

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sanovest Holdings Ltd. v. Ecoasis
Developments LLP,*
2026 BCSC 141

Date: 20260129
Docket: S243389
Registry: Vancouver

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

Before: The Honourable Mr. Justice P. Walker

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.
November 24, 26,
December 1, 2025,
and January 12, 21, 27, 2026

Place and Date of Judgment:

Vancouver, B.C.
January 29, 2026

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Introduction

[1] Sanovest Holdings Ltd. (“Sanovest”) applies for an order that would bring four separate actions within the ambit of this insolvency litigation involving entities in which it is a stakeholder (e.g., limited partner and secured creditor). The parties refer to those actions, previously ordered to be tried together, as the “Bear Mountain Litigation” (see 2024 BCSC 635; 2025 BCSC 991).

[2] This insolvency litigation concerns lands and assets known as the Bear Mountain Resort located near Langford, British Columbia. I issued a receivership order by consent (“Receivership Order”) in this proceeding on September 18, 2024, following a lengthy and fractious hearing, where nearly every issue was in dispute. The parties ultimately agreed to an order appointing Alvarez & Marsal Canada Inc. as receiver and manager (“Receiver”) over certain lands (“Lands”) within the Bear Mountain Resort community, together with all of the assets and undertakings of the other respondents, including Ecoasis Bear Mountain Developments Ltd. (“EBMD”).

[3] Two of the terms of the parties’ agreement that resulted in the Receivership Order excluded the business of Ecoasis Resort and Golf LLP (“Resorts”), including all of its operations such as its golf course and tennis club, and the Bear Mountain Litigation from the ambit of the receivership (“Receivership”). The trial of the Bear Mountain Litigation, which has been proceeding separately with no case management judge assigned, was scheduled to commence in January 2026; it has been adjourned to January 2027.

[4] Additional terms of the Receivership Order allowed any party to apply to vary it, and as will be seen from the discussion below, included carveouts for the Bear Mountain Litigation (defined in the Receivership Order as the “Oppression Litigation”), the Receiver’s involvement in the tennis club and golf course business, and an arbitration proceeding involving some of the entities and a third party (referred to as the “Hotel Arbitration”; a discussion of the issues in the Hotel Arbitration may be found at *Bear Mountain Resort & Spa Ltd. v. Ecoasis Resort and Golf LLP.*, 2025 BCCA 368).

[5] My reasons for judgment, issued in this proceeding following a subsequent variation application heard in July 2025, should be read in conjunction with these reasons as they include a lengthy discussion of underlying facts, parties, and issues; see 2025 BCSC 1504.

[6] Sanovest’s instant application is grounded in the terms of the Receivership Order permitting variation, or alternatively, s. 187(5) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*].

[7] It will suffice at this juncture to say that all litigation between the parties remains highly fractious. The principal combatants are Mr. Tian Kusumoto and Mr. Daniel Matthews. Mr. Kusumoto is a director of Sanovest. Mr. Matthews is the director and president of 599315 B.C. Ltd. (“599”).

[8] Adding to the intensity and complexity of their litigation, and complicating an orderly resolution of the Receivership proceeding, are their competing claims (advanced on their own behalf and through various entities) in the Bear Mountain Litigation, alleging various forms of *mala fide* conduct against each other such as breach of fiduciary duty and oppression.

[9] Sanovest’s position is that the Bear Mountain Litigation must now be brought within the Receivership to promote its orderly, efficient resolution for the benefit of all stakeholders. Sanovest submits that the outcome of the Receivership depends on the timely determination of the claims in the Bear Mountain Litigation. As a consequence, Sanovest says that case management is urgently needed, with a view to incorporating hybrid procedures contemplated in the *BIA*, as was done in *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 and *Walter Energy Canada Holdings, Inc. (Re)*, 2017 BCSC 709, now that trial is delayed by a year.

[10] Although part of the relief Sanovest seeks is an order for a hybrid form of trial, as was done in *Alderbridge*, I advised the parties that I am not able to determine suitability without further in-depth submissions, particularly in light of Mr. Matthews’

almost universal and adamant opposition to anything other than a traditional trial on account of significant credibility issues and resulting prejudice.

The Key Parties

[11] Before turning to discuss the component actions of the Bear Mountain Litigation and their intersection with the Receivership proceeding, and whether I can and should vary the Receivership Order as Sanovest asks, it is useful to describe the role of Mr. Kusumoto and Mr. Matthews in the various entities.

[12] I will start with the relevant ownership structure of Resorts and the various Ecoasis entity respondents. Ownership is structured through a tiered layer of entities. The parent entity and managing partner is EBMD. Immediately below EBMD in the tier is Ecoasis Developments LLP. The parties refer to it either as “Developments” or the “Partnership” (I will refer to it by the former to align with my prior reasons: 2025 BCSC 1504). Below Developments in the tier sits Resorts (also a partnership) and below Resorts is another entity, BM Golf Course Ltd.

[13] Sanovest and 599 each own 50% of EBMD. Each one also owns 49.75% of the units of Developments (EBMD owns the remaining 0.5%). Developments owns 99% of Resorts (EBMD owns the remaining 1%).

[14] Sanovest is also the senior secured lender to Developments.

[15] The two principals of the various entities in this proceeding are Mr. Kusumoto and Mr. Matthews. Both hold significant positions in the various ownership entities. For example, Mr. Kusumoto is a director and the chief financial officer of EBMD. Mr. Matthews is a director and the chief executive officer and president of EBMD. Both are directors of the remaining corporate respondents (those entities are guarantors of Developments’ indebtedness to Sanovest).

[16] Additionally, Mr. Tom Kusumoto, who is Tian Kusumoto’s father and a former director of Sanovest, is a party in some of the actions comprised in the Bear Mountain Litigation.

Bear Mountain Litigation

[17] I summarize the nature of the four actions below and will use the short form descriptors used by the parties for each.

[18] VA S223937 was commenced by Sanovest on May 13, 2022 (“Sanovest Action”), seeking an award of equitable compensation payable to Developments, against Mr. Matthews and Tom Kusumoto, for alleged breaches of fiduciary duties and failures to disclose self-interested transactions between January 2016 and June 2022.

[19] VA S234047 was commenced on June 1, 2023 by 599 and on behalf of Developments and Resorts (“Partnership Action”), all represented by counsel acting for 599 and Mr. Matthews. The claim in that action is for damages, on behalf of Developments, against Sanovest, EBMD, and Tian Kusumoto for alleged breaches of the terms of Developments’ partnership agreement and duties owed to it.

[20] VA S234048 was commenced by petition on June 1, 2023 (“Oppression Action”) and converted to an action on April 18, 2024. In that action, Mr. Matthews and 599 seek oppression remedies against Developments, Resorts, and EBMD. Some of the relief overlaps with matters concerning the Receivership. For example, Mr. Matthews seeks an order authorizing Developments to obtain third-party financing and an order directing equity distributions to be paid to 599.

[21] The parties ultimately agreed in oral submissions on this application that the Sanovest Action, the Partnership Action, and the Oppression Action are predominantly derivative actions. They are not inter-creditor disputes (as 599 and Mr. Matthews argued at one point).

[22] The parties have not addressed the effect, if any, arising from the fact that leave was not sought to commence derivative actions on behalf of Developments. The fact that Mr. Matthews both brings an action on behalf of Developments in the Partnership Action and has sued Developments in the Oppression Action has been raised by Sanovest as an issue affecting the lens through which I should view the

objections raised by Mr. Matthews and 599 to the relief it seeks on the instant application.

[23] The fourth action comprising the Bear Mountain Litigation, VA S226218, was commenced by Tom Kusumoto seeking judgment against Mr. Matthews for \$1.585 million plus interest arising from three loans that he advanced to Mr. Matthews between July 2019 and February 2020 in the context of their business relationship in Developments (“Debt Action”).

[24] Most of the terms of a case plan order issued in the Bear Mountain Litigation have been met. The initial examination for discovery of Mr. Matthews did not finish by the deadline but has now completed. In all, I was told that 12 days of discovery have taken place. There remain outstanding requests for documents and questions from examination for discovery (with contested production applications forthcoming). Expert reports have not been served (the deadlines were October 17, 2025 for initial reports and November 28, 2025 for responding reports). I am told by counsel that those reports are intended to deal with quantum issues, and the experts cannot be properly instructed until the amount realized from the Receiver’s sale of the assets encompassed in the Receivership is known. That is one of the key reasons why the trial was adjourned.

The Receivership Order Provides for Variation

[25] As seen from the excerpt below, the parties specifically contemplated the prospect for variation of the Receivership Order, generally, as well as specifically to the Receiver’s role in the Bear Mountain Litigation, Resorts’ business, and the Hotel Arbitration:

APPOINTMENT

...

2. Until further Order, this appointment [of the Receiver] shall not include or extend to:
 - (a) the Oppression Litigation (as defined in paragraph 13) [the Bear Mountain Litigation], and, for clarity and notwithstanding anything else in this Order, subject to further order of this Court, the Receiver shall

have no obligation to manage or otherwise participate in the Oppression Litigation; and

- (b) Resorts' operations and business (the "**Resorts Business**") which, subject to further order of this Court, shall continue to be managed by EBMD, provided that EBMD and Resorts are required to provide access and cooperation to the Receiver pursuant to paragraphs 7 to 10 of this Order, including in respect of Resorts and the Resorts Business. For greater clarity, the Resorts Business does not include the ownership, disposition or encumbrance of any interests in real property.

...

NO PROCEEDINGS AGAINST THE DEVELOPMENT ENTITIES OR THE PROPERTY

...

- 13. Notwithstanding paragraphs 3(g), 3(j), 12 and 14, subject to further order of this Court, this Order shall not in any way impact the litigation in Action Nos. (Vancouver Registry) S223937, S226218, S234047 and S234048 (collectively, the "Oppression Litigation") [Bear Mountain Litigation] or the arbitration proceedings [Hotel Arbitration] between Ecoasis Resort and Golf LLP and Bear Mountain Resort & Spa Ltd., BM Management Holdings Ltd. and BM Resort Assets Ltd.

...

GENERAL

- 39. Any interested party may apply to this Court to vary or amend this order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

[Bold in original; insertion in square brackets and underlining emphasis added]

Discussion

[26] As noted at the outset, the Receivership Order resulted from the compromise of a hotly contested receivership application, where the predominant dispute was whether a broad (Sanovest's position) or slim (Mr. Matthews' and 599's position) receivership order was appropriate in the circumstances. Given the significant liquidity issues facing the entities comprised in Resorts, it was essential that some form of receivership be granted without delay to allow a sales process to get underway.

[27] In relation to the Bear Mountain Litigation, 599 and Mr. Matthews made it clear in submissions during the hearing that led to the Receivership Order that they did not wish to have their claims in the Bear Mountain Litigation stayed on account of a receivership order. In bringing the instant application, Sanovest does not seek to stay the Bear Mountain Litigation, nor to have the Receiver take control of it. Sanovest's stated purpose is to engage case management within the Receivership with a view to using, where appropriate, the summary procedures contemplated by the *BIA*. It is noteworthy that at one point in their submissions, 599 and Mr. Matthews acknowledged that summary procedures might be appropriate but say that if any are, they should be crafted under the *Supreme Court Civil Rules* and not under the *BIA*.

[28] I did not find when I issued the Receivership Order that the exclusionary provisions concerning the Bear Mountain Litigation were an impermissible attempt to contract out of the single proceeding model contemplated by the case authorities: see, e.g. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 para. 22; *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at paras. 54–55; *Mundo Media Ltd. (Re)*, 2022 ONCA 607 at para. 6; *Alderbridge* at paras. 46–54.

[29] Nothing was drawn to my attention at the time I issued the Receivership Order concerning any possible intersection between the Receivership and the Bear Mountain Litigation. The possible connection concerned Resorts' business and I agreed to exclude it on a provisional basis to allow Mr. Matthews and 599 the opportunity to demonstrate that they could, contrary to Sanovest's assertion, operate its business as a going concern. Otherwise, the parties were to await the outcome of the Receiver's analysis of the appropriate manner in which to sell the Lands and whether Resorts should be brought into the Receivership.

[30] Those were the circumstances in which the Receivership Order was made and are some of the important factors for my determination of the instant application:

Integrus Credit Union v. Mercedes-Benz Financial Services Canada Corporation, 2016 BCCA 231 at paras. 25–28.

[31] The fact that the Receivership Order was a consent order is not an impediment to variation in the circumstances: see, e.g., *Century Services* at para. 22; *Mundo Media* at paras. 6, 40, 52; *Alderbridge* at paras. 104–106; *Williams Moving & Storage (B.C.) Ltd. v. Canada (Minister of National Revenue)*, 2024 BCCA 160 at paras. 85–89.

[32] Nor do I find Sanovest’s current application to be an attempt to reopen an order where a change in material fact(s) must be shown. There is no basis to construe the Receivership Order as a final order incapable of variation without demonstrating a change in material fact(s).

[33] Variation of the Receivership Order has in fact occurred twice.

[34] As mentioned, in July 2025, I varied the Receivership Order to include Resorts’ business and operations in the Receivership. 599 and Mr. Matthews opposed Sanovest’s application at that time but did not assert that the Receivership Order could not be varied unless a change in material fact(s) is shown.

[35] Moreover, Mr. Matthews and 599 supported Sanovest’s subsequent application (contested by the third party) to vary the Receivership Order to include the Hotel Arbitration within the ambit of the Receivership.

[36] There is also no basis to establish that Sanovest has delayed in putting 599 and Mr. Matthews on notice of their intention to bring the instant application nor in filing it. The delay in having it heard was due to the court’s scheduling.

[37] 599 and Mr. Matthews did not establish, any prejudice if the order is made. Mr. Matthews’ evidence that bringing the Bear Mountain Litigation into the Receivership “could signal potential problems” with lenders and appraisers is a general statement not supported by any facts.

[38] I disagree with 599 and Mr. Matthews' characterization of the variation provisions of the Receivership Order (citing *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 at paras. 50, 51–56) as a “come back” provision, available only when circumstances change.

[39] These remarks of the eminent insolvency jurist Justice Farley in *Ravelston Corp. (Re)*, [2005] O.J. No. 1643, 138 A.C.W.S. (3d) 792, are instructive to the facts of the instant case:

[6] ...

(j) In this regard, I reiterate what I have said before in other cases and what should be taken as a given automatic if not expressed. No party or interested person using the comeback clause on a timely basis should feel constrained by the fact that the court has today granted these orders – constrained legally, functionally or psychologically. The onus is always on the applicants to justify the order and its language and the court is always willing to adjust the language or amend, vary or delete any term – or indeed to terminate the order if that is the appropriate thing to do. The race is not to the swift and there is no benefit to being on the high ground in the sense of having an order in place which has not been exposed to full debate on an informed basis.

[Emphasis added]

[40] As I have pointed out, the intersection between the Bear Mountain Litigation and the Receivership was not addressed when the Receivership Order was issued. Nor was the notion that the Receivership Order could only be varied on a change in material fact(s). There was no full debate.

[41] At this juncture, I can only determine that it is not clear the way in which the outcome of the Bear Mountain Litigation will affect the distribution of sale proceeds (called the “waterfall”) as between Sanovest and 599 as equity partners contemplated by Developments' partnership agreement; what is certain is that the outcome of the claims in the Bear Mountain Litigation is a critical factor to determining the quantum of the assets currently encompassed within the Receivership and the ultimate distributions to be made.

Orders Made at the Hearing

[42] When the initial phase of the hearing concluded on December 1, 2025, I advised the parties that whether or not I varied the Receivership Order to bring the Bear Mountain Litigation within the ambit of the Receivership, I was satisfied that the litigation required case management and interim orders directed at moving the litigation forward in an efficient and proactive manner so as not to hold up the Receivership to the detriment of all stakeholders.

[43] To that end, and with the parties' agreement, I made the following orders in the Bear Mountain Litigation on December 1, 2025: (a) the parties will respond to all outstanding examination for discovery requests by December 12, 2025; (b) the parties will meet and confer on all outstanding document discovery issues by December 19, 2025; (c) the parties will write to each other and to the Court identifying any document discovery or other motions they wish to bring (together with issue identification and time estimates); and (d) any party who is a plaintiff in any action in the Bear Mountain Litigation will deliver trial management briefs by January 16, 2026; any party who is a defendant by January 23, 2026.

Subsequent Event: Sale of Assets

[44] The parties returned to court on January 21, 2026 on a sale approval application to advise me that the limited partners – Sanovest, 599, and EBMD – had reached agreement (“Settlement Agreement”) concerning the sale of the Lands and other assets owned by Developments and subsidiary entities (including Resorts) to Groundplay Developments Ltd. (“Groundplay”), an entity involving Mr. Matthews, for just over \$141 million. After reviewing the transaction and hearing the parties' submissions (including submissions grounded on evidence dispelling any concern that the Developments and Resorts partnerships had been inadvertently dissolved), and after being told of the Receiver's recommendation to approve the sale, I granted the order sought and approved the asset purchase agreement (“APA”), as I found the asset sale to be fair and reasonable. It is a significant, positive step in moving the Receivership towards conclusion for the benefit of all stakeholders.

Disposition

[45] None of the events following the conclusion of the initial phase of the hearing of this application, including the sale to Groundplay, have altered my assessment that the outcome of the claims in the Bear Mountain Litigation is a critical factor to determining the quantum of the assets currently encompassed within the Receivership and the ultimate distributions to be made.

[46] Even after the APA completes, the outcome of the claims in the Bear Mountain Litigation remains intertwined with the Receivership.

[47] The Receiver will remain involved, as it will need to attend to distributions and holdbacks contemplated by the Settlement Agreement (e.g., \$3.4 million until after the resolution of the claims in the Bear Mountain Litigation), and prepare financial statements and attend to tax filings (for 2025 and for a long and undefined period thereafter).

[48] Moreover, in view of the Settlement Agreement, the Receiver will remain involved to assess: (a) claims that Sanovest and 599 and Mr. Matthews assert for legal expenses incurred in the Bear Mountain Litigation; and (b) any claims Mr. Matthews and 599 assert for management fees, reimbursement of partnership expenses incurred personally by Mr. Matthews or 599, as they are now, per the Settlement Agreement and a claims process order I issued by consent on January 27, 2026, included within the claims process in the Receivership:

[Settlement Agreement]

15. b. Sanovest is entitled to prove a claim for its costs of the [Bear Mountain] Litigation as a claim of Sanovest against Ecoasis [defined to include Developments, EBMD, and Resorts], including, without limitation, under any of its loan agreements;

...

15. d. Mr. Matthews and 599 represent and agree that the maximum amount of any claims they may submit in such claims process will not exceed \$1,000,000 in aggregate.

[Claims Process Order]

24. Notwithstanding anything else in this Claims Process Order, for certainty, pursuant to section 15(d) of the Settlement Agreement, Mr. Daniel

Matthews and 599315 B.C. Ltd. may submit Claims in the Claims Process for: (a) management fees payable by the Ecoasis Entities to Mr. Daniel Matthews or 599315 B.C. Ltd.; or (b) reimbursement by the Ecoasis Entities of partnership expenses personally incurred by Mr. Daniel Matthews or 599315 B.C. Ltd. (including, by way of example, costs of the [Hotel Arbitration]);

[Insertion in square brackets added

[49] Whether claims Mr. Matthews and 599 may present in the claims process, per para. 24(b) of the claims process order, for reimbursement of management fees and expenses are included within the claims to be determined in the Bear Mountain Litigation is a disputed issue. Thus, proving those claims as well as the claims for recovery of legal expenses engages, at a minimum, the risk of inconsistent findings if the Bear Mountain Litigation is determined outside of the Receivership.

[50] I disagree with the submission of 599 and Mr. Matthews that in light of the approved sale to Groundplay, the Bear Mountain Litigation is now “normal commercial litigation” that should follow a step-by-step, and what I took to be a likely drawn-out, path through interlocutory procedures and trial.

[51] Quite apart from the seeming overlap between claims asserted in some of the actions in the Bear Mountain Litigation and the Receivership, given the clear intersection between the Bear Mountain Litigation and the need for a prompt, efficient, and orderly conclusion of the Receivership for the benefit of all stakeholders, the Bear Mountain Litigation must be brought within the ambit of the Receivership.

[52] I also reject the recent assertion, advanced by 599 and Mr. Matthews, that Groundplay will be prejudiced if the order is granted because of the stigma of receivership. Their submission overlooks the fact that Groundplay and the assets it purchased fall outside the Receivership. Their further contention that bringing the Bear Mountain Litigation within the ambit of the Receivership will draw undue public attention to their disputes in the Bear Mountain Litigation is not supported by evidence and moreover, fails to recognize that the litigation and its connection with the Receivership are already public knowledge. Their prejudice submission drives

home the need for as swift a conclusion as possible to the Receivership, as opposed to the point they made about a staged approach in “normal commercial litigation”.

[53] As I said above, this is not a case where a change in material circumstances is required. Even if it were, now that Sanovest and the Receiver have identified matters not previously disclosed arising from the Bear Mountain Litigation that require the Receiver to remain engaged until that litigation is concluded, there is a justifiable basis for Sanovest’s alternative ground for variation – s. 187(5) of the *BIA*. Continuing to exclude the Bear Mountain Litigation outside the ambit of the Receivership would now, in the present circumstances, be an unwarranted departure from the single proceeding model.

[54] Accordingly, the Receivership Order is varied to encompass the Bear Mountain Litigation within the Receivership.

[55] The parties should schedule a further hearing concerning Sanovest’s application to establish summary procedures in the Bear Mountain Litigation.

“P. Walker J.”