to 8.4, 9.2

128. On May 9, 2025, Matthews met with the Receiver to discuss the change in circumstances since the issuance of the Fourth Report. By that time, the Damages Award had been rendered, with Hotel ordered to pay the Resort Partnership \$2.058 million (which sum would be sufficient to satisfy all of Resorts' outstanding payables and statutory obligations for GST/PST).

Matthews #4 (Receivership), para. 47

129. As well, because, to his knowledge, the Receiver had never canvassed the market for an alternative lender to Sanovest, Matthews secured a term sheet for interim financing from a lender that the Receiver had previously worked with. This term sheet was subsequently provided to the Receiver on May 22, 2025.

Matthews #4 (Receivership), para. 48

130. On June 5, 2025, the Receiver issued the Supplement to the Fourth Report in which the Receiver noted its meeting with the third-party lender to discuss the terms of the interim financing arrangement. The Receiver noted the requirement for an interest reserve and described the term sheet as involving higher overall costs relative to Sanovest's facility due to the requirement for an appraisal and a \$50,000 fee.

Receiver's Supplement to the Fourth Report, paras. 3.1 to 3.4

131. Matthews learned through the third-party lender that the Receiver had not followed up with the third-party lender nor inquired whether it was open to negotiating the content of the term sheet. The third-party lender confirmed with Matthews that it was, in fact, open to negotiation.

Matthews #4 (Receivership), para. 50

Impact of Receivership Over The Resort Partnership

Receivership Costs

132. Resorts' management requested a budget from the Receiver for the costs of the proposed expansion of the receivership over Resorts. To date, no budget has been provided. However, the costs are expected to be quite significant.

Matthews #4 (Receivership), para. 66

133. The Developments Partnership's business has only three employees and was not carrying on any active development business or land sales at the time the Receiver was appointed.

Matthews #4 (Receivership), para. 67

134. The professional fees of the Receiver and its counsel, as reported in Appendix A of the Fourth Report, were estimated to be approximately \$964,000 for the period from September 18, 2024 to June 27, 2025.

135. Resorts' operations are considerably more complex and time intensive. There needs to be oversight and management of agronomy/horticulture, golf operations, tennis operations, golf and tennis membership, GMEA membership, destination event/stay and play business, resort marketing and membership sales, and F&B business. Managing the community of over 3,000 residents also demands substantial time and resources. The business employs approximately 130 people, with many seasonal hires requiring significant oversight as we head into the busy season. The costs of a receivership would be further increased given the necessary engagement and communication with community members, current golf and tennis members, and vendors/suppliers.

Matthews #4 (Receivership), paras. 68, 69

Impact on Revenue

136. The Resort Partnership's business is currently in its busy season (from May to September), which generates over 75% of green fee/power cart/sales revenue for the year and that is critical to its continued sustainability. The appointment of the Receiver would necessarily disrupt operations and pull resources away from the business during this critical period. Insolvency proceedings are not viewed favourably by the public, so it is expected the appointment would negatively impact destination/stay and play tour business (accounts for \$450,000 in revenue in the coming months) as well as bookings for the 2026 season.

Matthews #4 (Receivership), para. 70

Human Capital Impact

137. The Resorts' team has performed admirably throughout this unsettled period. There is no doubt that expanding the receivership to include Resorts would significantly impact morale and risk more deleterious consequences.

Matthews #4 (Receivership), para. 71

Increased Delay and Mounting Debt

138. The ongoing accrual of interest under the Sanovest Loan (estimated by Sanovest at over \$14,700 per day) and other financial obligations continue to accrue. The sale process has yet to be finalized, notwithstanding the parties' initial expectation it would be approved last year. The Receiver taking possession of and overseeing the Resorts' business would require additional resources and potentially further delay the ultimate resolution of this matter and thus result in further unnecessary erosion of 599's equity position.

Matthews #4 (Receivership), para. 72

Erosion of Confidence and Operations Impairment

139. A receivership would severely damage trust with critical suppliers, potentially disrupting the supply chain and impairing the broader operational systems that support Resorts. Consequently, this would lead to increased costs, reduced quality, and a loss of essential partnerships with vendors, suppliers, and industry networks. Some of these partnerships are unique and longstanding, the loss of which would severely hamper the future owner of Bear Mountain.

Matthews #4 (Receivership), para. 73

Impact on Going Concern Value and the Community

140. Particularly given Matthew's experience with Bear Mountain's prior insolvency proceeding in 2008 to 2010, it is expected that the appointment of the Receiver over results would involve negative media attention and long-term societal and financial implications. The appointment of the Receiver over Resorts would also unnecessarily indicate to the market that this is a "distressed sale" and should be valued accordingly.

Matthews #4 (Receivership), para. 74

141. Particularly in light of the acknowledgement by Placemark and the Receiver of the importance of Resorts to the overall value of the Bear Mountain project, the appointment of the Receiver over Resorts would not achieve the objective of obtaining the best value for the stakeholders – i.e., as opposed to simply ensure it receives a reasonable level of funding (with whatever controls are considered appropriate).

Matthews #4 (Receivership), para. 75

PART 5: LEGAL BASIS

142. The appointment of a receiver is extraordinary relief that "should be granted cautiously and sparingly". Even if the appointment of a receiver would otherwise be appropriate, the court must consider whether other measures might be employed to balance the interests of the parties. Whenever possible, the court ought to fashion a less intrusive remedy.

Indeed, a receivership should not be granted if there is a less intrusive remedy that may achieve the same objective

Cascade Divide Enterprises Inc. v. Laliberte, 2013 BCSC 263 at para. 81 [*Cascade*];
Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477 at para. 50

[*Textron*];

Schmidt v. Balcom, 2016 BCSC 2438 at paras. 69 and 75 [*Schmidt*].

143. In *Maple Trade Finance Inc. v. CY Oriental Holdings Inc.*, 2009 BCSC 1527, Justice Masuhara noted sixteen factors that “figure in the determination of whether it is appropriate to appoint a receiver”:

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Inc., 2009 BCSC 1527 at para. 25 [*Maple Trade*]; see also, in the context of interim corporate relief: *Ward Western Holdings Corp. v. Brosseuk*, 2021 BCSC 919, aff'd *Ward Western Holdings Corp. v. Brosseuk*, 2022 BCCA 32 (see, in particular, para. 49 of 2022 BCCA 32).

144. These factors are not an exhaustive checklist, but a set of considerations to be viewed holistically in determining whether the appointment of a receiver is just and convenient. Whether an appointment would be just and convenient is determined based on the facts of a particular case.

Bank of Montreal v. Gian's Business Centre Inc., 2016 BCSC 2348 at para. 23;
Schmidt at para. 74.

145. Although the “extraordinary” nature of a receivership is reduced where a secured creditor has a right to receivership under its security agreement, judicial appointment of a receiver is not an automatic right. There is no presumption in favour of the appointment of a receiver merely because a contract between the parties provides for one. Rather, as set out in *Maple Trade*, the existence of the contractual right to the appointment of a receiver merely forms one factor in a constellation of relevant considerations.

Prospera Credit Union v. Portliving Farms (3624 Parkview) Investments Inc., 2021 BCSC 2449 at para. 24;

Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership, 2024 BCSC 47 at para. 116 [*Haro-Thurlow*].

146. As noted above, where less intrusive remedies are available, the appointment of a receiver will not be just and convenient: “[t]he chambers judge on such an application should carefully explore whether there are other remedies, short of a receivership, that could serve to protect the interests of the applicant”.

Schmidt at para. 75;

BG International Ltd. v. Canadian Superior Energy Inc., 2009 ABCA 127 at para. 16;
Coromandel Properties Ltd. (Re), 2023 BCSC 2187 at paras. 40-42.

147. As held by the Court in *Schmidt* at paragraph 75:

75 The Alberta Court of Appeal, made it clear in *BG International Ltd. v. Canadian Superior Energy Inc.*, 2009 ABCA 127, that a receivership should not be granted if there is a less intrusive remedy that may achieve the same objective:

16 We agree that the appointment of a receiver is a remedy that should not be lightly granted. The chambers judge on such an application should carefully explore whether there are other remedies, short of a receivership, that could serve to protect the interests of the applicant...

This same principle, that a court should avoid granting receivership if it can fashion an alternative remedy, has been articulated in British Columbia: See *Cascade Divide* at para. 81.

[Emphasis added.]

148. The referenced paragraph from Justice Fitzpatrick’s decision, in *Cascade* states:

[81]... an important consideration is that a receivership is extraordinary relief which should be granted cautiously and sparingly. Accordingly, if the court can fashion a remedy that avoids receivership, then that is certainly something that should be considered. Both counsel before me are experienced insolvency counsel, and it is well taken that the appointment of a receiver is an extraordinary remedy that can, and in some cases, likely will, cause harm to the company in terms of the public perception and public reaction to that event. There is also, of course, the cost of the receivership, which, in respect of this type of a company, I have no doubt would be considerable. To that end, this Court must consider whether there are other measures that might be employed to balance the interests of the parties pending trial.

[Emphasis added.]

149. The application fails on a threshold issue. There is no such thing as an “incremental” appointment of a receiver. There are clearly less intrusive remedies available. Resorts will form part the sales process. If it becomes necessary for Resorts to be included in the receivership to effect a sale to a purchaser, then the appointment can be made at that time. But it is not necessary for the Receiver to be appointed over Resorts now – and if 599/Mr. Matthews are the purchaser, then it may well never be necessary.
150. The objective of providing stability to Resorts’ operations may be achieved through other means. The Receivership Order, by consent, empowered the Receiver to advance funds to Resorts. The Receiver’s discretion to make advances to Resorts was improperly foreclosed or, at the very least, severely fettered by Sanovest. The Resort Partnership requires only relatively modest funding to stabilize its operations. Indeed, the equivalent of the anticipated cost of the receivership for 4 – 8 months would almost certainly be enough to repay the entirety of all of Resorts’ indebtedness and fund the “Transition Plan”.
151. The funding of Resorts’ operations can be achieved through a direction that the Receiver either repay some or all of the approximately \$6 million in debt owed by Developments to Resorts or, alternatively, to canvas the market for a source of funding on the same or better terms relative to Sanovest’s advances under the Receiver’s certificates. Particularly in light of the substantial equity in the assets, neither of those alternative options would prejudice any stakeholder.
152. Furthermore, and in any event, the vast majority of the *Maple Trade* factors militate against the appointment of the Receiver over the Resort Partnership:
- a. It cannot reasonably be suggested that Sanovest or any other party will suffer irreparable harm if the order is not made. In contrast, this Court has consistently recognized the stigma and prejudice associated with the appointment of a receiver, particularly when appointed over an operating business. If the order is made at this time, it is a certainty that significant additional costs will be borne by the stakeholders and harm will be caused to Resorts’ operations, relationships

with its customers and suppliers, good will, going concern value, etc. The only question is whether that harm would prove irreparable.

- b. There is no risk to the security holder if the appointment is not made. Sanovest will be repaid, in full, through the sales process. In the interim, the Receiver has oversight (effectively in the position of a Monitor) and Tian is an officer, director and is required to approve all payments of expenses. 599 and Mr. Matthews are also open to less intrusive orders or mechanisms that may be considered necessary by the Court or the Receiver (though the evidence does not appear to justify any apart ensuring Resorts may obtain funding).
- c. The appointment of a receiver necessarily entails stigma and prejudice for an operating business. Aside from cost and impairment of operations, a receiver's appointment will also negatively impact a business's going concern value and reputation. As held by Justice Huddart in *Korion Investments Corp. v. Vancouver Trade Mart Inc.*, [1993] B.C.J. No. 2352 (S.C.), "a receiver-manager says to the world, including potential investors, that the [debtor] is not reliable, not capable of managing its affairs, not only in the opinion of the [applicant], but also in the opinion of the court. That is a large presumption for a court to make when it is considering whether need or convenience or fairness dictates an equitable remedy..."
- d. The "nature of the property" is an operating business. A business that at the outset the partners agreed would be managed by Mr. Matthews, and has been managed by Mr. Matthews, since 2013. There is no allegation of dissipation of assets or other forms of misconduct that would typically form the basis for a receivership application. Rather, the challenges faced by Resorts are liquidity challenges – the direct consequence of its lender's refusal to lend and intensive efforts to deter the Receiver from seeking much less securing funding from any other source.
- e. No assets are wasting.
- f. There is no need to preserve or protect property pending a judicial resolution. To the extent any such need may be perceived on the evidence, it would be met via the funding expressly permitted under the Receivership Order (and results from Sanovest's wilful efforts to starve the Partnerships of cash for the ulterior purpose of ousting Mr. Matthews and eroding 599's equity position).
- g. For the reasons discussed above, including the significant additional layer of professional fees and other associated costs, and the disruption and damage to Resorts' business and operations that the appointment would necessarily entail, in circumstances where no stakeholder stands to suffer harm if the appointment is not made, the balance of convenience heavily weighs in favour of dismissing the application (or adjourning it with a direction that it only be re-set due to a material change in circumstances or to facilitate the completion of a sale).
- h. The terms of the security include the appointment of a receiver. However, this is only one factor amongst many relevant considerations.

- i. The Receiver has not encountered difficulties with Resorts. To the contrary, Resorts has made dogged efforts to satisfy the enormous volume of Receiver's requests and to implement its recommendations. Of course, those efforts have been rendered considerably more difficult, and some of the recommendations impossible to immediately implement, due to Resorts inability to access financing.
 - j. That the appointment of a receiver constitutes an extraordinary remedy looms larger in the context of the present case, which, in substance, involves a shareholder dispute and not the usual creditor-debtor relationship. Indeed, the primary grounds for the receivership application, namely, Resorts' liquidity challenges, go to the very heart of the shareholder dispute and result from the applicant's concerted efforts to create precisely that state of affairs.
 - k. It is not necessary for the Receiver to be appointed over Resorts at this time to carry out its duties. Indeed, the appointment may never be necessary.
 - l. The effect of the order on the parties, the conduct of the parties and the cost to the parties has been discussed above and so will not be repeated here.
153. For all of the foregoing reasons, it is respectfully submitted that the application ought to be dismissed, with costs.


PART 6: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of T. Kusumoto filed May 23, 2024 (Exhibit M only)
- 2. Affidavit #1 of D. Matthews filed June 17, 2024 (Exhibits B to I, L, N, and R only)
- 3. Affidavit #1 of R. Larocque filed June 24, 2024
- 4. Affidavit #2 of T. Kusumoto filed July 3, 2024 (without exhibits)
- 5. Affidavit #2 of D. Matthews filed September 12, 2024 (Exhibits A to P and S only) – Subject to sealing order
- 6. Affidavit #3 of T. Kusumoto filed June 16, 2025 (without exhibits)
- 7. Affidavit #4 of D. Matthews filed July 2, 2025
- 8. Order of Justice Walker pronounced September 18, 2024 (Receivership Order)
- 9. Receiver's First Report
- 10. Receiver's Second Report
- 11. Receiver's Third Report
- 12. Receiver's Fourth Report

13. Receiver's Supplement to Fourth Report
14. Affidavits filed in Oppression Action (S-234048):
 - a. Affidavit #1 of D. Matthews filed June 1, 2023 (Exhibits H, J, K, V, AA, BB, GG, HH, NN, OO only)
 - b. Affidavit #2 of D. Matthews filed May 13, 2024 (Exhibits C and F only)
 - c. Affidavit #3 of D. Matthews filed June 24, 2024 (Exhibit F only)
 - d. Affidavit #4 of D. Matthews filed August 20, 2024 (Exhibit A only)
 - e. Affidavit #5 of D. Matthews filed September 12, 2024
 - f. Affidavit #1 of T. Kusumoto filed August 25, 2023 (Exhibits Y, PP, LLL, JJJ, and KKK only)
 - g. Affidavit #2 of T. Kusumoto filed July 17, 2024 (Exhibits DD, HH, LL, and MM only)
 - h. Affidavit #3 of T. Kusumoto filed August 9, 2024 (Exhibits F and Q)
 - i. Affidavit #1 of D. Clark filed June 19, 2024
 - j. Affidavit #1 of R. Malak filed June 19, 2024
 - k. Affidavit #1 of R. Larocque filed August 16, 2024
 - l. Affidavit #3 of R. Celiz filed September 6, 2024

The application respondents have filed in this proceeding a document that contains the application respondent's address for service.

Date: July 2, 2025


Signature of lawyer for application respondents,
Scott H. Stephens & Lily Y. ZHANG