



This is the 9th Affidavit of Daniel Matthews in this case and was made on December 1, 2025

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

AFFIDAVIT #9 of DANIEL MATTHEWS

I, **Daniel Matthews**, businessman, c/o 505 – 1168 Hamilton Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am the president and a director of 599315 B.C. Ltd. (“**599**”), which is the equal partner to the petitioner Sanovest Holdings Ltd. (“**Sanovest**”) in the respondent Ecoasis Developments LLP (the “**Partnership**”). I am also a director of the

respondent Ecoasis Bear Mountain Developments Ltd. ("EBMD"), which is the managing partner of the Partnership and of Ecoasis Resort and Golf LLP (the "**Resort Partnership**"), and I am a director of the other respondent companies. In the foregoing capacities, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. On November 25, 2025, the Receiver, Alvarez & Marsal Canada Inc., filed a Notice of Application for an Approval and Vesting order, seeking the approval of the Asset Purchase Agreement of Groundplay Developments Ltd. (an affiliated entity to 599 and myself) as Purchaser and 599 as guarantor.
3. On November 28, 2025, the Receiver issued its Ninth Report. In the Ninth Report at section 5.24, the Receiver addresses a point raised in Court on November 26, 2025, in relation to Advances (as defined in the Ninth Report) which Mr. Matthews acknowledged in a pleading were payable from eventual distributions from the sale of the Partnership assets. The Receiver notes that the Groundplay Bid does not contemplate a mechanism to address the Advances or any counter arguments as to why the Advances should not be deducted from an equity distribution.
4. My position on the advance which is alleged in the Sanovest Holdings Ltd. Amended Notice of Civil Claim at paragraphs 55 to 58 (Action No S-223937), is set out at paragraphs 54 to 57 of my Response to Amended Notice of Civil Claim, attached as **Exhibit "A"**. I have never denied the advance of \$1,000,000 nor my obligation to account for that advance from the equity distributions from the sale of the Partnership's assets.
5. While I reserve the right to claim a set off from this amount in the Excluded Litigation and to set off from this amount any amounts owed to me by the Partnership, I do not have any intention of double counting my entitlement to an equity distribution. Accordingly, if the Groundplay Bid is approved, I am prepared and able to place \$1,000,000 into a solicitor's trust account prior to the closing date of the transaction

or as ordered by the Court, pending resolution of the Excluded Litigation, to ensure that any amounts that may be due to the Partnership under this advance are accounted for and to avoid any double counting of 599's equity distribution. Effectively, I am agreeing (as I always have) that I was advanced funds by the Partnership, repayable on a distribution from a sale, and therefore, I agree to repay those funds to the Partnership on said sale, subject to the claims and defenses made in the Excluded Litigation and to a set off from those funds any amounts owed to me by the Partnership.

6. Similarly, Tom Kusumoto in Action No. VLC-S-S-226218 alleges that three promissory notes were issued to me, which he alleges were payable on demand. I deny the terms of these loans, and my defense is set out in full in my Response to Notice of Civil Claim, which is attached as **Exhibit "B"**.
7. I understand from my legal counsel, that the amount that Mr. Kusumoto seeks under these loans is approximately \$2,000,000 as of today's date.
8. These loans were subject to the terms of the Umbrella Agreement as defined in paragraph 11 of my response and as explained in detail throughout my response. I have also advanced a counterclaim against Tom Kusumoto in relation to his breach of the Umbrella Agreement.
9. While I deny the terms of the loans as alleged in the Notice of Civil Claim and maintain my position as set out in my response, I do acknowledge and agree that I received three advances from Tom Kusumoto as defined in paragraph 13 of my response. Further, as I stated in my response at paragraph 11(c), as part of the Umbrella Agreement, I agreed to repay Tom Kusumoto these advances on a disposition of the Partnership's assets.
10. While I reserve the right to claim a set off and to claim damages in the Excluded Litigation, I do not have any intention of double counting my entitlement to an equity distribution. Accordingly, if the Groundplay Bid is approved, I am prepared and able to place \$2,000,000 (or such other amount that is reflective of the amount claimed

in this action by Tom Kusumoto) into a solicitor's trust account prior to the closing date of the transaction or as ordered by the Court, pending resolution of the Excluded Litigation, to ensure that any amounts that may be due to Tom Kusumoto under these advances are accounted for and to ensure there is no double counting of 599's equity distribution.

11. I confirm that I will pay into trust, on closing of the Groundplay transaction, any amount of cash the court considers necessary or appropriate in the circumstances, up to the \$7.5 million in kind equity distribution.

AFFIRMED BEFORE ME at the City
of Vancouver, in the Province of
British Columbia, this 1st day of
December, 2025.

A Commissioner for taking Affidavits for
British Columbia

Malcolm B. Furt

BOJM, FUNT & GIBBONS LLP
505 - 1168 Hamilton Street
Vancouver, BC V6B 2S2
604-558-1140



This is Exhibit "A" referred to in the affidavit
of Daniel Matthews sworn
(or affirmed) before me on Dec 1, 2025.

NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

Filed by: Daniel Matthews (the "Defendant")

Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1, 2, 4, 5, 8, 10, 12, 16, 17, 19, 21, 22, 28 and 42 of Part 1 of the Amended Notice of Civil Claim are admitted.

2. The facts alleged in paragraphs 6, 7, 11, 13, 14, 15, 18, 20, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and 70 of Part 1 of the Amended Notice of Civil Claim are denied, except as specifically admitted below.

3. The facts alleged in paragraphs 3 and 9 of Part 1 of the Amended Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant’s Version of Facts

A. The Bear Mountain Project

1. Background

4. In or around mid-2013, Daniel Matthews (“**Matthews**”) introduced Tomoson Kusumoto (“**Tom Kusumoto**”) to an investment opportunity involving the acquisition of the assets associated with the “Bear Mountain” development in the Greater Victoria area (the “**Bear Mountain Assets**”). The Bear Mountain Assets included more than eight hundred acres of land on and adjacent to Skirt Mountain in the City of Langford and District of Highlands as well as the Westin Bear Mountain Golf Resort and Spa (the “**Hotel**”) and two golf courses located on those lands.

5. At that time, Tom Kusumoto and Matthews were involved in a land development project at Whistler Mountain (the “**Whistler Project**”). The Whistler Project involved the acquisition, site servicing, and ultimately the sale, of single-family residential lots.

6. The Whistler Project operated under the following general structure:

- (a) The project operated under the “Ecoasis” brand: a brand that Matthews had created and developed;
- (b) An operating company represented 50% by Matthews, 30% by Tom Kusumoto / Sanovest Holdings Inc. (“**Sanovest**”), and 20% by a third partner;

- (c) Matthews was responsible for all operational aspects of the Whistler Project; Sanovest's primary responsibility was to provide the capital necessary for the acquisition and site servicing work;
- (d) Sanovest was entitled to receive an 8% rate of return on the debt financing, together with a first entitlement to be repaid interest and loans from the proceeds of sales; and
- (e) The parties' objective throughout was to sell serviced lots as and when market conditions permitted, with an approximate time horizon of three to five years.

(the "Whistler Business Terms")

7. Matthews became aware of the potential sale of the Bear Mountain Assets through business contacts. On learning of the potential sale opportunity, Matthews conducted investigations and inquiries over a period of approximately 18 months into the assets' development potential, their potential operating and land development costs, and the feasibility of the project and its acquisition.

8. When Matthews introduced the Bear Mountain Asset sale opportunity to Tom Kusumoto, Tom Kusumoto proposed that if they were successful in acquiring the assets, they enter into a business arrangement with the financing and development obligations modeled on the Whistler Business Terms.

9. Ultimately, Matthews, through a company he controlled, entered into a purchase and sale agreement for the Bear Mountain Assets in August 2013. Matthews and Tom Kusumoto agreed to the following general business structure:

- (a) the Bear Mountain Assets would be held in a limited liability partnership structure, which would take an assignment of the purchase and sale agreement. The partnership would be owned equally by 599315 B.C. Ltd. ("599315"), a company controlled by Matthews, and by Sanovest, a company that Matthews understood was controlled by Tom Kusumoto;

- (b) 599315, through Matthews, would be responsible for managing the overall operations, including the land development work; Sanovest's primary responsibility was to provide the capital necessary for the acquisition, operations, and land development work;
- (c) Matthews, nominated by 599315, and Tom Kusumoto, nominated by Sanovest, would serve as directors in any companies associated with the partnership. In such companies, Matthews would serve in the role of President/CEO, reflecting 599315's responsibility for managing the overall operations;
- (d) Sanovest would receive an 8% rate of return on its debt financing, together with a first entitlement to be repaid interest and loans from the proceeds of sales and a preferred waterfall distribution based on profitability; and
- (e) Their objectives with the Bear Mountain Assets would be to: (i) service and improve the operating businesses and amenities, with a view to improving the public image and community character of the Bear Mountain development; (ii) conduct land development work, including site servicing work, with a view to selling to developers/builders for building development, thereby increasing the sale value of the land assets as a whole; (iii) generate sufficient revenues from initial sales to pay down the financing provided by Sanovest; and (iv) sell the land assets, either in tranches or *en bloc*, in an appropriate manner, once the increased land value yielded a reasonable return on their investment.

(the "Bear Mountain Business Terms")

2. Business Structure

10. 599315 and Sanovest acquired the Bear Mountain Assets through a limited liability partnership structure. The acquisition completed on October 8, 2013.

11. On September 17, 2013, Ecoasis Bear Mountain Developments Ltd. ("EBMD") was incorporated as a British Columbia company, which was to have the role of "managing partner" for the limited liability partnerships. The shares of EBMD were and are held 50% by

599315 and 50% by Sanovest. Each nominated a director to serve on EBMD's board. 599315's nominee was at all times Matthews, except for a period between 2014 and 2016. Sanovest's nominee was Tom Kusumoto until on or about June 1, 2021, when Tom Kusumoto's son, Tian Kusumoto, replaced him as Sanovest's nominee.

12. By agreement dated September 24, 2013 (the "**Partnership Agreement**"), Ecoasis Developments LLP (the "**Partnership**") was formed for the purpose of holding the Bear Mountain Assets. 599315, Sanovest and EBMD each became partners in the Partnership. The Partnership's units are held in equal proportion by 599315 and Sanovest (100 units each), and 1 unit is held by EBMD.

13. As set out in the preamble to the Partnership Agreement, the assets to be acquired included: (a) the "Mountain Course" and the "Valley Course" (the "**Golf Courses**"); (b) the Hotel; and (c) significant tracts of lands, including as described as Schedule "C" to the Partnership Agreement.

14. Section 2.3 of the Partnership Agreement specified that the Partnership would acquire and maintain a limited liability partnership interest in a second limited liability partnership, Ecoasis Resort and Golf LLP (the "**Resort Partnership**"), which would own and operate the Golf Courses and the Hotel.

15. The Resort Partnership was formed by a separate partnership agreement also dated September 24, 2013 (the "**Resort Partnership Agreement**"). The Partnership and EBMD became its partners, with the latter as "managing partner". The units of the Resort Partnership were held 100 by the Partnership and 1 by EBMD. As described in the Resort Partnership Agreement, the Resort Partnership was formed for the purpose of acquiring the assets comprising the Golf Courses and the Hotel, and to carry out the businesses of the Golf Courses and the Hotel and other activities or business ancillary to or in furtherance of those businesses.

16. In response to paragraphs 5 and 20 of Part 1 of the Amended Notice of Civil Claim:

(a) BM Mountain Golf Course Ltd. ("**BMGC**") is a British Columbia company that owns certain assets associated with the "Mountain Course".

Its sole share was transferred to the Resort Partnership on October 8, 2013, in connection with the larger Bear Mountain Asset acquisition;

- (b) The directors of BMGC were Matthews (as nominee of 599315) and Tom Kusumoto (as nominee of Sanovest) until June 1, 2021, when Tian Kusumoto replaced Tom Kusumoto as Sanovest's nominee; and
- (c) Matthews denies that Sanovest is a "beneficial shareholder" of BMGC, or otherwise has any beneficial interest in BMGC's shares or property.

17. In response to paragraph 13 of Part 1 of the Amended Notice of Civil Claim, section 12 of the Partnership Agreement authorizes EBMD, as managing partner, to carry out the business of the Partnership. However, the Partnership Agreement does not restrict the general authority of the partners to act on behalf of the Partnership. The Partnership does not "act... only through EBMD".

3. **Sanovest Loan Agreement**

18. In accordance with the Bear Mountain Business Terms, Sanovest advanced the financing required for the purchase of the Bear Mountain Assets, and at that stage, made available additional funds required for the business operation and land development work (the "Sanovest Loan").

19. The terms of the Sanovest Loan were set out in a commitment letter to the Partnership dated October 8, 2013 (the "Sanovest Loan Agreement"). The terms of Sanovest's financing 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.

20. In response to paragraph 23 of Part 1 of the Amended Notice of Civil Claim, the specific contents of the reporting requirements referenced are set out at Schedule "A" to the Sanovest Loan Agreement – "Standard Terms and Conditions", sections 3(a)(viii) and 6(k) and (l), and not as paraphrased in the Amended Notice of Civil Claim.

21. In response to paragraph 24 of Part 1 of the Amended Notice of Civil Claim, the specific contents of the covenants referenced are set out in section 3 of Schedule "A" to the Sanovest Loan Agreement, and not as paraphrased in the Amended Notice of Civil Claim. Among other things, the Sanovest Loan Agreement does permit the Partnership to make payments out of the normal course, and to make payments and engage in financial transactions that are non-arm's length, with Sanovest's consent.

22. In response to paragraph 25 of Part 1 of the Amended Notice of Civil Claim, the Property (as defined in the Sanovest Loan Agreement) may be managed by someone other than EBMD, for and on behalf of the Partnership, provided that Sanovest approves the manager and the management terms.

4. Change to Sanovest Board of Directors and Nominee

23. The genesis of the claims alleged in the Amended Notice of Civil Claim is in an apparent change within the governance of Sanovest, the particulars of which are unknown to Matthews but which are known to Sanovest.

24. When the Bear Mountain Business Terms were negotiated, Tom Kusumoto represented to Matthews that Sanovest was "his" company, and that he had full authority to act on Sanovest's behalf. At various times, and from time to time, Tom Kusumoto involved Tian Kusumoto in various aspects of the Partnership. However, all decisions were made by Tom Kusumoto, who advised Matthews that Tian Kusumoto did not have authority to make decisions on Sanovest's behalf. Matthews understood and reasonably believed that Tom Kusumoto was Sanovest's sole directing mind.

25. On or around March 1, 2021, and unknown to Matthews at that time, Tian Kusumoto was added as a director of Sanovest. On June 1, 2021, Tian Kusumoto replaced Tom Kusumoto as Sanovest's nominee to EBMD. Subsequently, on or around November 4, 2021, Tom Kusumoto ceased to be a director of Sanovest.

26. The claims alleged in the Amended Notice of Civil Claim arise from Tian Kusumoto's new role as Sanovest's nominee to EBMD. As set out in more detail below, each of the matters raised against Matthews was known to and consented to by Sanovest at the material

times. Sanovest, as currently directed by Tian Kusumoto, now seeks to resile from its prior corporate acts. In response to the whole of the Amended Notice of Civil Claim, Matthews asserts that change in Sanovest's internal management does not and cannot create any viable legal claim based simply on disagreement with prior, validly authorized corporate acts. In the alternative, Matthews maintains that Tom Kusumoto had ostensible authority to act on Sanovest's behalf, such that Sanovest is bound by the authorizations and commitments Tom Kusumoto made in his capacity as Sanovest's nominee to EBMD and its representative in Partnership affairs.

B. Alleged Self-Interest Transactions

27. In response to paragraph 30 of Part 1 of the Amended Notice of Civil Claim, and as set out in more detail below, beginning in or around 2016, Matthews and Tom Kusumoto pursued a marketing strategy for the sale of the Bear Mountain project as an entire package. This strategy sought an *en bloc* transfer of the Bear Mountain Assets to a purchaser. Matthews and Tom Kusumoto considered that such a strategy would allow 599315 and Sanovest to benefit from strength in the market at that time and from the value added by the Partnership's land development, amenity improvements, strategic partnerships, and operations work to that point.

28. As part of this strategy, Matthews and Tom Kusumoto also sought to exclude certain assets from the "package" sale opportunity. Matthews understood and reasonably believed that their reasons for doing so included: (a) that certain assets may have increased sale value if sold or operated separately; (b) to exclude receivables from a "package" sale (*i.e.*, without having to negotiate such exclusions as part of a general sale of Partnership assets); and (c) to exclude operations or opportunities that did not fall within the scope of the Bear Mountain Business Terms. Matthews understood and reasonably believed that Tom Kusumoto, in his capacity as Sanovest's representative and its nominee to EBMD, shared those objectives and was authorized by Sanovest to plan and carry out the exclusion of certain assets from the Partnership.

29. In further specific response to paragraph 30 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that any such transactions were done in breach of any duty owed to EBMD or otherwise. Matthews approved all such transactions on behalf of 599315. He reasonably understood and believed that EBMD's other shareholder, Sanovest, had similarly approved and authorized all such transactions.

1. Bear Mountain Adventures

30. In November 2016, and in furtherance of the above strategy, Tom Kusumoto directed that Sanovest's legal counsel incorporate a new company for the purpose of holding land and other assets associated with the potential development of a gondola from a base near the Hotel to the peak of Mount Finlayson (the "Gondola Opportunity").

31. Although the Gondola Opportunity could add significant value to the surrounding lands, it would entail construction and operation costs that were not contemplated by the Bear Mountain Business Terms. In addition, the Gondola Opportunity, as conceived at that time, may have required partnerships with the City of Langford, the Province of British Columbia, and/or regional First Nations groups. Accordingly, when Tom Kusumoto proposed to Matthews in or around 2016 that assets relating to the Gondola Opportunity be placed in a new company outside of the Partnership, Matthews did not have any objections or concerns. Tom Kusumoto and Matthews discussed and agreed that the potential development of the Gondola Opportunity outside of the Partnership would enhance rather than detract from the marketing of the Partnership's assets.

32. Bear Mountain Adventures Ltd. ("BMA") was incorporated for this purpose on or about November 18, 2016. The shares in BMA were held equally by companies associated with Matthews and Tom Kusumoto respectively: 50% by 1096501 B.C. Ltd., associated with Matthews, and 50% by SJN Holdings Inc, associated with Tom Kusumoto.

33. Matthews and Tom Kusumoto were the directors of BMA from incorporation until June 1, 2021, when Tian Kusumoto replaced Tom Kusumoto as a director.

34. Matthews understood and reasonably believed from Tom Kusumoto's representations that Sanovest had authorized and approved the incorporation of BMA for the purpose of holding assets connected to the Gondola Opportunity. Further, the incorporation and planned transfer of assets to BMA were known to some or all of Sanovest's other shareholders, and in particular to Tian Kusumoto. When advised in January 2017 that the gondola site, among other properties, "will be placed into a new company with Dan [Matthews] and Tom [Kusumoto]'s nominated companies as owners", Tian Kusumoto did not state any objection.

35. In response to paragraph 29 of Part 1 of the Amended Notice of Civil Claim, the intention of Matthews and Tom Kusumoto in incorporating BMA was not to conduct an “adventure business” separate from that of the Partnership. In any event, the Gondola Opportunity falls outside of the Bear Mountain Business Terms and its development or operation are not Partnership opportunities.

2. Assignment of Reservoir Agreement

36. The “**Reservoir Agreement**”, as defined at paragraph 31 of Part 1 of the Amended Notice of Civil Claim, was an agreement entered into in or around 2009 between the Capital Regional District (the “**CRD**”), and Bear Mountain Development Holdings Ltd. and Bear Mountain Master Partnership (who then owned the Bear Mountain Assets). The purpose of the Reservoir Agreement was for the CRD to provide compensation for work associated with the construction of a water reservoir on Skirt Mountain (which work was necessary to service the Bear Mountain development). Under the Reservoir Agreement, the Bear Mountain Assets’ owners at that time were entitled to \$4,773,240.50 in development cost charge credits.

37. The Reservoir Agreement was assigned to the Partnership when it purchased the Bear Mountain Assets. By May 2017, the remaining amount of the development cost charge credits was \$3,371,524.44. Therefore, and in order to protect this credit in any sale of the Partnership’s assets, the Partnership assigned the Reservoir Agreement to BMA by assignment agreement made May 1, 2017 (the “**Assignment Agreement**”). Sanovest was at all material times aware of the Assignment Agreement: Tom Kusumoto executed the Assignment Agreement on behalf of the Partnership, in his capacity as Sanovest’s representative.

38. In response to paragraph 34 of Part 1 of the Amended Notice of Civil Claim, neither Matthews nor Tom Kusumoto made any personal representation, express or implied, in entering to the Assignment Agreement. In any event, the reference in the Assignment Agreement to BMA as an “entity controlled by partners of Ecoasis” referred to Matthews and Tom Kusumoto as the controlling minds of both the Partnership and BMA. Matthews denies that the specific ownership structure of either BMA or the Partnership was relevant to the CRD’s consent to the Assignment Agreement.

39. In response to paragraph 37 of Part 1 of the Amended Notice of Civil Claim, in or around December 2018, the CRD and BMA entered into a further agreement for the dissolution of the Reservoir Agreement, and for the payment to BMA in cash of the \$3,148,874.44 in remaining development cost charge credits. The CRD paid those funds to BMA in 2019.

40. In response to paragraph 38 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that Tom Kusumoto advanced any loans to him out of funds paid through the dissolution of the Reservoir Agreement. Further, or in the alternative, all amounts advanced by Tom Kusumoto to Matthews were advanced under a separate agreement between them, and cannot and do not engage Sanovest's legal interests in relation to the Reservoir Agreement, or otherwise.

3. Transfer of Gondola Property to BMA

41. As set out above, BMA was incorporated in November 2016 for the purpose of holding land and other assets associated with the Gondola Opportunity. The "**Gondola Property**", as defined in the Amended Notice of Civil Claim, was the land identified for the base of the gondola, being a vacant approximate 1-acre tract near the first tee of the Mountain Course and held, at that time, by BMGC.

42. From and after November 2016, Matthews and Tom Kusumoto took steps to assess the feasibility of the Gondola Opportunity and to seek out partnerships with local authorities and First Nations. As these efforts progressed, they made arrangements in 2018 to transfer the Gondola Property to BMA, as originally contemplated.

43. In response to paragraphs 42 and 44 of Part 1 of the Amended Notice of Civil Claim, the stated value of \$122,820 in the Form A transfer represented the Gondola Property's assessed value in 2018. Matthews denies that the Form A transfer in any way misstated the value of the Gondola Property or that its value "may have been in the millions". The Gondola Property was and is not zoned for a gondola and would require significant additional density, among other things, to be developed. Any potential increase in value to the Gondola Property that may result from the Gondola Opportunity is speculative and yet to be realized.

44. In further response to paragraph 44 of Part 1 of the Amended Notice of Civil Claim, Sanovest's allegation that the Gondola Property's value "may have been in the millions" when transferred is contradicted by Tian Kusumoto's own statements at the material time. On or around July 17, 2018, Tian Kusumoto recommended to Tom Kusumoto and Matthews that EBMD add in the Gondola Property (which he acknowledged was excluded from the Bear Mountain Assets) as an incentive to a potential purchaser during that purchaser's due diligence period, stating "[t]he gondola site has little value".

45. In response to paragraph 45 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that BMGC or EBMD suffered any loss as the result of transfer of the Gondola Property to BMA. The transfer was authorized by the Partnership and by BMGC, including through Tom Kusumoto as the director appointed by Sanovest to both BMGC and EBMD.

4. Funding and Purchase of Bear Mountain Activity Centre

46. In response to paragraphs 46 to 50 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that the proceeds of any construction loan financing were improperly diverted for BMA's purchase of the Bear Mountain Activity Centre ("BMAC"), as alleged or at all.

47. The credit facility referenced at paragraph 47 of Part 1 of the Amended Notice of Civil Claim was originally issued to the Partnership on October 9, 2019. That credit facility was increased by agreement made November 27, 2020 providing a further \$4,000,000 in financing (the "**Extension Agreement**"). Any use of the Extension Agreement funds for the BMAC purchase was consistent with the terms of the Extension Agreement and was approved by the lender, who had sufficient security in the Pinehurst lands.

48. In or around December 2020, Partnership funds were advanced to BMA for the purpose of it purchasing the BMAC lands and buildings. BMAC is a community centre facility, which was then known as the North Langford Recreation Centre and was owned by the City of Langford. The BMAC purchase had been a strategic priority for the Partnership, due to the access to land and facility space that it provided, sited at the core of the development.

49. Sanovest was aware of and agreed to the Extension Agreement, including by agreeing on December 3, 2020 to release its security on Pinehurst lots to permit the advance of the Extension Agreement funds. Ultimately, the Extension Agreement funds were fully repaid to the lender, reducing the total distributions payable to Sanovest in repayment of the Sanovest Loan. As a result, the BMAC purchase was effectively financed by Sanovest.

50. The BMAC purchase was structured through BMA in order to accommodate the terms of a “framework agreement” for the sale of the Bear Mountain Assets *en bloc* to a third party. Those negotiations contemplated multiple scenarios, including the potential separate purchase of BMAC, or the potential exclusion of BMAC from the assets to be purchased. Thus, BMA was used as a vehicle to maintain the BMAC assets under separate legal ownership from the Partnership. However, it was at all times understood and agreed that BMAC would be operated and funded as an asset of the Resort Partnership, and that any profits generated would be treated as Resort Partnership revenues.

5. **BMAC Funding**

51. In response to paragraphs 51 to 54 of Part 1 of the Amended Notice of Civil Claim, beginning when BMAC was purchased, EBMD provided the funds necessary to satisfy BMAC’s operational and capital expenditures. EBMD was indeed obligated to do so, in accordance with the agreement to operate and fund BMAC as a Resort Partnership asset.

52. In or around August 2022, Sanovest, as directed by Tian Kusumoto, and acting unilaterally, caused EBMD to cease advancing funds to BMAC, including from a BMAC-specific account held by EBMD. As a result, Matthews had to advance personal funds, by way of loan, to fund BMAC’s ongoing operations (such as staff payroll). Sanovest’s conduct in this regard is in breach of its duties to the Partnership and risks causing significant loss and damage to the Partnership’s reputation and goodwill and to the value of the BMAC asset. Matthews has suffered loss and damage as a result his expenditures taken in an effort to mitigate the effects of Sanovest’s misconduct. Sanovest has also refused to permit property taxes and other invoices to be paid, despite available funds to make such payments.

53. Matthews has repeatedly stated to Tian Kusumoto, as Sanovest's current nominee to EBMD, that the Resort Partnership should formally acquire the BMAC assets from BMA. To date, Sanovest has refused to permit any such transfer of assets.

6. Player's Peak Loan Proceeds

54. In response to paragraphs 55 to 58 of Part 1 of the Amended Notice of Civil Claim, in or around June 2020, the Partnership caused \$1,000,000 in funds to be advanced to Matthews personally (the "Advance"). The Advance was duly authorized by EBMD's board of directors at that time, including by Tom Kusumoto, who communicated that authorization to the Partnership's external accountants. The purpose of the Advance was to provide funds for Matthews' use personally as an advance on distributions to be made from the eventual sale of Partnership assets. Matthews requested, and was paid the Advance, on the basis that his role in leading the Partnership's overall operations occupied substantially all of his working time for a limited annual salary.

55. In specific response to paragraph 56 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that the Advance was made in breach of any obligation under the "Player's Peak Loan" (as defined in the Amended Notice of Civil Claim).

56. Matthews does not and has never disputed the Advance, nor his obligation to account to the Partnership for the Advance from eventual distributions from the sale of Partnership assets.

57. Although the Advance was authorized by Sanovest at the time it was made, Tian Kusumoto has more recently raised repeated complaints about the Advance. In response, Matthews has sought to engage with Tian Kusumoto with a view to more specifically documenting the Advance's terms. To date, Tian Kusumoto has refused to engage in good faith in any such discussion.

7. Amounts “Due from Shareholder”

58. In response to paragraph 59 of Part 1 of the Amended Notice of Civil Claim, from 2016, and indeed earlier, amounts due to the Partnership from Matthews personally were recorded in the Partnership's financial statements. Such amounts included goods or services procured through the Partnership that were for uses unrelated to the Partnership business. At the same time, Matthews regularly incurred Partnership expenses from personal funds.

59. In further response to paragraph 59 of Part 1 of the Amended Notice of Civil Claim, Matthews specifically denies that any amounts were on account of any renovation work at his home.

60. Sanovest agreed to, was aware of, and accepted the “due to shareholder” balance owing by Matthews. By agreement made with Sanovest (through Tom Kusumoto), the Partnership agreed that this balance would not bear interest and, if not repaid earlier, would be payable from eventual distributions from the sale of Partnership assets.

61. Matthews does not and has never disputed that there is a “due to shareholder” balance with the Partnership. Further, Matthews has acted in reliance on Sanovest's acknowledgment and agreement that such amounts would not bear interest and would not be immediately repayable.

7. Response to Alleged “Self-Interested Transactions”

62. In response to paragraph 61 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that any of the above-described matters constitute “self-interested transactions”, as alleged or at all. At all material times, the above facts and matters proceeded by agreement within the Partnership and in a manner consistent with the partners' business objectives. To the extent Matthews was bound by any substantive fiduciary or corporate duties to EBMD or BMGC, which is not admitted but is expressly denied, then Matthews acted in accordance with such duties, which are constrained by the context in which EBMD and BMGC operate, as legal vehicles for the conduct of Partnership business.

C. Alleged Disclosure Obligation

63. In response to paragraphs 62 to 66 of Part 1 of the Amended Notice of Civil Claim, the referenced transactions were in relation to the property of the Partnership, in which EBMD is merely a legal vehicle. In the circumstances, the disclosure requirements of section 147 of the *Business Corporations Act*, S.B.C. 2002, c. 57 are inapplicable.

64. Further, and in any event, all of the referenced transactions were done with the knowledge and approval of Sanovest, whose nominee Tom Kusumoto provided corporate approvals on behalf of both EBMD and BMGC.

65. If, contrary to the above, Tom Kusumoto was required to but failed to seek out and obtain approvals from other Sanovest directors or shareholders, Matthews had no knowledge of any such requirement or failure to fulfill such requirement. At all times from the inception of the Partnership and until June 1, 2021, Tom Kusumoto had actual authority, or in the alternative, ostensible authority, to approve and carry out corporate and Partnership acts on Sanovest's behalf.

66. In the alternative, if Matthews held any disclosable interest under of section 147 of the *Business Corporations Act*, which is not admitted but is expressly denied, then the subject transactions were procedurally and substantively fair, entered into in good faith, and in the best interests of EBMD or BMGC, to the extent that either held any cognizable legal interest in any such transactions.

D. Reporting Obligations

67. In response to paragraphs 67 to 70 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that EBMD has refused to comply with any aspect of Sanovest's April 11, 2022 demand for documents and records, or that Matthews has directed any refusal or non-cooperation by EBMD in that regard. Sanovest has at all times had complete access to the Partnership's financial records and banking information and Matthews has never restricted or interfered with Sanovest's ability to access these records.

68. In specific response to paragraphs 69(a) – (h) of Part 1 of the Amended Notice of Civil Claim, Matthews says as follows:

- (a) EBMD has never refused to make records or books of account available to Sanovest, as alleged or at all. In particular, Sanovest has full access to Partnership financial information, including in the hands of its external accountant. This includes access to the general ledger and all financial statements, and complete access to the external accountant's services for the purpose of making EBMD-related inquiries. Further, on May 3, 2022, Tian Kusumoto, together with separate accountants he had retained, attended at the Partnership's office at Bear Mountain on short notice. They were, similarly, provided with complete access to the available Partnership records that they requested.
- (b) Matthews denies that he has directed any refusal or non-cooperation by EBMD in preparing financial reports, updates, or budgets. EBMD has regularly provided such information to Sanovest, and Sanovest has access to EBMD's full financial information, as described above. The original business plan, as developed by Matthews and Tom Kusumoto, remains the current business plan.
- (c) Matthews denies that EBMD has refused to provide financial information in respect of the Bear Mountain assets and operations in response to any reasonable request made by Sanovest.
- (d) The requirement that EBMD provide detailed management prepared financial statements was waived by Sanovest prior to its demand on April 11, 2022. Since that time, and as Sanovest is aware, the Partnership has been required to focus its efforts on reconciling past financial information. Sanovest's claim of failure to provide detailed management prepared financial statements is not advanced in good faith, as Sanovest is fully aware of the pressing focus on reconciling past financial information and the reasons for which current detailed management prepared financial statements are not yet available.

- (e) The allegation that Matthews has instructed EBMD not to prepare financial statements for the Partnership since 2018 is knowingly false. Sanovest has been advised by the Partnership's independent accountant, and is separately aware, that the delay in preparing updated financial statements is wholly outside of Matthews' control.
- (f) Sanovest had in the past waived audits of EBMD's year-end financial statements. The waiver, if any, of any subsequent year-end financial statements is a matter to be determined among 599315 and Sanovest.
- (g) Matthews denies that EBMD has refused to provide financial information in respect of the Resort Partnership or other Partnership assets in response to any reasonable request made by Sanovest.
- (h) Matthews denies that EBMD has refused to provide any documents containing assurances and information in relation to the Sanovest Loan Agreement or its supporting security.

69. In response to paragraph 70 of Part 1 of the Amended Notice of Civil Claim, Matthews denies that he has directed EBMD to withhold provision of any information to which Sanovest is entitled, as alleged or at all.

Division 3 – Additional Facts

70. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

71. Matthews consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

72. Matthews opposes the granting of the relief sought in paragraphs 1, 2, 4, 5, and 6 of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

73. Matthews takes no position on the granting of the relief sought in paragraph 3 of Part 2 of the Amended Notice of Civil Claim.

Part 3: LEGAL BASIS**A. No Standing**

74. In response to the whole of the Amended Notice of Civil Claim, Sanovest's claim is, in substance, a claim alleging: (a) harm to the Partnership; and (b) breaches of alleged fiduciary duties said to be owed to EBMD and BMGC. Sanovest has not advanced, and has not sought to advance, any claim in the name of or on behalf of the Partnership, EBMD or BMGC in respect of the alleged harm, loss, or breach of duty. Sanovest is not at liberty to claim, in its own right, for harm done to the Partnership, EBMD or BMGC. The Amended Notice of Civil Claim should be struck out for lack of standing.

B. Claims under the *Business Corporations Act*

75. In response to paragraphs 1 to 7 of Part 3 of the Amended Notice of Civil Claim, Matthews denies that sections 142 or 147 – 153 of the *Business Corporations Act* are applicable in respect of any Partnership acts alleged to be "self-interested transactions". The acts were, in substance, acts of the Partnership and not of EBMD or BMGC, which are not operating companies but legal vehicles for the conduct of Partnership business. EBMD and BMGC did not have any "material interest", or indeed any relevant beneficial interest in the impugned transactions or underlying assets.

76. In specific response to Sanovest's alleged reliance on section 142 of the *Business Corporations Act*, section 105 of the *Partnership Act*, R.S.B.C. 1996, c. 348 expressly excludes partners (which Matthews, in any event, is not) from the duties imposed on directors of corporations at common law or under section 142 of the *Business Corporations Act*.

77. In the alternative, and in response to Sanovest's alleged reliance on the disclosure requirements and related obligations in sections 147 – 153 of the *Business Corporations Act*, the impugned transactions all occurred with the actual knowledge of and approval by both shareholders: 599315 and Sanovest, through their respective nominees. Further, and in any event, all of the impugned transactions were procedurally and substantively fair, entered into in good faith, and in the best interests of EBMD or BMGC, who consented to them. In the circumstances,

Matthews can have no equitable obligation to pay compensation or account for any profits arising from such transactions.

78. At all material times, Matthews acted honestly and reasonably, in good faith, and with a view to the best interests of EBMD, BMGC and the Partnership, and exercised due care, diligence, and business judgment that a reasonably prudent individual would exercise in comparable circumstances. Matthews reasonably relied on Tom Kusumoto's representations that he had authority to enter into and approve transactions on Sanovest's behalf, such that Sanovest is bound by Tom Kusumoto's approvals on its behalf, and is barred from asserting that Tom Kusumoto lacked authority in this regard.

C. Sanovest Not Entitled to Equitable Relief

79. Matthews denies that EBMD or BMGC have suffered any loss or damage arising from the alleged "self-interested transactions". As a matter of equity, Sanovest is not entitled to claim compensation or an accounting of profits in connection with corporate acts that it authorized. In the alternative, if Sanovest did not authorize some or all of the impugned transactions, Matthews had no knowledge of any acts taken by Tom Kusumoto without Sanovest's authorization. Based on Tom Kusumoto's position as director nominated by Sanovest, his conduct, and his representations as to his corporate authority, Matthews had no reason to know of any acts taken by Tom Kusumoto without Sanovest's authorization. As Matthews has not breached any alleged duty to EBMD or BMGC, or otherwise, he cannot be liable for the compensation claimed.

80. Further, and in any event, Sanovest does not come before this Court with clean hands. To the extent Sanovest alleges that Matthews has breached duties owed to EBMD or BMGC by authorizing transactions on behalf of 599315, Sanovest, through its nominee, participated in the conduct of which it complains. Sanovest's participation in this conduct precludes a finding that it is just and equitable that Sanovest be awarded the equitable relief it seeks in this proceeding.

D. No Breach of Reporting Obligations

81. Matthews denies that EBMD or the Partnership has refused to comply with any reporting obligations under the Partnership Agreement, the Sanovest Loan Agreement, the *Partnership Act*, or otherwise, and denies that he has directed any refusal or non-cooperation by EBMD in that regard.

E. Limitations

82. Sanovest is barred from seeking all, or in the alternative some, of the relief claimed in this proceeding by reason of estoppel, acquiescence, laches, or unreasonable delay, and by operation of the *Limitation Act*, S.B.C. 2012, c. 13, and any amendments thereto. Sanovest's knowledge includes all matters that were or ought to have been known to Tom Kusumoto in conducting Partnership business and in acting as Sanovest's nominee to EBMD and BMGC.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C. / Gordon B. Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com / gbrandt@lawsonlundell.com

Dated at the City of Vancouver, in the Province of British Columbia, this 5th day of May, 2023.



 Lawson Lundell LLP
 Solicitors for the Defendant,
 Daniel Matthews

This Response to Amended Notice of Civil Claim is filed by Craig A.B. Ferris, K.C. / Gordon B. 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.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

NO. S-223937
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SANOVEST HOLDINGS LTD.

PLAINTIFF

AND:

DANIEL MATTHEWS ET AL.

DEFENDANTS

AND:

TOMOSON (TOM) KUSUMOTO

THIRD PARTY

AND:

SANOVEST HOLDINGS LTD. ET AL.

DEFENDANTS BY WAY OF COUNTERCLAIM

**RESPONSE TO AMENDED NOTICE OF
CIVIL CLAIM**



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C. / Gordon B. Brandt

This is Exhibit "....." referred to in the affidavit

of.....Daniel Matthews..... sworn

(or affirmed) before me onDec 1, 2015..... NO. VLC-S-S-226218
VANCOUVER REGISTRY

MAR 23 2015

RECEIVED

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL MATTHEWS

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Daniel Matthews (the "Defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1 and 2 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 3 – 7 of Part 1 of the Notice of Civil Claim are denied, except as specifically admitted below.
3. The facts alleged in none of the paragraphs of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant's Version of Facts

A. The Parties

4. The Defendant, Daniel Matthews is a businessperson resident in British Columbia, with an address for service in this proceeding c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, V6C 3L2.

5. At all material times, Matthews has been, and he remains, the president and a director of 599315 B.C. Ltd. ("599 Ltd."), a private, family-held company incorporated under the laws of British Columbia.

6. The Plaintiff, Tom Kusumoto ("Kusumoto"), is the elder member of the Kusumoto family, which conducts business through Sanovest Holdings Ltd. ("Sanovest"), among other entities. Sanovest is a company incorporated pursuant to the laws of Canada and registered extraprovincially in British Columbia. Kusumoto is the founder and was the long-time president of Sanovest and acted as Sanovest's representative in all dealings with Matthews and 599 Ltd. until in or around April 2021, when Matthews learned that Kusumoto's role as Sanovest's president and representative would be assumed by his son, Tian Kusumoto.

7. Matthews and Kusumoto had a long history of business dealings together, since at least 2010. Their business relationship was built on mutual trust and respect. They have worked closely together and have been successful in their shared endeavours.

B. Bear Mountain Project and Loan Arrangement

8. In or around September 2013, 599 Ltd. and Sanovest went into business together on the "Ecoasis" project at Bear Mountain in the Greater Victoria area (the "Ecoasis Project"). The Ecoasis Project involved, among other things, the development of a resort community and related amenities, including private residences, a hotel, golf courses, and other recreational facilities. The Ecoasis Project has operated through various companies, partnerships and Limited Liability Partnerships.

9. Under the business arrangement, Sanovest and 599 Ltd. have equal ownership and control in the Ecoasis Project. Sanovest agreed to provide financing, in the form of a mortgage loan, to fund the acquisition, development work and operations. Matthews was to lead the Ecoasis Project's overall operations. While Matthews would receive an agreed-upon salary for this work, that salary would be substantially less than his customary annual earnings. Matthews (and indeed 599 Ltd. and Sanovest) expected that far more substantial earnings would be realized from the sale of land and buildings in the Ecoasis Project.

10. In order to induce Matthews to lead the Ecoasis Project's overall operations for a limited salary, Kusumoto promised to lend funds to Matthews, upon Matthews' request, in such amounts as Matthews would reasonably require (the "Loan Arrangement"). The Loan Arrangement mirrored similar prior arrangements between Matthews and Kusumoto in relation to other development projects. Matthews agreed to the Loan Arrangement. It was expected, or in the alternative, agreed, that Matthews would repay these loans as and when profits were distributed from the Ecoasis Project or from other development projects involving Matthews and Kusumoto. At various times, and from time to time, between 2013 and 2018, Kusumoto loaned funds to Matthews in accordance with the Loan Arrangement. On some or, in the alternative, all of these occasions, the advances were documented with a promissory note that indicated a date for repayment. However, such dates were only notional; and the repayment was in fact subject to the terms of the broader Loan Arrangement. The promissory notes were only used to memorialize the amounts and dates of the loans. All funds advanced under the Loan Arrangement were repaid in accordance with that arrangement.

C. The Umbrella Agreement

11. In or around November 2018, Kusumoto and Matthews agreed to revise and replace the Loan Arrangement. In particular, they entered into an agreement having the following terms:

- (a) Kusumoto would advance Matthews a loan or loans in the aggregate amount of up to \$5,000,000, fundable in full once real estate sales in Sanovest-involved projects, including the Ecoasis Project, reached \$25,000,000;
- (b) Once the sales threshold had been met, Kusumoto would advance such amounts as Matthews requested from time to time (up to the \$5,000,000 maximum); and
- (c) Matthews would repay to Kusumoto the amounts advanced from profits distributed to 599 Ltd. in a "Liquidity Event". The parties understood and agreed that a Liquidity Event would mean a substantial disposition of the Ecoasis Project's land and business, allowing for retirement of the project's debt and the realization of profits from the project.

(the “Umbrella Agreement”)

12. The Umbrella Agreement was made by way of a series of written communications between Kusumoto and Matthews, or, in the alternative, was made partially in writing and partially orally.

13. In 2019, real estate sales reached the \$25,000,000 amount and Matthews requested that Kusumoto advance funds under the Umbrella Agreement. Kusumoto advanced an aggregate amount of \$1,585,000 to Matthews in three tranches, as follows:

- (a) \$250,000 advanced on or about July 22, 2019 (the “First Advance”);
- (b) \$700,000 advanced on or about October 28, 2019 (the “Second Advance”); and
- (c) \$635,000 advanced on or about February 10 – 12, 2020 by two successive payments (the “Third Advance”);

(collectively the “Advances”).

14. The Advances were each documented using promissory notes signed by both parties (the “Promissory Notes”).

15. The promissory note for the First Advance states “[t]his loan is a demand loan and is due Oct 31, 2019”. The promissory note for the Second Advance states “the loan will be repaid by Jan 15, 2020”. The promissory note for the Third Advance states “the loan will be repaid by May 2020”.

16. The parties intended the Advances to be subject to the Umbrella Agreement and not demand loans, nor subject to the specific repayment dates stated on the respective Promissory Notes.

17. Kusumoto did not advance the remaining \$3,415,000 available under the Umbrella Agreement. Ultimately, following Matthews requests, Kusumoto advised Matthews in or around February 2021 that he would not be advancing further funds under the Umbrella Agreement. Kusumoto’s failure to do so has caused and is causing loss and damages to Matthews.

18. October 31, 2019, January 15, 2020, and May 2020 each passed by without Kusumoto making any demand for, or otherwise inquiring about, repayment of any of the Advances, or making any reference to the Promissory Notes.

19. To date, and for reasons entirely outside of Matthews' control, there has been no Liquidity Event triggering Matthews' repayment obligation under the Umbrella Agreement.

20. In or about early January 2022, Kusumoto demanded repayment of the Advances, purporting to rely on the repayment dates stated on the Promissory Notes. In response, Matthews confirmed receipt of the Advances and that repayment was not yet required pursuant to the Umbrella Agreement. This remains the case.

Division 3 – Additional Facts

1. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.

2. The Defendant opposes the granting of the relief sought in ALL of the paragraphs of Part 2 of the Notice of Civil Claim.

3. The Defendant takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Umbrella Agreement is a binding contract between the parties and its terms supersede any repayment dates stated on the Promissory Notes.

2. The Umbrella Agreement was in force at the time each of the Advances was made.

3. In the alternative, each of the Promissory Notes documents a contract that is collateral to and subject to the Umbrella Agreement. In the further alternative, the Umbrella

Agreement and the Promissory Notes must be considered as a unified contract consisting of a total package of interrelated rights and obligations.

4. Further, the Promissory Notes must be interpreted in light of the Umbrella Agreement and of the prior Loan Arrangement between the parties.

5. Pursuant to the terms of the Umbrella Agreement, the Advances are not due until the occurrence of a Liquidity Event, which has not yet occurred.

6. In the alternative, the recall dates stated on the Promissory Notes are subject to the requirement that a Liquidity Event have occurred by such date, failing which the Promissory Notes cannot be recalled until the occurrence of a Liquidity Event.

7. In the further alternative, there is an implied condition precedent in each of the Promissory Notes that a Liquidity Event have occurred before Matthews is required to repay any of the Advances.

8. As no Liquidity Event has occurred since the Advances were made, Matthews cannot be in default under the Umbrella Agreement or the Promissory Notes. Kusumoto's purported demand is invalid, and he is not currently entitled to repayment.

9. In the alternative, Kusumoto is prevented by the doctrine of estoppel from demanding repayment of the Advances at this time. In particular, but without limiting the generality of the foregoing, Kusumoto is estopped from demanding repayment of the Advances in circumstances where no Liquidity Event has occurred.

10. In any event, the Promissory Notes do not entitle Kusumoto to have his legal fees of this proceeding paid by Matthews.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C./Gordon Brandt).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com; gbrandt@lawsonlundell.com

Dated at the City of Vancouver, in the Province of British Columbia, this 23rd day of March, 2023.

Lawson Lundell LLP (633)

Lawson Lundell LLP
Solicitors for the Defendant,
Daniel Matthews

This Response to Civil Claim is filed by Craig A.B. Ferris, K.C. and 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.

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 - (b) serve the list on all parties of record.

NO. VLC-S-S-226218
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

TOM KUSUMOTO

PLAINTIFF

AND:

DANIEL
MATTHEWS

DEFENDANT

RESPONSE TO CIVIL CLAIM



Barristers & Solicitors
1600 Cathedral Place
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Phone: (604) 685-3456
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GBB