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

APPLICATION RESPONSE

Application response of: Groundplay Developments Ltd. ("**Groundplay**"), 599315 B.C. Ltd. ("**599**") and Daniel Matthews ("**Matthews**")

THIS IS A RESPONSE TO the notice of application of Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver (the "**Receiver**") filed November 25, 2025

The application respondents estimate that the application will take one day.

PART 1: ORDERS CONSENTED TO

The application respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: ALL

PART 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NONE

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NONE

PART 4: FACTUAL BASIS

Select Background

1. Unless otherwise defined, capitalized terms are as defined in the Receiver's Ninth Report.

2. This proceeding was borne out of what can charitably be described as a dysfunctional business relationship. Prior to the commencement of this proceeding, the 50/50 partners had been in deadlock since June 2021.

3. On numerous occasions during the course of this proceeding, Sanovest, on the one hand, and Mr. Matthews and 599 on the other, made known to each other and the court that they would each be bidders for the Property and Resorts Business. Which is to say, this proceeding was viewed by the parties as, among other things, the means through which they could achieve the separation of their business interests.

Sanovest Initiated This Proceeding for the Stated Purpose of Obtaining Repayment of its Loan

4. Sanovest issued demands, commenced this proceeding and sought and obtained an order appointing the Receiver for the stated purpose of monetizing the Partnerships' assets to see its loan repaid.

5. In his first affidavit filed in support of the within petition, Tian twice noted that the Ecoasis Entities had failed to repay the Sanovest loan despite demand and attested that the appointment of a receiver was required to "monetize" the assets:

> ... a receiver-manager is required to ensure that the Partnership's assets are safeguarded and their value maximized for the benefit of Partnership and other stakeholders. The receiver-manager is best positioned to determine <u>how best to monetize the partnership's assets, specifically its lands</u>, including with input from the partners.
>
> [emphasis added]

Kusumoto #1 filed May 23, 2024 at paras 5, 42 and 77

6. Sanovest's petition similarly described the appointment as necessary to "realize" on the value of the Partnerships' property. In its written submissions for the hearing of the receivership application, Sanovest expressly pleaded for the sale and monetization of the assets:

> [Sanovest and Tian Kusumoto] are of the view that, since the parties are unable to advance the development, the Partnerships' assets <u>should be sold</u> *en bloc*. ... [T]he only practical and appropriate path forward is for the Partnerships' assets and business to be put in the hands of a court- appointed receiver who can best determine how to <u>monetize the assets</u> and who will be sufficiently funded to safeguard the assets and ensure the continued operation of the Partnerships during that process.
>
> [Emphasis added.]

Sanovest Petition filed May 23, 2024 at para 17
Sanovest Receivership Submissions at para 20

The SISP Order

7. On July 15, 2025, on the application of the Receiver, the court granted the SISP Order approving, among other things, a sale and investment solicitation process to permit interested parties to participate in a sales process and present offers on some, all or substantially all of the Property and Resorts Business.

8. Neither Sanovest nor 599/Mr. Matthews objected to any aspect of the SISP, the terms of which "...were designed to ensure a fair and transparent process for all participants."

Ninth Report para 5.4

9. The SISP sought by the Receiver, supported by the parties, approved by the court, and incorporated into a court order, expressly required all Final Bids – including any offer that might be made by Sanovest or 559/Matthews – to be submitted on or before the Final Bid Deadline of November 3, 2025. The SISP Order employs imperative language in that regard:

> 26. Any Qualified Bidder may submit an Asset Bid or a Restructuring Bid (each a "Final Bid") to the Receiver...which <u>**must** be received by the Receiver by no later than 5:00 p.m. (Pacific Standard Time) on November 3, 2025</u> (the "Final Bid Deadline").
>
> ...
>
> 27. A Final Bid submitted as an Asset Bid <u>**shall be** a "Qualified Asset Bid" **if**: ...(K) it is received by no later than the Final Bid Deadline</u>.
>
> ...

> 28. A Final Bid submitted as a Restructuring Bid **shall be a "Qualified Restructuring Bid" if:** ...(K) it is received by no later than the Final Bid Deadline.

10. In assessing Qualified Final Bids, the Receiver had discretion to determine the process and timing to be followed in selecting the highest and best bid, including to proceed to a sealed bid, auction or any other process that the Receiver determined would further the objective of the SISP:

> 32. As part of the assessment of Qualified Final Bids, the Receiver shall have the discretion to determine the process and timing to be followed in selecting the highest and best bid including, but not limited to, whether proceeding to a sealed bid, auction, or other process, to be conducted in accordance with procedures determined by the Receiver, would further the objective of these SISP Procedures.

11. Following its assessment and any further process considered to be in furtherance of the SISP, the Receiver was tasked with selecting both the Winning Bid and the next highest or otherwise best Qualified Final Bid (i.e., a Backup Bid). The Receiver was also empowered not to accept any Qualified Final Bid and to terminate the SISP.

SISP paras 33, 38 and 48

12. Under the terms of the SISP Order, among other things, the SISP was to be confidential. Paragraph 45 of the SISP provides:

> All participants and prospective participants under these SISP Procedures, and all other persons, shall not be permitted to receive any information that is not made generally available to all participants...

13. Accordingly, all bidders were obliged to make offers without knowledge of the details of other parties' offers. Which is to say, pursuant to this court's SISP Order, parties were obliged to put their best foot forward in making their Final Bids by the Final Bid Deadline of November 3, 2025.

The Sales and Marketing Process

14. The Receiver and Colliers engaged in a fulsome marketing campaign in accordance with the SISP Order. The efforts in that regard were undeniably robust, as confirmed by the market response. As a result of the marketing efforts, 45 parties executed a confidentiality agreement and were granted access to the data room. At the LOI Deadline, one expression of interest and six LOIs were submitted to the Receiver.

Eighth Report at paras 6.1 to 6.4 and Appendix A

The Bids Received by the Final Bid Deadline

15. The Receiver received three Final Bids by the Final Bid Deadline, each accompanied by a duly authorized and executed purchase agreement for the acquisition of all or substantially all of the Property and Resorts Business:

    a. A bid by Sanovest;

    b. A bid by Groundplay Developments Ltd., a company in respect of which Mr. Matthews is a principal ("**Groundplay**"); and

    c. A bid by a qualified bidder who was ultimately unable to tender the deposit and thus not considered further by the Receiver.

16. In assessing the highest and best bid, the Receiver decided not to proceed with any secondary process (i.e., sealed bid, auction or other process) because:

    a. Sanovest and Groundplay's bids had different structures; and

    b. Groundplay's Final Bid provided for immediate payment of cash on closing to satisfy all secured and unsecured liabilities.

17. Sanovest's bid was not accepted by the Receiver as a Backup Bid. Per paragraph 33 of the SISP, this would seemingly indicate that the Receiver did not consider it "...the next highest or otherwise best Qualified Final Bid Received."

The Groundplay Bid

18. Key terms of the Groundplay bid are summarized in the Receiver's Eighth Report at paragraph 6.11. Following thorough evaluation, the Receiver determined that Groundplay's bid was the Winning Bid for the following reasons:

    a. The proposed transaction contemplated a total purchase price of $141,440,724.50, including cash consideration of approximately $132.5 million to be paid in full upon closing, which provides significant liquidity to the estate;

    b. The Groundplay bid provides for immediate payment of cash on closing to satisfy all secured and unsecured liabilities as well as a very material amount of money available for distribution to the equity holders;

    c. The proposed transaction involves the acquisition of the Resorts Business and substantially all of the assets of the Partnerships, except for cash, the oppression litigation, and select intercompany debts of the Partnerships;

    d. The business of Resorts and Developments will continue in the normal course, including the retention of all employees and, at the request of the Receiver, assumption rather than payment, of the employees' accrued vacation liability and other entitlements;

e. 599 and Mr. Matthews have been involved in the operations of Resorts and Developments for over 10 years and have the industry knowledge and background to continue operating the Partnerships as a going concern;

f. Groundplay paid a material deposit of $6.6 million to the Receiver, which is held in trust;

g. Groundplay is financing the proposed transaction through debt and equity and has provided commitment letters from two financial backers that have the financial wherewithal to close the proposed transaction;

h. Groundplay is incentivized to close the transaction quickly as interest continues to accrue on the outstanding secured and unsecured liabilities, which, among other things, erodes the equity holders' positions;

i. The Groundplay bid and the proposed transaction represent the highest and best offer received in accordance with this court's SISP Order;

j. The purchase price under the Groundplay bid is consistent with Placemark's indication of value and development strategy; and

k. The Groundplay bid satisfies all key criteria outlined in the SISP, including limited conditions reducing the risk of non-completion, a near-term closing date (by December 31, 2025), and a demonstrated financial and operational capability to assume ownership and continue the Partnerships as a going concern.

19. The Receiver expressed the view that the Groundplay bid is fair and reasonable in the circumstances, taking into account, among other things, the value and nature of the assets being disposed of and the other offers received during the SISP.

20. If approved by the court, the proposed transaction will result in full recovery by the secured and unsecured creditors, a very material amount of money available for distribution to the equity holders, and ongoing business operations that will preserve employment of the Partnerships' employees and the economic activity of a going concern business.

The "Advances" Issue

21. In the Receiver's Ninth Report, it is noted that Mr. Matthews has acknowledged in a pleading that he has received certain advances from the Ecoasis business and that the Groundplay bid does not contemplate a mechanism to address those advances in respect of the $7.5 million "in kind" payment.

Ninth Report para 5.24

22. It is noted that Sanovest's late bid contemplates an immediate payment of $8MM to 599 (i.e., in excess of the $7.5 million "in kind" payment under Groundplay's bid). It is further noted that the Receiver recalculated the amount payable to 599 under Sanovest's

late bid (taking various of Sanovest's assumptions, hypotheticals and calculations at face value) at $8.9 million.

Ninth Report para 5.19

23. In any event, with a view to removing the only potential issue raised by the Receiver in connection with the Groundplay bid, Mr. Matthews has confirmed that he will pay into trust any amount of cash the court considers necessary or appropriate in the circumstances.

Affidavit #9 of D. Matthews made December 1, 2025

Sanovest's Final Bid

24. 599 and Mr. Matthews have not received a copy of Sanovest's Final Bid. Based on the Ninth Report, issues with that bid included:

   a. Sanovest's Final Bid had a "stated" (i.e., as baldly asserted by Sanovest) purchase price of $135,000 (contrasted with Groundplay's purchase price of $141,440,724.50) and maximum cash consideration of $7.5 million (contrasted with Groundplay's total cash consideration of $132.5 million);

   b. The bid did not provide for payment of third-party liabilities, with Sanovest instead assuming all liabilities;[1]

   c. The $7.5 million said to be payable to 599:

      i. Was subject to litigation and "adjustments"; and

      ii. Would constitute a taxable distribution in the hands of 599 notwithstanding that s. 11.3 of the partnership agreement requires an additional cash distribution to cover the tax liability associated with equity distributions;

   d. The Purchased Assets included:

      i. Cash that the Receiver requires to administer the estate;

      ii. Intercompany and affiliate receivables in connection with which 599 is entitled to 50% as a Partner but would receive no value under the offer; and

      iii. The Partnerships' right, title, interest and benefit in and of the oppression litigation (i.e., effectively denying 599 and Mr. Matthews a judicial determination on the merits in that litigation and insulating Sanovest and

[1] Groundplay assumed certain liabilities at the request of the Receiver. Groundplay was and remains content for all third-party liabilities to be paid on closing.

Tian Kusumoto from the payment of damages for their oppressive conduct);

Ninth Report paras 4.1 and 6.1(a)

Sanovest's Late Bid

25. Almost three weeks after the Final Bid Date, with full knowledge of the details of Groundplay's Winning Bid, Sanovest delivered a further offer to the Receiver. Sanovest's late bid was, thus, not submitted in compliance with the express terms of this court's SISP Order (i.e., by the Final Bid Deadline and outside of a confidential process/with knowledge of the details another offer).

26. As discussed in greater detail under the "legal basis" of this response, Sanovest's late bid should not be considered. Further, and in any event, Sanovest's late bid is not superior to Groundplay's bid.

27. Despite revising its bid after the Final Bid Deadline, and with full knowledge of the Groundplay bid, the Receiver's Ninth Report confirms that the late bid remains problematic (and presumably incapable of acceptance) for reasons including that:

   a. The late bid's $5 million fund for creditor claims may be insufficient and there is no mechanism by which that fund can increase (para 5.13);

   b. Even if the theory underlying Sanovest's late bid is accepted (which, for reasons discussed below, it should not), the Receiver calculates that 599 may receive up to $8.9 million under that structure yet is capped at $8 million (para 5.19);

   c. The late bid assumes that contingent tax distributions are absorbed by Sanovest in arriving at a net payment of $8 million to 599; however, contrary to s. 11.3 of the Partnership Agreement, it does not provide for a cash distribution to 599 to pay taxes on top of the $8 million – which taxes may be deferred or avoided entirely through planning and thereby further enhance the value of 599's distribution entitlement (para 5.22);

   d. The late bid overstates the amount due to Sanovest (paras 5.20 and 5.18);

   e. The late bid's purchased assets includes cash that the Receiver requires to complete its administration (para 6.1(a)); and

   f. The calculation for the supposed "value" of the late bid includes a contingent liability to HSBC in the amount of $3.2 million; however, that payment is not payable now and could be entirely avoided since the underlying agreement expires in 2028 (paras 5.8 and 6.1(d)).

28. Sanovest's late bid is problematic for a number of additional reasons, including:

a. Sanovest's late bid is, in substance, an equity buyout clothed as a "credit bid" – i.e., involves the acquisition of property that is not part of this receivership, is not for sale under the SISP Order, and is not within the Receiver's sale mandate;

b. The late bid is devoid of calculations to support a purported $157.9 million headline purchase price. Absent that support, the notional price is speculative at best;

c. The supposed value of the late bid is based on a number of assumptions and estimates, none of which are clearly set out in the bid (e.g., assumptions as to historical tax account balances, income allocations and tax cost base of assets). Absent a detailed listing of those assumptions, the late bid is incapable of accurate assessment or comparison to Groundplay's Winning Bid;

d. In the nearly three weeks between Sanovest's Final Bid and late bid, the cash component increased by only $5.5 million (the $5 million claims fund and an additional $500,000 distribution to 599), yet Sanovest purports that its purchase price has somehow increased by $23 million. While Sanovest will no doubt attempt to rationalize its numerical manipulation, the price differential does not pass the smell test;

e. A substantial part of the "value" of Sanovest's bid is illusory when viewed realistically as opposed to in the abstract. The waterfall under the Partnership Agreement (assuming for present purposes that s. 11.3 applies) stipulates that:

    i. The first $15 million is split between the Partners 50/50 (i.e., $7.5 million each);

    ii. The next $30 million is paid to Sanovest; and

    iii. The partners then split any additional funds 50/50.

   So, on the theory of the calculations underlying Sanovest's late bid, if Sanovest were to pay even $1 over $7.5 million to 599, then it gets to credit bid the full $30 million. This is illustrative of the dangers in comparing the hypothetical and illusory "value" of Sanovest's late bid to the actual cash value of Groundplay's bid;

f. The purchased assets continue to include (all of which remain assets of the Partnerships under Groundplay's bid):

    i. Cash that the Receiver requires to administer the estate;

    ii. Intercompany and affiliate receivables in connection with which 599 is entitled to 50% but receives no value under the bid; and

    iii. The Partnerships' right, title, interest and benefit in and of the oppression litigation;

g. With respect to the calculations Sanovest relies upon in support of the notional purchase price:

   i. As confirmed by the Receiver, Sanovest overstates the Partnerships' debts and liabilities;

   ii. Sanovest includes a payment to HSBC in the amount of $3,946,481 that will not be triggered since no land is actually being sold and which would be within Sanovest's control to never pay;

   iii. Sanovest ignores that if a sale actually transacted, as is the premise underlying its late bid, 599 would be entitled to an additional cash distribution to cover its taxes (i.e., 599 would be paid the $4,293,483 that Sanovest is purporting to effectively credit bid);

   iv. Sanovest includes notional amounts for payment of the hypothetical tax liabilities of the Partners on a sale ($12,393,483 for Sanovest and $4,293,483 for 599); however:

      1. These are the Partners' tax liabilities and not the Partnerships' tax liabilities;

      2. Sanovest assumes the rate at which 599 would be taxed despite having no knowledge of 599's tax position;

      3. Because no transaction is actually taking place:

         a. There would be no tax liability on the hypothetical distribution; and

         b. 599 would have a tax liability for the $8 million Sanovest would actually pay to it under the late bid (i.e., so not only is 599 denied the additional cash distribution it would receive on a sale for $157.9 million, as insult to injury 599 would be obliged to pay tax on the $8 million actually distributed under the late bid); and

h. Notwithstanding that Sanovest commenced this proceeding on oath it wished to see the assets monetized so its loan could be repaid, the late bid does not achieve that result. Instead, it is, in substance, an equity buyout with Sanovest continuing to carry all of the debt owed to it. This lends substantial credence to Mr. Matthews and 599's primary claim in the oppression litigation (see, for example, Affidavit #1 of D. Matthews filed June 1, 2023 in S-234048 at para 62), and in its opposition to this proceeding from the outset, that Sanovest's real goal is to acquire 599's equity position on a distressed or discounted basis.

PART 5: LEGAL BASIS

Issues Determined in Advance with a SISP

29. Court approval of a sales process ensures process-related objections must be raised and addressed in advance. Sanovest did not object to any aspect of the SISP. To the contrary, Sanovest supported the terms of the sales process as drafted.

30. In approving the SISP, this court favourably assessed:

   a. The fairness, transparency and integrity of the process;

   b. The commercial efficacy of the process in light of the specific circumstances; and

   c. Whether the process would optimize the chances, in the particular circumstances, of securing market value for the Property and Resorts Business.

CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750

Groundplay's Bid Should be Approved

31. The well-known factors that the court will consider when assessing approval of a proposed transaction in a receivership were set out in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.):

   a. Whether the court-appointed officer made sufficient effort to get the best price and has not acted improvidently;

   b. The interests of all parties;

   c. The efficacy and integrity of the process by which offers are obtained; and

   d. Whether there has been unfairness in the working out of the process.

32. For the reasons set out above and in the Receiver's Eighth Report, all of these factors militate in favour of approval of the Groundplay's bid:

   a. The Receiver, with the assistance of Colliers, carried out the marketing and sales process in accordance with the court approved SISP. The marketing efforts were carried out by leading brokers and were unquestionably robust. The market reaction was strong. 45 parties executed the confidentiality agreement and accessed the data room, six LOIs were received, and three Final Bids were submitted to the Receiver. Groundplay's Winning Bid was the highest and best offer. There can be no reasonable dispute that the Receiver made sufficient effort to get the best price and has not acted improvidently;

   b. Groundplay's bid will, among other things, payout all secured and unsecured debt (and put an end to the ~$14,000 daily interest burn), maintain the employment of all employees, ensure that the business operations continue as a going concern, and bring this receivership (and a dysfunctional partnership) to a substantive end. Approval of the Groundplay bid is in the interests of all parties;

c. The process by which offers were obtained was supported by the parties and approved by the court in advance. The efficacy and integrity of the process are unimpeachable; and

d. The process did not work unfairness on any party.

33. Accordingly, the relevant considerations overwhelmingly support approval of the Groundplay bid.

Sanovest's Late and Deficient Bid Should Not Be Considered and No Further Process Should be Ordered

34. The only remaining question is whether the court ought to entertain Sanovest's late bid. The Receiver invites the court to consider the late bid and opines that some further process may appear reasonable in the circumstances. Respectfully, the Receiver's suggestion is contrary to the law. Sanovest's late bid may only be considered if the court concludes that the sales process – i.e., the process the Receiver itself carried out – was improperly conducted and resulted in an improvident proposed transaction.

35. In many court ordered sales processes, a primary consideration for the court is maximization of value for creditors, some or all of whom face a shortfall or non-payment. Even in that context, protection of the integrity of the sales process, and fairness for the parties that participated in the sales process, constitute considerations of the utmost importance.

Soundair

Rose-Isli Corp. v. Frame-Tech Structures Ltd., 2023 ONSC 832

36. When faced with a late bid, the court will first decide whether the proposed transaction should be approved and then consider whether the late bid changes that result. On the latter point, the relevant question is whether the receiver acted improvidently in accepting the offer it did. The court will consider that question based on the information the receiver had at the time it accepted the subject offer. A late submitted offer is only relevant if the price disparity is so significant that it evidences the party holding conduct of sale acted improvidently. Which is to say, the late offer will only be considered or given any weight if it evidences that the *Soundair* principles set out under the heading directly above do not, in fact, support the proposed transaction.

Soundair at paras 21 and 46
Terrace Bay Pulp Inc. (Re), 2012 ONSC 4247 at paras 48 and 49
Blue Lobster Capital Ltd. (Re), 2025 NSSC 243 at paras 116 and 152

37. As held by the Ontario Court of Appeal in *Soundair*:

> 30. What those cases show is that the prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it. I am of the opinion, therefore, that if they do not tend to show that the receiver was improvident, they should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver. If they were, the process would be changed from a sale by a receiver, subject to court approval, into an auction conducted by the court at the time approval is sought. In my opinion, the latter course is unfair to the person who has entered bona fide into an agreement with the receiver, can only lead to chaos, and must be discouraged.
>
> 31. If, however, the subsequent offer is so substantially higher than the sale recommended by the receiver, then it may be that the receiver has not conducted the sale properly. In such circumstances, the court would be justified itself in entering into the sale process by considering competitive bids. However, I think that that process should be entered into only if the court is satisfied that the receiver has not properly conducted the sale which it has recommended to the court.
>
> [emphasis added]

38. In *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247, the Receiver accepted and sought approval of an offer for mill assets with an effective purchase price of $27 million. A late all cash offer was then received from another party for $35 million (i.e., an $8 million, or 30% increase). The court accepted that the party who submitted the late offer for $35 million had been unaware of the Receiver's sales process. If the late bid was approved, subordinate creditors would have seen their recovery increase by no less than $8 million. Morawetz J. considered the *Soundair* factors, found that they militated in favour of the bid accepted by the Receiver (including that the price increase was not so high as to indicate the accepted offer was improvident), and thus declined to entertain the higher offer.

39. The relevant principles to be drawn from *Terrace Bay* were summarized by the court in *Co-operative Housing Federation of Canada v. Bridlewood Co-operative Inc.*, 2012 ONSC 5936:

> 32 The approach this Court takes to the consideration of post-bid deadline offers was reviewed by Morawetz J. in Re Terrace Bay Pulp Inc. Although in that case the offers arose in the context of a sale in a Companies' Creditors Arrangements Act proceeding, the principles apply equally to a receiver's sale. In Terrace Bay Pulp the applicant corporation, with the concurrence of the Monitor, sought approval of an asset sale at an effective price of $27 million. After the expiry of the bid deadline, the company received an offer from another party for an effective price of $35 million.
>
> 33 In approving the recommended pre-deadline transaction, Morawetz J. reiterated three basic points found in the jurisprudence. First, when determining the providence of a receiver's sale conduct, the court should examine the receiver's acts in light of the information it possessed when it agreed to accept an offer.

> 34 Second, under Soundair, prices in post-deadline offers are relevant only to the extent they show that the price contained in the recommended offer "was so unreasonably low as to demonstrate that the receiver was improvident in accepting it".
>
> 35 Third, if they do not tend to show that the receiver was improvident, then the post-deadline offers "should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver".
>
> [emphasis added]

40. In *Harbour Grace Ocean Enterprises Ltd. (Re),* 2024 NLSC 47 at the conclusion of a SISP the monitor accepted a winning bid. Subsequently, the majority shareholder and a secured creditor of the company submitted a late bid. The Company brought a motion to approve the accepted offer and the majority shareholder opposed. The analytical approach taken by Justice MacDonald was to first decide whether the proposed transaction ought to be approved and then consider whether the late bid changed that result.

41. The court analyzed the SISP process and the role of the shareholder, who had been considering a credit bid during the process, but ultimately did not submit a bid by the deadline. The shareholder argued there were reasons for not doing so, including that the monitor had prohibited it from submitting a bid. The court rejected the shareholder's complaints:

> 105 Thus, when I consider if I should order the Monitor to accept the Gray bid, I should:
>
> > (a) authorize the sale outside of the SISP only in the most extraordinary circumstances when I believe the Monitor did not act providently to obtain the best price;
> >
> > (b) exercise extreme caution before I interfere with the SISP especially when the Court approves an agreement to sell an unusual asset like a shipyard; and
> >
> > (c) not sit on an appeal and review in minute detail every element of the Monitor's actions during the SISP.
>
> 106 Justice Blok in Bank of Montreal v. Renuka Properties Inc., 2015 BCSC 2058, at para. 31(5), confirmed that in considering these issues I am to consider the interests of all parties, including the Purchaser.
>
> 107 Thus, I will consider:
>
> > (a) if the Monitor properly conducted the SISP, which led to the Proposed Transaction;

(b) the Monitor's conduct considering the information the Monitor had when it agreed to accept the Purchaser's offer;

(c) if the Purchaser acted in good faith, bargained seriously and entered into an agreement with the Monitor; and

(d) if the price contained in the offer accepted by the Monitor is so unreasonably low as to demonstrate that the Monitor was improvident in accepting it. <u>I should only enter the SISP process and consider the Gray Bid *if I am satisfied that the receiver has not properly conducted the sale which it has recommended to me.*</u> [italics in original]

108 Considering these factors, I find that:

(a) the Monitor did not know that Gray would make the Gray Bid and did not know the contents of that bid when it accepted the Purchaser's bid;

(b) the Monitor properly ran the SISP. I discussed the reasons why earlier in this decision. My conclusion does not change because of the circumstances surrounding the Gray Bid or the Gray Bid Issues;

(c) there is no evidence that the Purchaser is acting in bad faith. The negotiation process leading up to the accepted bid shows it bargained seriously; and

(d) the Monitor had already accepted the Purchaser's bid and had entered into a binding agreement before Gray submitted its bid.

109 I will not enter into the SISP process and consider the Gray Bid because I will only do so if I am satisfied that the Monitor has not properly conducted the SISP that caused it to recommend it to me.

110 Accordingly, the Gray Bid does not show that the offer accepted by the Monitor was so unreasonably low as to demonstrate that the Monitor was improvident in accepting it. This is not an extraordinary circumstance where I would allow a bid outside the SISP.

...

115 <u>The integrity of a SISP is fundamental to the proper operation of insolvency restructuring proceedings. Participants must believe that receivers, monitors and courts will treat them fairly. Gray, an insider, a secured creditor, a shareholder, a former DIP lender and an active participant in this CCAA, asks that I find that the rules of the SISP do not apply to it. This I will not do.</u> ...

[emphasis added]

42. The tension between protection of the integrity of the process and maximization of value in the circumstances of a late-delivered offer was also considered in *Gene Drennan Ltd. v. Med Grill Ltd.*, 2001 BCSC 117:

> 54 In the result, I am faced with a "Catch-22" situation. If I accept arguments of Sophie, then the creditors receive the benefit of a 20% price increase. That is indeed significant. On the other hand, I impeach the integrity of the sealed bidding process followed by Drennan as receiver and approved by the learned Master.
>
> 55 I am persuaded, as was the Master, that Drennan has dutifully, fully and conscientiously performed his duties to obtain the best possible price and to seek the approval of the court. Sophie, Moxie's and the other interested parties all had an equal and fair opportunity to submit their best bid in accordance with the conditions stipulated by Drennan in his letter of December 28, 2000.
>
> 56 Having heard all the evidence and re-considered this matter de novo, I am of the view and find that in the context of fairness to all of the bidders, and in the interests of the integrity of the process, Moxie's bid of $652,000 plus inventory, must be accepted. To hold otherwise would be to make mockery out of the tender process that is the integral and basic part of the procedure.
>
> 57 At bar it is not known whether other secured creditors will, of necessity, be affected. All that is known is that there is a potential that they may or may not be affected. Even though this is so, and even though the offer submitted before the Master at the hearing is 20% higher, I do not find that sufficient for me to accept Sophie's higher bids made outside the tendering process.
>
> 58 There are tendering rules and it is the public interest that, save in exceptional circumstances, by and large, they should be obeyed.
>
> [emphasis added]

43. Justice Fitzpatrick considered a late offer in *Cox v. Seymour Village Management Inc.*, 2015 BCSC 275. The subject property in that case was a 114-unit strata development. The sales process, which had not been approved by the court in advance, resulted in Polygon having the highest offer. Relying on a provision in Polygon's offer that seemingly contemplated competing bids, Mosaic submitted a late offer. Mosaic's offer included a $100,000 higher purchase price and, if accepted, would heave also resulted in the discontinuance of outstanding litigation against 104 of the owners.

44. The court ultimately approved Polygon's offer, principally based on the considerations of fairness and protection of the integrity of the sales process. The reasons are quoted at length due to their helpful guidance on this issue:

> [25] Late offers, such as that now presented by Mosaic, are not completely unheard of in the courts of British Columbia. However, in my view, the court looks fairly askance at such late offers, for reasons that I will address below.

[26] Darwin's counsel has referred me to Sun Life Savings and Mortgage Corp. v. Sampson, [1991] 59 B.C.L.R. (2d) 355 (S.C.). In that decision, Madam Justice Huddart, as she then was, identified price as the most important factor in the sales process. In my view, this decision has to be put in context because it dealt with a residential foreclosure and the relevant sales process was far different from what applies here. Residential foreclosures are dealt with in this Court on a fairly, I would say, standard basis. Here, the court is addressing a very unique situation, and no doubt this unique situation was what drove the very considerable and detailed sales process the council of Seymour Estates embarked upon with the assistance of the professional real estate firm.

[27] The other distinguishing factor arising from the Sun Life Savings decision was that the new offer in that case was from a different person, as opposed to coming from a person who had already been involved in the sales process. In other words, the late offer considered in Sun Life Savings came from someone who should have been, but was not, for whatever reason, identified as a bidder in the earlier process. As such, the logical inference was the sales process was flawed in not producing the best offer that the market could produce.

[28] This is in contrast to someone who has gone through the entire process, in good faith, with a view to presenting its best offer. There is no suggestion that Mosaic was not told what the sales process was or that it was not treated fairly in terms of having an opportunity to put its best foot forward. One can only presume that Mosaic did put its best foot forward. But that best foot forward was not considered by the council to be the best offer in the circumstances. In my view, this brings forward issues of the fairness and efficacy of the process in terms of allowing someone who has gone through the entire process, along with Polygon, to now submit a last minute bid.

[29] Does fairness dictate that, not having been successful, Mosaic should be allowed to have a second kick at the can? As I have said, it is not completely unheard of that these late offers are considered; but where they are truly considered, in terms of price being the primary factor, is where there has been a substantial increase in price beyond the price that has been garnered through the sales process. Again, this factor gains more prominence because it is likely indicative of the fact that the sales process did not work in the sense of bringing forward persons who were interested in a purchase and giving them an opportunity to participate in a fair sales process. There is no suggestion here that the sales process was unfair and, in particular, that Mosaic did not have the opportunity to present its bid in competition with other offers being submitted, such as from Polygon.

[30] That brings me to the second factor, price. Notwithstanding the amendments to both offers at the hearing, the difference is still $100,000. Some parties suggested in their submissions that this amount is fairly "nominal". I agree that it is nominal in a sense of the overall price; however, I do not mean to suggest, in any way, that another $887 in the pockets of these families would not be significant in and of itself. I conclude, however, that the efficacy and integrity of the sales process becomes more important in the overall consideration here and rises above the difference in the price of the bid that has now been offered by Mosaic.

45. Sanovest's late bid is properly afforded no consideration, and no further process is warranted, for reasons including the following:

a. As illustrated by the *Soundair*, *Terrace Bay*, *Harbour Grace*, *Co-operative Housing Federation of Canada* and *Med Grill Ltd.* decisions cited above, even in the context where a primary concern for the court is the maximization of realizations for creditors, Sanovest's offer would not properly be considered. The purchase price is "notional" and demonstrably the product of various fictions and assumptions (even taken at face value the percentage increase on the purchase price is lower than the increases at issue in *Terrace Bay*, *Med Grill Ltd.* and a number of other decisions). Indeed, in substance, it is an offer to acquire property that is not the subject of this receivership for $8 million (i.e., 599's equity position). Certainly, Sanovest's late and non-compliant offer does not give rise to a "logical inference" that the sales process was somehow flawed. This is not a case where a *bona fide* third party submitted a late offer because the marketing efforts ought to have, but did not, uncover them as a prospective purchaser. Rather, the "price disparity" in the present case is illusory and borne out of Sanovest's displeasure with the *results* of the sales process and with full knowledge of the price to "beat";

b. In the case at bar, fairness as between 599 and Matthews, and maintenance of the integrity of the court-approved sales process, properly govern over any consideration of the ultimate purchase price (whether real or, in the case of Sanovest's late bid, incapable of reasonable assessment). That was the approach taken in the decisions discussed above notwithstanding that third-party creditors stood to receive a greater recovery. This includes *Seymour Village Management Inc.* which involved competing bids from arm's length offerors for the purchase and sale of the homes of more than 100 ordinary families. The court's reasoning in *Seymour Village Management Inc.* is even more compelling here where the parties and competing offerors are 50/50 Partners and the subject Property is primarily comprised of development sites;

c. The Property and Resorts Business were marketed in accordance with a process that was supported by Sanovest and approved by the court. All interested parties, including, in particular, Sanovest, had an adequate opportunity to participate. Sanovest – an extremely sophisticated commercial entity having the benefit of specialized legal advice – made an informed decision when it submitted a Final Bid. That Sanovest regrets its decision making does not render the court approved sales process unfair or the highest offer borne out of that process improvident;

d. Maximization of realizations for creditors is not a relevant consideration. Groundplay's Winning Bid includes sufficient cash to payout all secured and unsecured claims in full. The Receiver's suggestion of a further process would only serve to potentially increase consideration payable to equity (i.e., not the debtor or its creditors) and, in the case of Sanovest's late offer, for the acquisition of assets that are outside the scope of this receivership and the Receiver's mandate (i.e., not the Property of the Ecoasis Entities);

e. In its Eighth Report, the Receiver confirmed that it decided not to proceed with any secondary process after receipt of the parties' Final Bids for two reasons: first, because the Final Bids had different structures; and second, because Groundplay's Final Bid provides for immediate payment of cash on closing to satisfy all secured and unsecured liabilities. Those two factors remain equally applicable today;

f. Further delay for the sake of negotiations would serve no useful purpose. The parties have litigated for years. A number of settlement discussions at various different times, including numerous written settlement offers and a formal mediation, have failed to achieve a resolution. The SISP represented the means through which the parties could achieve a separation of their business interests. The SISP concluded and was successful – the result ought to be respected;

g. Groundplay played by the rules and complied with the court-ordered sales process. Groundplay submitted its offer blind, in good faith and in compliance with the terms of the SISP. It would be unfair for all parties who participated in the SISP, and be grossly unfair to Groundplay, 599 and Mr. Matthews, for the court to consider Sanovest's late offer and thus effectively alter the terms of the process at this late stage. It would have a chilling effect on court approved sales processes generally and "make a mockery" of the SISP in this case; and

h. This proceeding has proved to be expensive and protracted. Well in excess of $6 million has accrued on the secured debt owed to Sanovest since this proceeding was commenced – representing a direct transfer of funds out of 599's pocket and into Sanovest's. Approximately $14,000 accrues on the secured debt on a daily basis. A further process would unnecessarily add yet further considerable additional delay and expense. That additional delay and expense would serve the interests of only one party, Sanovest – an insider that fully participated in the SISP and has already made two deficient offers. Respectfully, no further process is warranted in the circumstances.

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of D. Matthews filed June 1, 2023 in S-234048 (body and Exhibits H and I only)
2. Affidavit #1 of Tian Kusumoto (Receivership) filed May 23, 2024 (body).
3. Affidavit #2 of Tian Kusumoto (Receivership) filed July 2, 2024 (body and Exhibit D).
4. Affidavit #9 of D. Matthews to be filed.
5. SISP Order made July 15, 2025.
6. The Receiver's Eighth Report.
7. The Receiver's Ninth Report.
8. Such further and other materials as counsel may advise

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: December 1, 2025

Signature of lawyer for Daniel Matthews, 599315 B.C. Ltd. and Groundplay Developments Ltd.
Scott H. Stephens