



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 the Bear Mountain Resort and Spa Ltd. ("BM Resort")
Creditor and Interested Party:**

THIS IS A RESPONSE TO the Notice of Application of the Applicant, Alvarez & Marsal Canada Inc. in its capacity as Court-appointed receiver (the "**Receiver**" or the "**Applicant**") of Ecoasis Developments LLP, Ecoasis Bear Mountain Developments Ltd., 0884185 B C Ltd 0884188 B.C. Ltd., 0884190 B.C. Ltd., 0884194 B.C. Ltd BM 81/82 Lands Ltd BM 83 Lands Ltd., BM 84 Lands Ltd., BM Capella Lands Ltd., BM Highlands Golf Course Ltd., BM Highlands Lands Ltd., BM Mountain Golf Course Ltd., certain lands of Bear Mountain Adventures Ltd., and any interests in real property of Ecoasis Resort and Golf LLP., filed January 24, 2025 (the "**Application**").

The Receiver estimates that the Application will take two and half hours.

Part 1: ORDERS CONSENTED TO

BM Resort consents to the granting of the Orders set out in ALL of the paragraphs of Part 1 of the Application on the following basis:

- 1) The Reports (as defined in the Application) ought to be filed with the Court at this time and posted on the Receiver's website pursuant to s. 34 of the Receivership Order; or
- 2) In the alternative, the Reports ought to be delivered to all "interested parties" or all persons listed on the Service List pursuant to s. 35 of the Receivership Order.

Part 2: ORDERS OPPOSED

BM Resort opposes the granting of the Orders set out in NONE of the paragraphs of Part 1 of the Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

BM Resort takes no position on the granting of NONE the Orders set out in Part 1 of the Application.

Part 4: FACTUAL BASIS

BM Resort's Status as Creditor and Interested Party

1. BM Resort claims that Ecoasis Resort and Golf LLP ("**Ecoasis Resort**") is indebted to it for \$453,271.07, which is one of the issues currently being arbitrated between the parties.

Affidavit #1 of R. Malak, sworn January 28, 2025

Background

2. BM Resort relies on the background information outlined by the Receiver in the Application. BM Resort also relies on the defined terms in the Application unless otherwise defined in this Application Response.

The September 10, 2024 Sealing Order

3. The only Sealing Order made in this proceeding to date was made September 10, 2024 to seal the Affidavit #2 of Daniel Matthews made on June 21, 2024.

Part 5: LEGAL BASIS

BM Resort's Standing in this Proceeding

4. Sections 36 and 39 of the Receivership Order provide that:

36. **Any interested party**, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. **Any interested party**, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

[8] I have no difficulty with the information aspect of the application. **The lien claimants are entitled to full disclosure from their fiduciary.** That has already been accomplished in large part by three events:

1. an order requiring the delivery of copies of all offers on the condominium project, which is the major asset of Vista Homes;
2. an order that the applicants be provided with copies of the monthly reports of the receiver-manager to the plaintiff and of its semi-annual statements of receipts and disbursements;
3. the retainer by the receiver-manager of independent counsel who recognizes the fiduciary obligation of his client to all parties to this litigation.

[9] To the extent that the desire of the applicants for information is not resolved by those three factors, the last of which I consider to be the most important, I express the following views. **The receiver-manager is obliged to make the same information available to all parties. It is obliged to respond to requests for information which are consistent with the position of the party making the request and the amount involved in the particular asset in question.** Should the receiver-manager be of the view that the cost of responding is excessive in the circumstances, it is at liberty to fix a fee or a rate for the provision of such information and invite the party requesting the same to bear that cost. Falling agreement, an application for directions would be appropriate. [emphasis added]

10. Overall, BM Resort's position is that the Receiver owes a general duty of disclosure to all interested parties and not just the Petitioner and other parties that may have already received a copy of the Reports. That obligation can only be superseded by a sealing order over the Reports, which has not been obtained or nor to this date sought by any of the parties in this proceeding.

The Receivership Order

11. Paragraphs 4 and 6 of the Receivership Order state that the Receiver "shall deliver" the Reports, but does not specifically state who the Receiver shall deliver the reports to.
12. BM Resort's position is that the Reports should have been:
 - a. filed with the Court pursuant to s. 5 of the Receivership Order;
 - b. delivered to all interested parties,
 - c. or at a minimum, to all persons on the Service List pursuant to s. 35 of the Receivership Order.
13. BM Resort takes the position that given the Receiver's general disclosure obligations to all interested parties, the Receiver's obligation to "deliver" the Reports requires disclosure to all interested parties. If the Receivership Order intended to restrict the persons to whom the Reports should be delivered so as to conflict with the Receiver's common law disclosure obligations, it should have explicitly provided for that restriction.

1) The Reports Should be Posted on the Receiver's Website

14. BM Resort's primary position is that the Reports ought to be posted on the Receiver's website pursuant to s. 34 of the Receivership Order, outlined below:

34. The Receiver shall establish and maintain a website in respect of these proceedings at: www.alvarezandmarsal.com/ecoasisdevelopments (the "**Website**") and shall post there as soon as practicable:

(a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the Supreme Court Civil Rules', and,

(b) all applications, reports, affidavits, orders and other materials **filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.**

[Emphasis added]

15. As outlined above, s. 34 requires that all reports shall be posted on the Receiver's website, except such materials as are confidential *and* the subject of a sealing order or pending application for a sealing order. Given that no such application is pending as of this date, the Reports ought to be posted on Receiver's website.
16. At paras. 43-44 of the Application, the Receiver seeks directions on whether the Reports, or any portions thereof, that are required to be filed with this Court and distributed pursuant to the Receivership Order ought to be made subject to a sealing order. The Receiver also notes that 599/Matthews and Sanovest maybe making submissions to the Court on these issues.
17. That procedure is not in accordance with s. 34 of the Receivership Order. The Receiver's Application is not a "pending application for a sealing order" nor is 599/Matthews or Sanovest's submissions a "pending application for a sealing order" such as to fall within the disclosure exception in s. 34.
18. If the 599/Matthews and Sanovest intend to apply for a sealing order, then the persons on the Service List are entitled to notice of such application including advance notice of any proposed redactions and the reasons for such redactions. That is the only way in which the Court can determine whether any sealing of the material is as minimally restricted as possible.

Azure Dynamics Corp., Re, 2012 BCSC 781, at para. 54
Hollinger Inc., Re, 2011 ONCA 579, at para. 29,
leave to appeal refused [2012] 1 S.C.R. vi (SCC)

19. Further, as outlined in *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 1023 ("**Forjay**") at para. 58, with respect to the risk to commercial interest, the test in *Sierra Club* requires the applicant to establish the risk is "real and substantial" and must be "well grounded in the evidence." In *Forjay*, when denying the applicant's request for a sealing order, the Court noted the applicant's affidavit only provided a "very thin explanation" as to what "important commercial interest" required sealing a receiver's report. At para. 63, the Court would not accept receiving the "bald statements" of the applicant as to confidentiality or risk of harm.

20. In this situation, there is currently no application before the Court as the important commercial interest, which requires protection by sealing the Reports.
21. It is also BM Resort's understanding that the Receiver has taken the position that since the Reports have not been "filed", they need not be posted on the Receiver's website.
22. However, the Reports, or at least the October 25, 2024 Report ought to have been spoken to in chambers on November 6, 2024 pursuant to s. 5 of the Receivership Order:

5. A hearing for the Receiver's counsel to speak to the Report, and for any applications resulting from the Report or any ancillary relief, shall be held at the Courthouse at 800 Smithe Street, Vancouver BC at 10:00am on the 6th day of November 2024, or such other date as this Court may order.

23. Further, pursuant to s. 6 of the Receivership Order, the December 2, 2024 Report ought to have been delivered "to be approved by the Court", as shown below:

6. On or before Monday, December 2, 2024, or such other date as this Court may order, the Receiver shall deliver a report in respect of a marketing and sale process, to be approved by the Court, and shall only market or sell the Property or business in accordance with that marketing and sale process, except for the sale of Property within the limits in paragraph 3(l)(i).

24. BM Resort takes the position that if the December 2, 2024 Report was delivered by the Receiver so as to be approved by the Court, it should have to be filed with the Court.

2) *Deliver the Reports to All Interested Parties*

25. In any event, if the Receiver's obligation to post the Reports on its website is limited to posting the Reports once filed with the Court, the Receiver ought to deliver the Reports to all interested parties, or all persons on the Service List.
26. Section 35 of the Receivership Order provides that any person "that wishes to be served with any future application or other materials in these proceedings must provide to counsel for the Receiver a demand for notice in the form attached as **Schedule "C"**". BM Resort has provided a Schedule "C" to counsel for the Receiver and is on the Service List.
27. Section 38 of the Receivership Order provides that the Receiver and its counsel are authorized to serve or distribute any materials as may be reasonably required in these proceedings by forwarding copies to the Ecoasis Entities' creditors or other interested parties and their advisors. Given the Receiver's general disclosure obligation to all interested parties, BM Resort takes the position that s. 38 mandates that the Reports be delivered to all interested parties, or to all of the persons listed on the Service List.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Raoul Malak sworn January 28, 2025; and
2. The other materials filed in this proceeding.

BM Resort is listed on the Service List with its address as 1999 Country Club Way, Victoria, BC

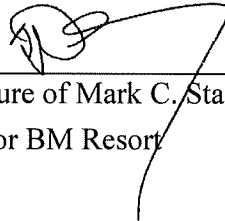
V9B 6R3, attention: David Clarke, but correspondence and documents in this proceeding should be directed to its counsel, Mark C. Stacey, at the address below:

BM Resort's address for service: Singleton Urquhart Reynolds Vogel LLP
1200 – 925 West Georgia Street
Vancouver, BC V6C 3L2
Attention: Mark C. Stacey

Fax number address for service (if any): N/A

E-mail address for service (if any): mstacey@singleton.com
service@singleton.com

Date: January 28, 2025


☒ Signature of Mark C. Stacey
Counsel for BM Resort