



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

**APPLICATION RESPONSE
(RE: LITIGATION SCHEDULE)**

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 17, 2025.

The application respondents estimate that the application will take one hour.

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 following paragraphs of Part 1 of the notice of application: NONE

PART 4: FACTUAL BASIS

1. Matthews and 599 propose the following timeline for filing materials and setting a subsequent hearing date:
 - a. Matthews and 599 will file their materials in response to Sanovest's debt declaration application by July 31, 2025;
 - b. Sanovest will file its reply materials by August 7, 2025; and
 - c. A hearing can be scheduled now for so soon thereafter as the court's availability permits to determine:
 - i. What claim or claims, if any, will be litigated in this proceeding; and
 - ii. If a claim or claims are to be litigated in this proceeding:
 - A. What pre-trial procedures ought to be utilized;
 - B. On what timelines should the pre-trial procedures be performed; and
 - C. The length and format of the ultimate hearing.
2. For the reasons set out below, at this point, it is premature for the court to order a discrete set of pre-trial procedures or a litigation schedule (beyond the exchange of response and reply materials). The above proposed form of order would ensure that the court may still order an expedited process should it consider such a process to be appropriate after receiving 599/Matthews' response and hearing submissions from counsel.

Suitability for and Scope of Determination in This Receivership Proceeding

3. Owen Bird was retained on Friday, June 20, 2025. The principal lawyer, Scott Stephens, primarily practices in the area of insolvency and restructuring. The retainer is limited to acting in the within receivership proceeding. Owen Bird is not retained in connection with any aspect of the Bear Mountain Proceedings (as defined below).
4. The application for a litigation schedule was served a business day or so prior to the hearing on Monday, June 23, 2025. At paragraph 10 of the litigation schedule application, Sanovest submits "The Receivership Proceedings do not include or impact the 'Oppression Litigation', as defined in the Receivership Order." Owen Bird, having only recently been retained, necessarily took that submission at face value. As discussed further below, it is now clear the submission is incorrect.

5. In addition to this receivership proceeding, 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] commenced in June 2023, which was initially brought by a petition but was subsequently converted into an action, with Sanovest’s consent (the “**Oppression Action**”). Among the various forms of relief sought by Matthews and 599 in the Oppression Action is an order that Sanovest and Tian Kusumoto compensate 599 by “reversing interest credited to Sanovest on its financing from and after June 1, 2021, or such other date as the Court deems appropriate”;
 - b. a claim brought by the Partnerships and 599 in June 2023 against Sanovest, Tian Kusumoto, EBMD, and TRK Investments Corporation, a company held by Tian Kusumoto [S-234047] (the “**Partnership Action**”);
 - c. a claim brought by Sanovest in May 2022 (and amended in March 2023) against EBMD, 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 in August 2022 against Matthews and counterclaim brought by Matthews [S-226218] (the “**Tom Debt Action**”).
6. By order of Associate Judge Nielsen made April 18, 2024, the Oppression Action, Partnership Action and the Sanovest Action were consolidated on certain terms (the “**Consolidated Action**”). Meaning, what were initially three actions are now one action.

Ecoasis Developments LLP v. Sanovest Holdings Ltd., 2024 BCSC 635 [*Ecoasis* 2024]

7. In her reasons for judgment, Associate Judge Nielsen specifically found that the underlying factual matrix is common to each of the Bear Mountain Proceedings, and the alleged underlying business arrangements will impact each action depending on the court’s findings.

Ecoasis 2024 at paras. 11, 14

8. By order of Justice Morellato made May 16, 2025, the Tom Debt Action and the Consolidated Action were ordered to be heard together.

Ecoasis Developments LLP v. Sanovest Holdings Ltd., 2025 BCSC 991 [*Ecoasis* 2025]

9. In her reasons, Justice Morellato summarized the Bear Mountain Proceedings based on the pleadings as follows:
 - a. In the Oppression Action, 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;

- b. In the Partnership Action, the plaintiffs assert that Sanovest and Mr. Tian Kusumoto committed “Partnership breaches” that have prevented Mr. Matthews from carrying out his role as CEO and President of EBMD, and from carrying out the parties’ agreed Bear Mountain business terms;
- c. In the Sanovest Action, 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; and
- d. In the Tom Debt Action, Mr. Tom Kusumoto seeks judgment against Mr. 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.

Ecoasis 2025 at para. 14

10. Consistent with the findings of Associate Judge Nielsen, Justice Morellato observed that there is an overlapping set of relationships and interconnected issues in dispute in the Bear Mountain Proceedings:

[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.

[emphasis added]

Ecoasis 2025 at paras. 42 to 49

11. The issue of the amount of debt owing to Sanovest is thus connected to the other claims made by Matthews and 599 against Tian Kusumoto and Sanovest in the Oppression Action (now part of the Consolidated Action), which was ordered, with Sanovest and Kusumoto's consent, to be converted from a summary proceeding into an action.

Ecoasis 2024 at para. 2

12. The issues initially plead in the Oppression Action are in turn interconnected with the claims of all other parties to the other Bear Mountain Proceedings. Accordingly, it is anticipated that 599/Matthews' response to the debt declaration application will raise the question of whether any one issue from Consolidated Action can or should be litigated in isolation from all of the other claims in the Bear Mountain Proceedings.

13. The reasons of Associate Judge Nielsen and Justice Morellato indicate that the only appropriate order on this application is for either all or none of the claims in the Bear Mountain Proceedings to be litigated within this proceeding. Furthermore, and in any event, the question for this court on this application may not be limited to the pre-trial procedures and timelines that would be appropriate for the determination of the issue of “the amount due and owing...to Sanovest” (as sought in the debt declaration application).

Pre-Hearing Procedures

14. For whatever claims the court ultimately determines should be decided in this receivership proceeding, if any, it will then be necessary to determine what pre-hearing procedures are appropriate or necessary, and the timeline for those procedures, to ensure that the court is placed in the best position to decide the issues.
15. It appears Sanovest is suggesting that evidence in main be by affidavit and for cross-examinations on affidavits to occur out of court. However, of course, regardless of what claim or claims, if any, are to be litigated in this proceeding, a litany of other pre-trial proceedings may be necessary or appropriate. For example, document production, document production applications, the use of notices to admit or interrogatories, examinations for discovery, cross-examination before the court, etc.
16. These matters should be assessed with input from the lawyer who will act for Matthews and 599 in connection with the Bear Mountain Proceedings. It is that lawyer, not counsel on this application (who have not even received 599/Matthews’ file yet and have only a superficial understanding of the claims in the Bear Mountain Proceedings), who should have an opportunity to come to a considered position, seek and obtain instructions, and make submissions on the issues discussed above.
17. A decision on what pre-trial procedures should be utilized, and on what timeline they should be performed, cannot properly be made at this time. The form of order proposed by 599/Matthews above would preserve the court’s ability to order an expedited process should that be considered appropriate after receiving 599/Matthews’ response and hearing submissions from counsel.

PART 5: LEGAL BASIS

18. As set out above, the amount owing to Sanovest is inextricably interconnected to all other claims in the Bear Mountain Proceedings. It is a live issue whether the relief sought in the debt declaration application can or should be determined in isolation from all other claims.

Ecoasis 2024 at paras. 11, 14; *Ecoasis* 2025 at paras. 47, 48

19. Any case plan order that is to be made should commensurate the amount involved in the proceeding, the importance of the issues in dispute, and the complexity of the proceedings. Document production, examinations for discovery, and further case planning, as well as other procedural tools available under the *Supreme Court Civil Rules*

may be needed to ensure the court will be able to decide whatever claims, if any, are ultimately litigated herein.

See e.g. *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 [*Alderbridge*];
Carriage and Case Plan Order of Justice Fitzpatrick pronounced October 3, 2023 in
Alderbridge

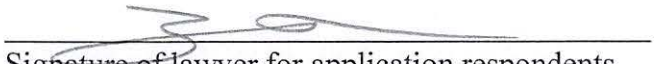
20. The number and nature of pre-trial tools utilized will drive the appropriate timeline. The number and nature of the claims, as well as the pre-trial procedures utilized, will guide the format and length of the ultimate hearing.

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of V. Zhang made July 3, 2025
2. Materials contained in the application record provided by counsel for Matthews and 599 in response to Sanovest's application to amend the receivership order
3. Such other and further materials counsel may advise

The application respondent has 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