



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

RESPONSE TO PETITION

Filed by: 599315 B.C. Ltd. (“599”) and Daniel Matthews (“**Matthews**”)
(together, “**Matthews/599**”)

THIS IS A RESPONSE TO the Petition filed on May 23, 2024.

Matthews/599 estimate that the hearing of this petition (the “**Petition**”) will take two (2) days, together with the hearing the application filed by Matthews/599 on May 10, 2024 in *599315 B.C. Ltd. and Daniel Matthews v. Ecoasis Bear Mountain Developments Ltd., Ecoasis Developments LLP, Ecoasis Resort and Golf LLP, Tian Kusumoto and Sanovest Holdings Ltd.*, SCBC Vancouver Registry No. S-234048 (the “**Oppression Action**”).

Part 1: ORDERS CONSENTED TO

Nil.

Part 2: ORDERS OPPOSED

All.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Nil.

Part 4: FACTUAL BASIS

1. This petition is opposed by Matthews/599 on the basis that the receivership order sought by Sanovest Holdings Ltd. (“**Sanovest**”) is overbroad and would be detrimental to the interests of the respondents and stakeholders that Sanovest purports to protect.
2. This petition is, fundamentally, an attempt by Sanovest to leverage its dual status as a partner and lender in the Bear Mountain Project (defined below) in order to oppress its partner, 599, and bolster Sanovest’s position as a lender.
3. This is brought into sharp relief by Sanovest’s position on this receivership petition: Sanovest purports to protect and demand repayment on a debt owing to it by Ecoasis Developments LLP (the “**Partnership**”), while simultaneously expressing a willingness to continue financing the Bear Mountain Project. As stated by Tian Kusumoto, Sanovest’s current representative, in evidence given in support of this petition (Affidavit #1 of Tian Kusumoto, made on May 22, 2024 at para. 8):

I believe that a comprehensive and coordinated approach is required. I also believe that the Respondents require access to funds to conduct the process and meet operating expenses. Sanovest is prepared provide those funds, but only if there is a receiver with control of all of the assets to ensure the process and expenses are commercially reasonable and that there is oversight of the process to safeguard stakeholder interests.

[Emphasis added.]

4. In bringing this receivership petition, Sanovest cannot “wear both hats”. Sanovest’s Petition for appointment of a full receiver is properly viewed through the lens of Sanovest’s status as a creditor only — and its entitlement to relief is confined accordingly.
5. Prior to Sanovest filing this petition, Matthews/599 filed an application in an existing proceeding (599315 *B.C. Ltd. and Daniel Matthews v. Ecoasis Bear Mountain Developments Ltd., Ecoasis Developments LLP, Ecoasis Resort and Golf LLP, Tian Kusumoto and Sanovest Holdings Ltd.*, SCBC Vancouver Registry No. S-234048; the “**Oppression Action**”), seeking interim relief under s. 227(3) of the *Business Corporations Act*, SBC 2002, c 57, s. 39 of the *Law and Equity Act*, RSBC 1996, c 253, and Rules 10-2 and 13-5 of the Supreme Court Civil Rules (the “**Funding Application**”).
6. Under the Funding Application, Matthews/599 seek an order appointing a marketing agent for the sole and limited purpose of having conduct of the sale of certain lands owned and managed by the respondent limited liability partnerships and their nominees (the “**Funding Order**”).

7. The limited relief sought by Matthews/599 on the Funding Application is preferable to the sweeping relief sought by Sanovest in this proceeding *qua* lender/creditor.
8. Critical to this Court's assessment of the extraordinary relief sought by Sanovest are the following factors:
 - (a) the day-to-day operations of Ecoasis Resort and Golf LLP (the "**Resort Partnership**") are a going concern that is distinct from the Partnership's real estate development business;
 - (b) there is a viable plan underway and nearing completion to transition the Resort Partnership's existing pro shop, golf cart staging and storage, lockers/change rooms, and charging space away from a third-party owned and operated hotel (the "**Hotel**") — and, contrary to Sanovest's claims on this petition, there is good reason for the non-renewal of an existing lease with the Hotel;
 - (c) 599/Matthews are willing and able to buy out Sanovest's full interest in the Bear Mountain Project, but Sanovest has refused to be bought out;
 - (d) third-party financing for the Partnership's development business is available, provided that the sale of development land can proceed unimpeded; and
 - (e) in the current circumstances, Sanovest's claims regarding urgency are overstated.
9. Accordingly, this Court should dismiss Sanovest's petition and grant the Funding Order sought by Matthews/599 on the Funding Application.

The Bear Mountain Project

10. Matthews is a principal of 599.
11. In October 2013, 599 and Sanovest went into business together to acquire assets associated with the Bear Mountain project, located in the Greater Victoria area (the "**Bear Mountain Project**" and the "**Bear Mountain Assets**"). Bear Mountain is a master-planned resort community near Victoria, spread over 1,100 acres, and today home to more than 3,000 residents.
12. The Bear Mountain Assets were acquired by 599 and Sanovest through two limited liability partnerships: (i) the respondent Ecoasis Developments LLP (the "**Partnership**"); and (ii) the Resort Partnership.
13. At the time of acquisition, Sanovest was represented by Tian Kusumoto's father, Tom Kusumoto. The Bear Mountain Assets at that time included, *inter alia*:
 - (a) two golf courses and associated practice facilities (which the Resort Partnership continues to own and operate today);
 - (b) a 156-room hotel (*i.e.*, the Hotel, which was sold by the Resort Partnership to a third party in 2019); and

- (c) extensive real property holdings, the majority of which the Partnership continues to hold for sale and development today.
- 14. The respondent Ecoasis Bear Mountain Developments Ltd. (the “**Company**” or “**EBMD**”) was incorporated to act as the “managing partner” of the Partnership and Resort Partnership, and acquired one partnership unit in each.
- 15. The Company has at all times occupied the role of managing partner under the Partnership and Resort Partnership’s respective partnership agreements. As such, the Company manages and operates the Partnership and Resort Partnership’s business.
- 16. Upon incorporation, Matthews and Tom Kusumoto were each appointed directors of the Company, and Matthews was appointed as the Company’s President and Chief Executive Officer, responsible for managing the Bear Mountain Project’s overall operations.
- 17. The remaining partnership units in the Partnership were — and continue to be — held in equal measure by 599 and Sanovest. The Partnership holds all partnership units of the Resort Partnership, other than the single unit held by the Company.

The Sanovest Loan

- 18. The Partnership and the Resort Partnership’s acquisition of the Bear Mountain Assets completed on October 8, 2013.
- 19. The acquisition was financed by Sanovest under a commitment letter dated October 8, 2013 (the “**Sanovest Loan Agreement**”).
- 20. The terms of Sanovest’s financing for the Bear Mountain Project (the “**Sanovest Loan**”) included, among other things, an interest rate of 8% per annum, stated to be calculated daily and compounded quarterly, in addition to a lender’s fee of \$700,000 paid from the initial advance. Further, under the Sanovest Loan Agreement, Sanovest was required to advance funds to the Partnership, as and when requested, for Partnership activities, including development of the Bear Mountain Assets and to fund ongoing operations.
- 21. The Sanovest Loan Agreement set a maturity date of November 30, 2017.
- 22. By agreement dated June 15, 2016 (the “**First Modification Agreement**”), Sanovest and the Partnership agreed to extend and increase the amount of the Sanovest Loan. To that point, according to the First Modification Agreement, Sanovest had advanced \$40M under the Sanovest Loan. Pursuant to the First Modification Agreement, Sanovest agreed to increase the loan limit to \$70M and to extend the term to November 1, 2021.
- 23. By agreement dated January 26, 2022, Sanovest and the Partnership extended the Sanovest Loan to May 1, 2024, with an extension fee of \$700,000 accruing to Sanovest (the “**Second Modification Agreement**”).

The Bear Mountain Project – Up to May 2021

24. When the Bear Mountain Assets were acquired by the partners in 2013, the Bear Mountain Project was in creditor protection and considered a troubled development within the community on south Vancouver Island.
25. Between October 2013 and late 2016, the Partnership accomplished key objectives with respect to increasing land value, infrastructure development, community engagement, and raising the profile of the resort development's golf courses and other sporting amenities.
26. During this period, Matthews also worked to successfully rebuild local support for the Bear Mountain Project and strengthen its reputation within the community and region.
27. In late 2016 and early 2017, Matthews and Tom Kusumoto agreed to a marketing strategy designed to effect bulk sales or a global sale of the Bear Mountain Assets. The Partnership's engagement of real estate marketing firm JLL was publicly announced in February 2017. More advanced discussions were held with purchaser groups in 2019 and 2020, with a significant deal collapsing in early 2021.
28. In early 2021, a sales strategy was initiated through Colliers International ("Colliers"), using an approach of creating distinct "sites" on the Bear Mountain lands. However, on or about May 17, 2021, this process was halted through unilateral communications from Tian Kusumoto to Colliers. Around this time, Matthews learned that Tom Kusumoto was being removed as Sanovest's president and no longer had full authority to act for Sanovest in respect of the Company and the Partnership.
29. In June 2021, Tian Kusumoto formally replaced his father Tom Kusumoto as Sanovest's nominee to the Company and other related companies. Tian Kusumoto was also appointed as the Company's Chief Financial Officer — a role that continues today.

The Bear Mountain Proceedings

30. In addition to this petition for receivership (the "**Receivership Petition**"), there are now 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, initially brought as a petition but converted to an action by Order dated April 18, 2024, wherein Matthews and 599 allege that, since June 1, 2021, Sanovest and Tian Kusumoto have stymied the operation of the Company and the Bear Mountain Project, and, *inter alia*, wrongfully and oppressively prevented the sale of development land in order to gain control and benefit financially;
 - (b) a claim by the Partnership, the Resort Partnership and 599, naming Sanovest, Tian Kusumoto, the Company, and TRK Investments Corporation, a company held by Tian Kusumoto, as defendants (the "**Partnership Action**");

- (c) a claim brought by Sanovest, naming the Company, Tom Kusumoto, BM Mountain Golf Course Ltd., and Matthews as defendants (the “**Sanovest Action**”); and
 - (d) a debt claim brought by Tom Kusumoto against Matthews and counterclaim brought by Matthews (the “**Debt Action**”).
31. By Order of Associate Judge Nielsen dated April 18, 2024, the Oppression Action, Partnership Action and the Sanovest Action were consolidated on certain terms: *Ecoasis Developments LLP v. Sanovest Holdings Ltd.*, 2024 BCSC 635.

Sanovest’s Demand for Payment on the Sanovest Loan

32. On May 3, 2024, Sanovest issued a formal demand for payment on the Sanovest Loan.
33. Sanovest asserts that the total amount owed under the Sanovest Loan is \$62,317,943.93, with interest currently accruing at a rate of \$13,560.65 per day (which would amount to more than \$5M accruing in the next year).
34. Matthews and 599 dispute the total amount owing under the Sanovest Loan, and Sanovest’s entitlement to interest from 2021 is subject to a claim in the Partnership Action; however, it is not disputed that an amount in excess of \$50M in principal is due and owing by the Partnership under the Sanovest Loan.

599/Matthews’ Funding Application

35. On May 10, 2024, Matthews and 599 filed the Funding Application, seeking the limited appointment of a marketing agent to market and sell three of the Partnership’s bundled development sites in order to pay off the Sanovest Loan. As stated in that application, Matthews and 599 were driven to seek this interim relief against the backdrop of ongoing oppressive conduct by Tian Kusumoto and Sanovest.
36. On the same date, 599 delivered a letter of intent to purchase Sanovest’s entire interest in the Bear Mountain Project, including repayment of the Sanovest Loan in full.

Sanovest’s Receivership Petition

37. On May 23, 2024, Sanovest brought the within petition seeking the appointment of a receiver over “all of the assets, undertakings and property of the Partnership, including all proceeds”, together with certain lands owned by Bear Mountain Adventures Ltd. (“BMA”) with PID 030-726-123 (the “**Gondola Lands**”), including, *inter alia*, power:

(c) to manage, operate and carry on the business of the Partnership, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Partnership or BMA, in respect of the BMA Lands;

...

(j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Partnership, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business ...;

(by reference to the full relief sought by Sanovest, the “**Full Receivership**”).

38. The relief sought by Sanovest on the Petition is far reaching, extending not only to the Partnership’s development business and land holdings but also to the assets and operations of the Resort Partnership.
39. This relief sought extends too far. As described below, the circumstances that Sanovest and Kusumoto seek to rely upon to support the Full Receivership are of their own manufacture. The Full Receivership should be rejected as unnecessary and not in the Resort Partnership’s and the Partnership’s best interests.

The Resort Partnership is a Distinct and Going Concern

40. Through the Company and nominees, the Resort Partnership owns and operates the Bear Mountain Tennis Centre and Bear Mountain’s two Nicklaus Design golf courses and associated facilities, and operates the Bear Mountain Activity Centre (which, like the Gondola Lands, is owned by BMA). These operations are supported by a team of 75-125 managers and staff (depending on the season).
41. Revenues from the Resort Partnership’s golf and recreation operations are sufficient to sustain the Resort Partnership, but not sufficient to sustain both the Resort Partnership and the Partnership’s land development work. The latter is a problem of Tian Kusumoto’s and Sanovest’s own design and making: with Tian Kusumoto’s ongoing efforts to block funding and land sales for the Partnership, and his and Sanovest’s insistence that revenues from land sales go to Sanovest before funding the Partnership’s operations, Tian Kusumoto and Sanovest have created a situation of otherwise unnecessary dependence between the Partnership and the Resort Partnership.
42. Further, contrary to Sanovest’s claim of “management concerns” regarding the Resort Partnership’s operations and the non-renewal of a facilities lease with the Hotel:
 - (a) the Resort Partnership is in the process of moving from the Hotel premises to facilities controlled by the Partnership as of June 30, 2024; and

- (b) there is good reason for the Resort Partnership's non-renewal of the existing facilities lease with the Hotel, including a long list of ongoing and past deficiencies, and an arbitral decision finding liability against the Hotel for, *inter alia*, a "serious breach of trust" and actions the impact of which were "devastating on the golf and tennis business".

Mischief in Sanovest's Dual Role as Creditor and Owner/Partner

43. In specific response to the particulars summarized at paragraph 21 of the Petition, as the basis of appointment of a receiver, Matthews and 599 say as follows:

Sanovest's Assertion	Response
"(a) 599 has acknowledged that the Developments Partnership and Guarantors will be unable to meet their obligations to Sanovest unless property is sold"	This is correct, but <u>a product of Tian Kusumoto's and Sanovest's refusals to fund and/or authorize the sale of land or third party financing.</u>
"(b) the Partnerships are in default of obligations to various creditors other than Sanovest, and unable to pay significant obligations coming due in the near-term, including property taxes"	It is correct that the outstanding accounts payable as revenues generated through the Resort Partnership's operations are insufficient to sustain <i>both</i> the Resort Partnership and the Partnership. However, this too is <u>a product of Tian Kusumoto's and Sanovest's refusals to fund and/or authorize the sale of lands or third party financing.</u>
"(c) the Resort Partnership's obligations include payroll, and there is a risk that it may not be able to meet those obligations without access to additional funds"	This is incorrect at present as Resort Partnership revenues have been stronger than expected such that the Resort Partnership will be able to make payroll and reduce some \$780,000 in accounts payable over the next four months.
"(d) several of the Nominee Guarantors are in default of corporate filings and subject to dissolution"	There is no immediate threat of dissolution. For those Nominee Guarantors whose annual reports are outstanding, those companies have extensions of time to file those annual reports until October 16, 2024.
"(e) the Golf Course Lease is critical to operations and expires at the end of June 2024, but the Resort Partnership has no viable strategy to extend that lease or replace the services it provides"	This is incorrect and misleading. The Resort Partnership owns the two golf courses at Bear Mountain. The Resort Partnership's current lease with the Hotel is limited to facilities for a pro shop, golf cart staging and storage, lockers/change rooms, and charging space. As stated above, a transition from the Resort Partnership's existing leased space within the Hotel is underway with the first phase of that transition to be completed by June 30, 2024. Nor

	is an extension to the existing lease a viable solution in the circumstances, including where representatives of the Hotel entities were found to have engaged in a serious breach of trust vis-à-vis the Resort Partnership.
“(f) the Developments Partnership faces litigation from third parties and it does not have access to funds to satisfy judgments if they were made in those proceedings”	The Partnership is defending litigation from third parties and denies the allegations made in such proceedings. The Partnership’s litigation position is not presently at risk. There is no proper basis for a receivership order extending to the Partnership’s <i>choses in action</i> .
“(g) the Partnerships are embroiled in litigation involving the partners and related parties, including allegations of misconduct or mismanagement, which has impaired the parties’ ability to advance the Project”	As outlined above, the Bear Mountain Proceedings are ongoing. Contrary to Sanovest’s assertion, the Bear Mountain Proceedings are not the source of impairment to the parties’ ability to advance the Bear Mountain Project. To the contrary, Tian Kusumoto’s and Sanovest’s actions to impair the Bear Mountain Project are in fact the subject of, <i>inter alia</i> , the Oppression Action and the Partnership Action.
“(h) there has been a breakdown in trust between the parties”	Any breakdown of trust does not impair the Resort Partnership’s ability to continue its operations; nor does it relieve Tian Kusumoto from his common law and fiduciary duties as director of EBMD and the nominees to act in those companies’ best interests.

44. Sanovest and Tian Kusumoto continue to act oppressively against Matthews and 599.
45. For example, after Sanovest filed the within petition on May 23, 2024, Matthews learned that Tian Kusumoto forwarded affidavit evidence and a media article to various third parties — including to a prospective investor in the Bear Mountain Project.

The BMA/Gondola Lands

46. As noted above, in addition to the appointment of a receiver over “all of the assets, undertakings and property of the Partnership”, Sanovest also seeks the appointment of a receiver over the Gondola Lands, or “BMA Lands”, held by BMA. The Gondola Lands are a vacant one-acre tract of land adjacent to the Hotel and the first hole of Bear Mountain’s “Mountain” golf course.
47. No demand has been made against BMA, which is not a borrower or guarantor under the Sanovest Loan Agreement, and there are no grounds to appoint a receiver in respect of the Gondola Lands.

599/Matthews' Ability to Fund

48. The value of the Partnership's assets significantly exceed the outstanding amount of the Sanovest Loan, by any measure. Mezzanine and/or replacement financing will be available upon the Court permitting the marketing and sale of the parcels of land identified in the Funding Order sought. A receivership over the Partnership and Resort Partnership's assets and operations is accordingly not necessary for either the purpose of maintaining operations or to secure repayment of the Sanovest Loan.

Part 5: LEGAL BASIS

49. The test for appointment of a receiver is not controversial.
50. In *Maple Trade Finance Inc. v. CY Oriental Holdings Inc.*, 2009 BCSC 1527 at para. 25 [*Maple Trade*], Masuhara J. noted the following sixteen factors that "figure in the determination of whether it is appropriate to appoint a receiver":
- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
 - b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - c) the nature of the property;
 - d) the apprehended or actual waste of the debtor's assets;
 - e) the preservation and protection of the property pending judicial resolution;
 - f) the balance of convenience to the parties;
 - g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
 - h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
 - i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
 - j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
 - k) the effect of the order upon the parties;

- l) the conduct of the parties;
 - m) the length of time that a receiver may be in place;
 - n) the cost to the parties;
 - o) the likelihood of maximizing return to the parties;
 - p) the goal of facilitating the duties of the receiver.
51. These factors are not an exhaustive checklist, but a set of considerations to be viewed holistically in determining whether the appointment of a receiver is just and convenient.

Bank of Montreal v. Gian's Business Centre Inc., 2016 BCSC 2348 at para. 23;
Schmidt v. Balcom, 2016 BCSC 2438 at para. 74 [*Schmidt*].

52. Judicial appointment of a receiver is an extraordinary remedy that “should be granted cautiously and sparingly”.

Cascade Divide Enterprises Inc. v. Laliberte, 2013 BCSC 263 at para. 81 [*Cascade*];
 see also, for example, *Schmidt* at para. 69.

53. Although the “extraordinary” nature of a receivership is reduced where a secured creditor has a right to receivership under its security agreement, judicial appointment of a receiver is not an automatic right. There is no presumption in favour of appointment of a receiver merely because a contract between the parties provides for one.

*Prospera Credit Union v. Portliving Farms (3624 Parkview)
 Investments Inc.*, 2021 BCSC 2449 at para. 24;
Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership,
 2024 BCSC 47 at para. 116 [*Haro-Thurlow*].

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

Schmidt at para. 75, citing *BG International Ltd. v. Canadian Superior Energy Inc.*,
 2009 ABCA 127 at para. 16; see also, for example, *Coromandel Properties Ltd. (Re)*,
 2023 BCSC 2187 at paras. 40-42.

55. As stated by Fitzpatrick J. in *Cascade*, “if the court can fashion a remedy that avoids receivership, then that is certainly something that should be considered” (at para. 81).

Appointment of a Full Receiver is Neither Just Nor Convenient

56. Applying a holistic analysis of the *Maple Trade* factors to the facts of the instant case, the appointment of a full receiver over all assets of the Partnership — including the golf and other recreation operations of the Resort Partnership — is neither just nor convenient.

57. Sanovest's stated basis for the Petition is a desire to "avoid risk of harm to stakeholders and ensure the Respondents' assets are safeguarded and that there is a process to maximize value for stakeholders"; however, it is evident that any meaningful risk of harm to stakeholders is a product of Sanovest's and Tian Kusumoto's own actions *qua* partner and Chief Financial Officer for the Company respectively.
58. Sanovest's efforts to use a receivership process to disregard the partners' original Bear Mountain Business Terms (which are the subject, *inter alia*, of the Partnership Action), wrest control of the Gondola Lands (also subject to extant litigation), and transfer power over extant litigation in respect of the Partnership, appear as attempts to circumvent a fair and just determination of the Bear Mountain Proceedings. Sanovest is attempting, wrongfully, to use this realization proceeding in its capacity as lender as a tool to address disputes between Sanovest and 599 as partners.
59. Further, any alleged unmet need to "maximize value for stakeholders" is illusory in circumstances where the appraised value of the Partnership's development lands alone exceed its debts by 400%.
60. Each of the *Maple Trade* factors is addressed in the following table:

	<i>Maple Trade</i> Factor	Application
(a)	Whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation	There is no evidence of irreparable harm to Sanovest. As noted above, the appraised value of the Partnership's development lands alone exceed its debts by 400%.
(b)	The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place	The limited Funding Order would address any need for protection. Moreover, as stated above, excluding the value of Bear Mountain's golf courses and tennis facilities, the estimated value of the Partnership's real estate assets exceeds \$210 million. The risk to Sanovest of its inability to recover on the Sanovest Loan is non-existent.
(c)	The nature of the property	As a master-planned community involving a complex mix of stakeholders, operations and asset types, the "property" in issue is more than just a "development" or asset with an assessed monetary figure.

	<i>Maple Trade Factor</i>	<i>Application</i>
(d)	The apprehended or actual waste of the debtor's assets	There is no evidence of apprehended or actual waste of assets.
(e)	The preservation and protection of the property pending judicial resolution	There is no evidence of a need to preserve and protect the property pending judicial resolution. As both a creditor and owner/ <u>partner</u> , Sanovest has a direct hand in the preservation and protection of the "property".
(f)	The balance of convenience to the parties	The limited Funding Order would allow the Resort Partnership to maintain continuity in the operation of its key recreational facilities, while allowing Sanovest to recover on its loan. The Full Receivership, on the other hand, would disrupt the operation of key facilities, and, critically, goes beyond what is necessary to retire the Partnership's current debt to Sanovest.
(g)	The fact that the creditor has the right to appoint a receiver under the documentation provided for the loan	The Sanovest Loan Agreement provides that Sanovest may enforce its rights by a court-appointed receiver. However, as stated above, there is no presumption in favour of a full receivership merely because a contract between the parties contemplates such appointment.
(h)	The enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others	This factor is irrelevant in the circumstances at hand. Sanovest is both a creditor and <u>partner</u> .
(i)	The consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently	Both partners seek judicial appointment of a neutral (marketing agent; receiver). Given the narrower scope of duties contemplated in the Funding Order, judicial appointment of a marketing agent will enable that agent to carry out its duties most efficiently.

	<i>Maple Trade Factor</i>	<i>Application</i>
(j)	The effect of the order upon the parties	The effect of the Full Receivership on the parties would be unnecessarily far-reaching and harmful in circumstances where the operations of the Resort Partnership continue as a going concern. The more limited Funding Order is sufficient to address any alleged harm to Sanovest, allowing the partners to move through their current impasse while preserving the financial and operational integrity of both the Partnership and the Resort Partnership.
(k)	The conduct of the parties	There is no evidence of improper conduct on the part of the Partnership <i>qua</i> debtor. On the contrary, despite 599 and Matthews' best efforts to pay off the Partnership's loan in full, Sanovest has refused to authorize the sale of development land.
(l)	The length of time that a receiver may be in place	It is likely that a receiver would be in place for less time under a limited Funding Order, as compared to a Full Receivership.
(m)	The cost to the parties	Given the more limited nature of the Funding Order, the cost of that relief will be less than the Full Receivership sought by Sanovest. A receivership is likely to prolong the repayment of the Sanovest Loan and may result in additional funds advance by Sanovest, increasing the cost to the Partnership and Resort Partnership.
(n)	The likelihood of maximizing return to the parties	Sanovest's stated concern is that it will not recover on the Sanovest Loan. This is not a matter of "maximizing return" to the parties.
(o)	The goal of facilitating duties of the receiver	There is no evidence that a limited Funding Order would preclude a receiver from "facilitating" or fulfilling its duties. The core point of dispute is the appropriate <u>scope</u> of duties to be exercised by a judicial appointee.

61. The Full Receivership as sought by Sanovest — with an unlimited power of sale including over all assets of the Partnership, including the Resort Partnership, in addition to the Gondola Lands; and control over all of the assets, undertakings and property of the Partnership, including, *inter alia*, the power "to initiate, manage and direct all legal proceedings now pending or hereafter pending... in respect of the Partnership, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings" (draft Full Receivership Order at para. 2(j)) — is

neither just nor convenient. Such extraordinary relief is not warranted in circumstances where a less intrusive option is available to fully and fairly address the concerns advanced by Sanovest, *qua* creditor, on this petition.

Entitlement to a Redemption Period

62. Though styled as a receivership proceeding, this proceeding is primarily a mortgage enforcement proceeding (read: a foreclosure proceeding). In other words, there is no real evidence that a receiver is necessary to preserve the ongoing operations or that the lender will be repaid through any means other than sales of lands. As creditor, Sanovest's only path to repayment is through a sale of the mortgaged lands.
63. A debtor's equitable right to redeem lands subject to a mortgage has long been recognized in this province.

Royal Bank v. Astor Hotel Ltd., 1986 CanLII 1072 (BCCA) at para. 34 [*Astor Hotel*];
Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477 at paras. 67-68.

64. In a recent pronouncement on the equity of redemption in receivership proceedings, Fitzpatrick J. held:

... the Court should consider the debtor's equity of redemption in terms of whether a receiver will be appointed and, if so, whether that receiver will be granted the power of sale and when. Such a consideration is clearly relevant to the question as to whether any such appointment and power is "just or convenient", again having regard to the nature of the relief sought. In addition, a consideration of any equity of redemption also comes within the *Maple Trade* factors – factor (k) – in relation to the "effect of the order upon the parties".

Haro-Thurlow at para. 101.

65. The usual redemption period is six months from the granting of Order Nisi absent "special circumstances".

Astor Hotel at para. 34;
Imor Capital Corp. v. Bullet Enterprises Ltd., 2012 BCSC 889 at paras. 16- 22;
Century Services Inc. v. LeRoy, 2010 BCSC 328 at para. 24ff;
 Chief Justice McEachern's "On Foreclosure Practice", (1983) 41:6
 The Advocate (Vancouver Bar Association) 583.

66. The corollary to that right is that any steps taken by a lender to frustrate, or "clog", that equity of redemption will not be tolerated by our Courts.

MacKay v. Herbert & Barnes, 2004 BCSC 107 at para. 17ff;
Dical Investments Ltd. v. Morrison (C.A.), 1990 CanLII 6606 (ON CA).

67. Here, Sanovest has manufactured a scenario where it is actively depriving the respondents of having any viable means to exercise their right of redemption.
68. If this Court finds that the Full Receivership should be granted, then the Partnership's equitable right to redeem should be recognized and protected by way of an Order that provides the respondents with actual authority to take steps to redeem the lands through a sale or refinancing.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Daniel Matthews, made on June 13, 2024;
2. Affidavit #1 of Daniel Matthews, made on June 1, 2023 in the Oppression Action;
3. Affidavit #2 of Daniel Matthews, made on May 10, 2024 in the Oppression Action;
4. Such further materials as counsel may advise and this Honourable Court may permit.

Dated at Vancouver, in the Province of British Columbia, this 17th day of June, 2024.



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

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NO. S-243389
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PETITIONER

AND:

ECOASIS DEVELOPMENTS LLP and others

RESPONDENTS

RESPONSE TO PETITION



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