



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

**NOTICE OF APPLICATION  
(RE: SEALING ORDER)**

**Name of Applicant:** 599315 B.C. Ltd. ("599") and Daniel Matthews ("Matthews", together with 599, the "Applicants")

TAKE NOTICE that an application will be made by the Applicants before the Honourable Mr. Justice Walker at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Thursday, January 30, 2025, at 10:00 a.m. for the orders set out in Part 1 below.

**The Applicant estimates that the application will take one-half day.**

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

## Part 1: ORDERS SOUGHT

1. A direction that the Reports in this proceeding (as defined below) need not be filed with the Court at this time, distributed to the Service List, or published on the Receiver's website;
2. In the alternative, an Order substantially in the form set out at **Schedule "A"** to this Notice of Application, sealing the Reports;
3. In the further alternative, an Order that the Reports be filed with redactions; and
4. Such further and other relief as counsel may request and this Court may grant.

## Part 2: FACTUAL BASIS

### A. Overview

5. The Applicants seek a direction that the reports issued by Alvarez & Marsal Canada Inc. (the "**Receiver**") in this proceeding need not be filed with the Court at this time. In the alternative, the Applicants seek an order that the reports be filed on a sealed basis, and in the further alternative that they be filed subject to redactions.
6. The reports are as follows:
  - (a) First Report of the Receiver dated October 25, 2024 (the "**First Report**");
  - (b) Second Report of the Receiver dated December 2, 2024 (the "**Second Report**"); and
  - (c) Third Report of the Receiver dated December 20, 2024 (the "**Third Report**")
 (collectively, the "**Reports**").
7. The Reports need not be filed at this time as the receivership order dated September 18, 2024 (the "**Receivership Order**") does not require that the Reports be filed with the Court; only that they be delivered. This choice of language is deliberate. As the Reports need not be filed at this time, and have not been filed, the distribution provisions in s. 34 of the Receivership Order are not engaged.
8. The terms on which any of the Reports are to be filed can and should be addressed in due course, when the Receiver's sales and marketing plan is presented to the Court for approval, or if a need to file any of the Reports arises before that time. There is currently no need for this to occur.
9. In the alternative, if the Reports must or should be filed at this time, the Applicants seek a sealing order over the Reports, or in the further alternative redactions, on the basis that the Reports contain confidential and commercially sensitive information relating to *inter alia*: (a) the business and operations of Ecoasis Resort and Golf LLP (the "**Resort Partnership**") (which is not under receivership); (b) the marketing and sales strategy for

the assets under receivership, which remains under development; and (c) arbitration and third party confidentiality obligations.

10. Previously, the Court has sealed materials in this proceeding, as well as in a related proceeding (S-234048) in order to protect commercially sensitive information and third party confidentiality interests.
11. Disclosure of the Reports at this stage is unnecessary and would be prejudicial to the Resort Partnership's ongoing operations and to the eventual marketing and sales process.

## **B. Background**

12. Bear Mountain is a master-planned resort community near Victoria in the Greater Victoria area. In October 2013, 599 and Sanovest Holdings Ltd. ("**Sanovest**") went into business together to acquire assets associated with the Bear Mountain project (the "**Bear Mountain Project**" and the "**Bear Mountain Assets**"), including two golf courses, tennis facilities, and extensive real property holdings.
13. The Bear Mountain Assets were acquired by 599 and Sanovest through two limited liability partnerships: (a) the Ecoasis Developments LLP (the "**Partnership**"); and (b) the Resort Partnership. This acquisition was financed by Sanovest under a loan agreement (the "**Sanovest Loan**").
14. The business of the Partnership is focused on developing and selling the real property holdings associated with the Bear Mountain Project. The focus of the Resort Partnership is operating two golf courses, eight tennis courts, and certain other related recreational amenities and services.
15. Ecoasis Bear Mountain Developments Ltd. ("**EBMD**") was incorporated to act as the "managing partner" of the Partnership and the Resort Partnership and acquired one partnership unit in each.
16. Matthews is a principal of 599, and a director, President and CEO of EBMD.

## **C. Receivership Petition**

17. On May 3, 2024, Sanovest issued a formal demand for payment on the Sanovest Loan.
18. On May 23, 2024, Sanovest brought the within petition proceeding seeking the appointment of a receiver and manager over "all assets, undertakings and property of the Partnership, including all proceeds", together with certain lands owned by another entity, Bear Mountain Adventures Ltd. (the "**Receivership Petition**").
19. The Receivership Order issued September 18, 2024, by consent, appointed Alvarez & Marsal Canada Inc. as Receiver, without security, of:
  - (a) Those lands having a legal description of Lot A District Lot 82 Highland District Plan EPP70640, PID: 030-726-123, including all proceeds and any personal property related to or derived from those lands,

- (b) All the assets, undertakings and property of the Ecoasis Bear Mountain Developments Ltd., 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. and BM Mountain Golf Course Ltd, including all proceeds but excluding any interest in the Oppression Litigation (as defined in the order), and
  - (c) Any interest in real property of the Resort Partnership, including all proceeds.
20. The Receivership Order excluded, *inter alia*, the operations and business of the Resort Partnership (the “**Resort Business**”), which continues to be managed by EBMD, subject to further order of the Court.
  21. Section 4 of the Receivership Order directed the Receiver to, by October 25, 2024, deliver a report and recommendation regarding the Resort Partnership, including as to EBMD’s continued management of the Resort Business; this direction resulting in the First Report and, later, the Third Report.
  22. Section 6 of the Receivership Order directed the Receiver to, by December 2, 2024, deliver a report in respect of a marketing and sale process to be approved by the Court.

#### **D. The Reports**

23. The First and Third Reports both address management of the Resort Business. They consist of commercially sensitive information relating to the Resort Business, including its financial information, governance structure and business plans.
24. Further, the First Report discloses information that is subject to separate confidentiality considerations: including information subject to third-party commercial confidentiality obligations and relating to ongoing arbitration proceedings involving the Hotel operator (the “**Arbitration**”).
25. The First and Third Reports do not contain any recommendation whether, as at their respective delivery dates, the receivership should be extended over the Resort Business.
26. The primary objective of the Second Report is to provide an update regarding the “Report on Sales and Marketing Strategy”, in response to paragraph 6 of the Receivership Order. The information in this regard is commercially sensitive as it relates to a marketing plan that is under development. Further, certain information stated in the Second Report is the product of the Receiver’s initial investigations, and is subject to correction, review or supplementation following from ongoing discussions between the Receiver, 599/Matthews and others.
27. The Second Report does not present a sales and marketing plan for Court approval. However, it is expected to be followed by a further report that will contain recommendations for the Court’s approval.

### **E. Requests for Disclosure of the Reports**

28. The Receiver's Notice of Application for the within hearing was prompted by requests on behalf of one the respondents in the Arbitration, Bear Mountain Resort & Spa Ltd., which is not identified as a creditor in the receivership and lacks standing to participate in this proceeding.
29. To the extent the Arbitration respondents seek disclosure of the Reports, or any of them, for collateral purposes related to the Arbitration, their remedy is to seek disclosure of those Reports within the Arbitration, where they are subject to the confidentiality provisions in s. 63 of the *Arbitration Act*, and such other restrictions as the Arbitrator may order.

### **Part 3: LEGAL BASIS**

#### ***Reports Need not be Disclosed***

30. The Reports need not be filed at this time as the Receivership Order does not require that the Reports be filed with the Court; only that they be delivered. This choice of language is deliberate. As the Reports need not be filed at this time, and have not been filed, the distribution provisions in s. 34 of the Receivership Order are not engaged.
31. The question of whether and to what extent the Reports should be sealed should be deferred to such time as the Reports, or any of them, are to be filed with the Court. Such an approach minimizes risk of prejudice to the Partnership and Resort Partnership arising from disclosure of commercially sensitive and confidential information, and from the disclosure of incomplete information that may be revised, corrected or supplemented by the Receiver, whose work remains at an interim stage.

#### ***Legal Test for a Sealing Order***

32. In the alternative, if the Reports must or should be filed at this time, the Reports should be filed under seal, or in the further alternative, filed with redactions.
33. The jurisdiction and authority to grant a sealing order is derived from the inherent authority of the court to control its own processes.

British Columbia Practice Directive PD-58, "Sealing Orders in Civil and Family Proceedings", dated February 10, 2020.

34. The test for a sealing order is set out in *Sherman Estate v. Donovan*, 2021 SCC 25 ("*Sherman Estate*"), which reframed the two-step inquiry from *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 into three steps, requiring an application for a sealing order to establish that:
  - (a) court openness poses a serious risk to an important public interest,
  - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk, and
  - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

*Sherman Estate* at para 38.

35. All three prerequisites must be established before a discretionary limit on openness can be properly ordered.

*Sherman Estate* at para. 38.

36. To establish that there is a serious risk to an important public interest, the risk in question must be real and substantial, in that it is well grounded in the evidence and poses a serious threat to the important interests in question. Further, the important interest cannot merely be specific to the party requesting the order; it must be an interest that can be expressed in terms of a public interest in confidentiality.

*Sierra Club* at paras. 54-55.

37. The information sought to be protected by a sealing order must be of a “confidential nature” in that it has been accumulated with a reasonable expectation of it being kept confidential.

*Sierra Club* at para. 60;

*Royal Bank of Canada v. Westech Appraisal Services Ltd.*, 2017 BCSC 773 at paras. 9-10.

38. The “general commercial interest of preserving confidential information” is an important public interest. This extends, in the context of arbitral proceedings, to the public policy interest of promoting the integrity and confidentiality of ongoing arbitration.

*Sherman Estate* at paras. 41-43;

*Teletast v. Boeing*, 2010 ONSC 22 at paras. 20 and 25-26.

39. Further, confidentiality orders have been granted with respect to affidavits or documents containing banking information, financial information, and performance criteria.

*Tiger Calcium Services Inc v. Sazwan*, 2019 ABQB 500 at para. 91,  
citing *Unilin Beheer BV v. Triforest Inc*, 2017 FC 76;

*Miller & Smith Foods Incorporated v. Citadelle, Coopérative de Producteurs de Sirop Dérable*, 2024 ONSC 6133 at paras. 18-20.

40. Similarly, documents containing an assessment of a business’ strengths, weaknesses, opportunities, and threats have been found to be commercially sensitive information that requires a sealing order.

*Imperial Parking Canada Corporation v. Anderson*, 2015 BCSC 2221 at paras. 312-314;

41. The Ontario Superior Court of Justice also recently confirmed that protection of a sales process and the maximization of recovery in such a process is an important public interest that justifies granting a limited sealing order.

*Rose-Isli Corp. v. Frame Tech Structures Ltd.*, 2023 ONSC 832 at paras. 137-141.

See also: *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2; and

*Romspen Investment Corporation v. Hargate Properties Inc.*, 2012 ABQB 412.

*Application of the Legal Test*

42. An order sealing the Reports is proportional and necessary to prevent disclosure of confidential material, and to protect commercially sensitive information, arbitration confidentiality, and the integrity of the sales process within this proceeding. Disclosure would represent a serious risk to these public interests.
43. The genesis of this hearing is in the requests by one of the respondents in the Arbitration for disclosure of the Reports. The Arbitration respondents lack standing and have access to separate remedies within the Arbitration for disclosure of the Reports for limited purposes related to that proceeding.
44. In the further alternative, if the application for a sealing order is not granted, the Reports should be redacted to mitigate the risks to the above-noted public interests.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Daniel Matthews filed June 17, 2024.
2. Affidavit #2 of Daniel Matthews (sealed) filed September 12, 2024.
3. Affidavit #3 of Daniel Matthews made January 28, 2025 (unfiled, sealing order sought).

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 28<sup>th</sup> day of January, 2025.

*Lawson Lundell LLP (GBB)*

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

This Notice of Application is filed by William L. Roberts / Gordon Brandt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: [wroberts@lawsonlundell.com](mailto:wroberts@lawsonlundell.com) [gbrandt@lawsonlundell.com](mailto:gbrandt@lawsonlundell.com); telephone number: 604-685-3456.

*To be completed by the court only:*

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

Signature of ☐ Judge ☐ Associate Judge

## APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery

- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

**SCHEDULE "A"**

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LTD., BM HIGHLANDS LANDS LTD., BM MOUNTAIN GOLF  
COURSE LTD. and BEAR MOUNTAIN ADVENTURES LTD.

RESPONDENTS

**SEALING ORDER**

BEFORE THE HONOURABLE ) THURSDAY, THE 30<sup>th</sup> DAY OF  
MR. JUSTICE WALKER ) JANUARY, 2025

ON THE APPLICATION of 599315 B.C. Ltd. ("599") and Daniel Matthews ("Matthews") coming on for hearing at Vancouver, British Columbia, on the 30<sup>th</sup> day of January, 2025, and on hearing William L. Roberts and Gordon Brandt counsel for 599 and Matthews; and Kibben Jackson and Lisa Hiebert, counsel for the petitioner; and upon reading the materials herein;

THIS COURT ORDERS AND DECLARES THAT:

1. The following documents are to be sealed by the Registrar of this Honourable Court for the duration noted:

**Items to be sealed**

Description	Date filed: <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought	Granted	
					YES	NO
1) Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Specific Documents:  First Report of the Receiver dated October 25, 2024  Second Report of the Receiver dated December 2, 2024  Third Report of the Receiver dated December 20, 2024  Notice of Application of 599315 B.C. Ltd. and Daniel Matthews dated January 28, 2025;  Affidavit #3 of Daniel Matthews made January 28, 2025	To be filed.	Two copies	Until further order of the Court.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**[This space is intentionally left blank]**

2. Access to the sealed items is restricted to the following personal:

☒ Parties

☒ Counsel for Alvarez & Marsal Canada Inc., as court-appointed receiver  
Counsel for the Petitioner  
Counsel for 599 and Matthews

☐ Other: \_\_\_\_\_

THE FOLLOWING PARTIES CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT

BY THE COURT

\_\_\_\_\_  
REGISTRAR

\_\_\_\_\_  
Lawson Lundell LLP  
Solicitors for 599315 B.C. Ltd. and  
Daniel Matthews

\_\_\_\_\_  
Fasken Martineau LLP  
Solicitors for Sanovest Holdings Ltd.

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**SEALING ORDER**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2  
Phone: (604) 685-3456  
Attention: Gordon Brandt/ rgc