

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

Date: 20250516
Docket: S234047
Registry: Vancouver

Between:

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

Plaintiffs

And

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

Defendants

- and -

Docket: S226218
Registry: Vancouver

Between:

Tom Kusumoto

Plaintiff

And

Daniel Matthews

Defendant

- and -

Docket: S223937
Registry: Vancouver

Between:

Sanovest Holdings Ltd.

Plaintiff

And

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

Defendants

And

Tomoson (Tom) Kusumoto

Third Party

And

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

Defendants by way of Counterclaim

- and -

Docket: S234048
Registry: Vancouver

Between:

599315 B.C. Ltd. and Daniel Matthews

Plaintiffs

And

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

Defendants

Before: The Honourable Madam Justice Morellato

Oral Reasons for Judgment

In Chambers

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Place and Date of Hearing:

Vancouver, B.C.
February 7, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 16, 2025

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I. INTRODUCTION

[1] There are four applications concurrently before me.

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

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

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

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

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

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

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

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Applicants' Position

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

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

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

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

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

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

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

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

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

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

B. The Respondents' Position

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

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

(collectively "Mr. Matthews' Loans")

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

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

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

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

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

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

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

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

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

III. DISCUSSION

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

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

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

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

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

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

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

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

A. Stage 1: Common Claims, Disputes and Relationships

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[63] Costs will be in the cause.

“Morellato J.”