



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 Petitioner Sanovest Holdings Ltd. ("Sanovest")

THIS IS A RESPONSE TO the Notice of Application of Alvarez & Marsal Canada Inc. filed November 25, 2025 (the "Receiver's Application").

The Application Respondent estimates that the application will take 2 days.

Part 1 ORDERS CONSENTED TO

The Application Respondent consents to the granting of **NONE** of the orders set out in Part 1 of the Notice of Application.

Part 2 ORDERS OPPOSED

The Application Respondent opposes the granting of **ALL** of the orders set out in Part 1 of the Notice of Application.

Part 3 ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of NONE of the orders set out in Part 1 of the Notice of Application.

Part 3 FACTUAL BASIS

Overview

1. Capitalized terms not otherwise defined in this Application Response have the meanings ascribed to them in the Receiver's Application or Affidavit #7 of Tian Kusumoto, sworn December 1, 2025 (the "**Seventh Kusumoto Affidavit**") as applicable.
2. Sanovest is the first ranking secured creditor of the Respondents,¹ as well as the party funding the within Receivership proceedings through Receiver's borrowings. Sanovest also has a significant equity interest in the Respondents, holding 49.75% of the units in the Developments Partnership. 599315 B.C. Ltd. ("599" and together with Sanovest, the "**Partners**") also holds 49.75% of the units in the Developments Partnership.
3. This application will require an understanding of the manner in which cash proceeds arising from a sale of the Developments Partnership's assets are to be distributed under the Partnership Agreement—i.e. the "waterfall"—which is as follows:²
 - (a) first, in payment of all liabilities of the Developments Partnership (which would include all indebtedness owing to Sanovest);
 - (b) second, in payment of any Partner loans (of which there are none);
 - (c) third, \$7.5 million to each Partner by way of equity distribution (the "**First Equity Tranche**");³
 - (d) fourth, \$30 million to Sanovest (the "**Second Equity Tranche**"); and
 - (e) lastly, the remainder equally between the Partners (the "**Third Equity Tranche**").

¹ HSBC Bank Canada (now Royal Bank of Canada) holds a mortgage of certain of the Developments Partnership's lands as security for payments to which it is entitled under a Participation Agreement.

² Partnership Agreement, Ninth Report of the Receiver dated November 28, 2025, at Appendix B.

³ There is uncertainty as to whether the Developments Partnership must also distribute to the Partners funds sufficient to satisfy any tax liability of a Partner arising from an equity distribution. If tax obligations must also be funded, then such amounts would be payable in priority to any distributions on account of the First Equity Tranche. For the purposes of structuring its bids and for this application, Sanovest treats the tax liabilities as being payable prior to any distributions on account of the First Equity Tranche.

4. To give the court an idea of the Partners' relative interests, Sanovest holds approximately 84% of all indebtedness of Ecoasis, whereas 599 has none. On a distribution to the equity holders of \$45 million, Sanovest receives approximately 83% of that amount.

5. With respect to the two offers for consideration by the court:

- (a) the Groundplay APA submitted by 599 (the "599 Bid") contemplates: (i) a purported distribution to 599 in the amount of \$7.5 million by delivery to it of the "Redeemable Special Shares" in the Purchaser (see below) and a distribution to Sanovest in the amount of \$7.5 million in cash, each on closing (i.e. each Partners' First Equity Tranche); and (ii) a distribution to Sanovest on account of the Second Equity Tranche, but in an unknown amount and at an unknown time; and
- (b) Sanovest's Revised Bid (as defined below) contemplates: (i) a cash distribution to 599 in the amount of \$7.5 million on account of its share of the First Equity Tranche; and (ii) a cash distribution to 599 in the amount of \$500,000 on account of its share of the Third Equity Tranche, for a total of \$8 million, payable on closing.

6. Considering the distribution waterfall, Sanovest's Revised Bid is patently superior to the 599 Bid, and for that reason Sanovest opposes the Receiver's application to approve the 599 Bid and the Proposed Transaction. Rather, Sanovest submits that the Court should approve the Revised Bid, or, in the alternative, direct a further bidding process as between Sanovest and 599.

7. It is now clear that the equity holders are the only stakeholders whose economic interests will be affected by any change in the value obtained for Ecoasis' assets. In other words: the receivership process has advanced to the point where it is now a question of how much one equity holder is prepared to accept in order to sell its interest to the other equity holder. For that reason, it is appropriate that any relief granted by the court on this application ensures that question can be answered.

Procedural History of the SISP

8. In early 2025, Sanovest, both directly and through its legal counsel, had discussions with the Receiver regarding the initiation of a sale process in respect of Ecoasis' assets. In the course of those discussions, the Receiver provided a template term sheet to be used in the preparation and

submission of a stalking horse bid. The draft term sheet included a schedule, which contemplated a deadline of March 14, 2025 for the submission of any proposed stalking horse bid. This timeline was later revised to contemplate non-binding offers by March 21, 2025 and binding offers 10 days after receipt of a report being prepared by Placemark Design Studio Inc. (which was ultimately delivered in draft on April 29, 2025).⁴

9. On March 14, 2025, Sanovest submitted a term sheet to the Receiver for its consideration as a potential stalking horse bid. With Sanovest's consent, the Receiver later shared the terms of that bid with 599.⁵

10. Although Sanovest understands that 599 also submitted a term sheet to the Receiver for consideration as a stalking horse bid, it is not known to Sanovest when such bid was delivered, except that it had not been delivered by April 2025.⁶

11. Throughout the spring and summer of 2025, Sanovest continued its discussions with the Receiver regarding its potential stalking horse bid and, in early June 2025, at the Receiver's request, authorized the Receiver to share its term sheet with 599 who, by that time, had submitted a term sheet for a potential stalking horse bid. Sanovest agreed to the Receiver's request in order to facilitate transparency and efficiency in the Receiver's discussions with the equity holders by ensuring 599 had the opportunity to consider the implications of Sanovest's proposed deal structure and terms.⁷

12. 599, however, did not reciprocate. The Receiver advised Sanovest that it could not share 599's stalking horse bid or terms, resulting in disparate transparency and information sharing between the parties. This remained the case until November 21, 2025, when Sanovest received a copy of the 599 Bid. As a result of 599 refusing to share its earlier bids, among other things, Sanovest was unable to assess the structure and implications of 599's deal and take steps to ensure the bids were more easily comparable.⁸

⁴ Affidavit #7 of Tian Kusumoto made December 1, 2025 (the "Kusumoto Affidavit") at paras 4 to 6.

⁵ Kusumoto Affidavit at paras 7 and 9.

⁶ Kusumoto Affidavit at para 8.

⁷ Kurumoto Affidavit at para 9.

⁸ Kusumoto Affidavit at paras 10 and 21.

13. On July 15, 2025, the court granted an order approving a sale and solicitation process (the “SISP”), which was appended as Schedule “B” to the order. The SISP did not include a stalking horse bid, but contemplated that the Receiver could subsequently apply to the court for approval of a stalking horse bid (though it did not do so).⁹

14. The SISP established a Letter of Intent Deadline of September 16, 2025, a Final Bid Deadline of November 3, 2025 and, at the instance of the Receiver, an auction or other further bidding process to be concluded by November 17, 2025.

15. At all times during its discussions with the Receiver concerning the sale process, Sanovest was consistent in advising that it believed that the best way to maximize value was to proceed to an auction among the parties submitting qualified Final Bids. Part of Sanovest’s rationale for its position was an expectation that, at the end of the process, it was likely to come down to a contest between the two equity holders, and, in that situation, it would be important to arrive at the maximum amount the “buying” equity holder was prepared to pay the “selling” equity holder.¹⁰

16. To be clear, while the Receiver did indicate that there might be an auction or other further bidding process, it did not commit to Sanovest that this would necessarily be the case. Similarly, at no time did the Receiver indicate that it believed an auction – or other bidding process following the Final Bid Deadline – would not be appropriate or beneficial.¹¹

17. Sanovest submitted a bid to the Receiver in accordance with the SISP and in advance of the Letter of Intent Deadline. Following the submission of this bid, the Receiver qualified Sanovest as a Qualified Bidder pursuant to the terms of the SISP, thereby qualifying Sanovest to submit a bid for the Final Bid Deadline of November 3, 2025.¹²

18. Prior to the Final Bid Deadline, Sanovest engaged with the Receiver to determine whether it had concerns with the structure, or other terms, of Sanovest’s bid. As a result of those discussions Sanovest prepared a final bid in a form it expected the Receiver could either recommend to the

⁹ SISP, para. 6.

¹⁰ Kusumoto Affidavit at para 16.

¹¹ Kusumoto Affidavit at para 17.

¹² Kusumoto Affidavit at para 13.

court for approval, or at the very least, would qualify Sanovest to participate in an auction or any other further bidding process implemented by the Receiver.¹³

19. Sanovest submitted a further bid (the “**Initial Bid**”) to the Receiver by the Final Bid Deadline under the SISP. Among other things, the Initial Bid contemplated a distribution to 599 in the amount of \$7.5 million (i.e. its share of the First Equity Tranche), and was equivalent to a cash purchase price of \$135 million for all of Ecoasis’ assets.¹⁴

20. Sanovest structured and priced its Initial Bid so as to ensure that it would be invited to participate in any further round of bidding, should the Receiver receive multiple bids. As explained by Sanovest to the Receiver in its cover letter under which the Initial Bid was delivered, an increase in the effective purchase price up to \$150 million would not require Sanovest to pay any additional cash at closing, and would not change 599’s recovery—any cash bid from \$120 million to \$150 million would result in 599 being entitled to \$7.5 million by way of equity distribution.¹⁵

21. On or about November 18, 2025, the Receiver communicated to Sanovest its intention to select the 599 Bid as the Successful Bid under the SISP. A copy of the 599 Bid was delivered to counsel for Sanovest on the afternoon of Friday, November 21, 2025.¹⁶

22. Despite having had little time to analyze the 599 Bid, Sanovest has already identified a number of significant concerns with it.

23. First, the 599 Bid contemplates a purchase price of \$141,440,724.50, of which \$7.5 million is to be paid by the Purchaser issuing to the Developments Partnership 7,500,000 “Redeemable Special Shares” in the capital of the Purchaser. There are a number of problems with payment of any part of the purchase price in this manner, all of which boil down to the question

¹³ Kusumoto Affidavit at paras 14 and 18.

¹⁴ Kusumoto Affidavit at para 19.

¹⁵ Kusumoto Affidavit at para 19. Any equity distribution to 599 is subject to reduction for any prior distributions to it, and to setoff in respect of any claims against it by the Developments Partnership.

¹⁶ Kusumoto Affidavit at paras 20 and 21.

of whether the “Redeemable Special Shares” have any value, let alone a value of \$7.5 million. In the circumstances, there is no basis on which the court might conclude that is the case.

24. As a starting point, in attributing value to any shares, one would expect to see a cap table showing the total issued shares in all share classes of the company. This would need to be accompanied by evidence as to the company’s assets and their value. There is no evidence concerning either of these items, meaning there is no way to value the “Redeemable Special Shares”.¹⁷

25. Apart from the foregoing, the “Redeemable Special Shares” are, by their terms, non-retractable, non-voting and non-participating, i.e. subordinated debt with no set repayment entitlement, meaning they have no effective value.¹⁸

26. For the foregoing reasons, the purchase price payable under the 599 Bid cannot be said to be \$141,440,724.50. It must be discounted by \$7.5 million, making it \$133,940,724.50 million (i.e. the cash consideration plus the amount of the liabilities to be assumed).

27. The 599 Bid also contemplates a distribution of the “Redeemable Special Shares” to 599, ostensibly on the basis that the purchase price is in fact \$141,440,724.50 and, at that price, 599 is entitled to an equity distribution of \$7.5 million on account of its partnership units.

28. If, for some reason, the court were to accept that the “Redeemable Special Shares” in fact have a value of \$7.5 million, there is no basis for 599 to receive a distribution in that amount at closing where there are extant disputes as to what amount 599 is entitled to receive by way of distribution. In that regard, there are two concerns:

(a) Mr. Matthews asserts that he received funds belonging to the Developments Partnership in the amount of *at least* \$2.95 million,¹⁹ and has stated that the receipts of such funds were intended to be treated as distributions to 599. On that basis, 599

¹⁷ Kusumoto Affidavit at para 22.

¹⁸ Kusumoto Affidavit at para 23.

¹⁹ Kusumoto Affidavit at para 26. Sanovest believes the amount received by Mr. Matthews was in fact significantly greater than \$2.95 million. This issue is engaged as part of the Excluded Litigation, and the discovery process concerning this issue is ongoing.

has no entitlement to a distribution from the Developments Partnership in the amount of \$7.5 million.²⁰

(b) Mr. Matthews has admitted that he owes Tom Kusumoto approximately \$1,585,000, and that such amount would be paid from, and is only payable on the issuance of, any profit distribution to 599 following a substantial disposition of the Developments Partnership's land and business. Structuring a distribution to 599 as "Redeemable Special Shares" in the manner contemplated by the 599 Bid would preclude any payment if Mr. Matthews (admitted) debt to Tom Kusumoto.²¹

29. There is a further problem with the proposed \$7.5 million initial distribution to each of 599 and Sanovest under the 599 Bid. Specifically, the 599 Bid fails to provide for the priority distribution to each of the Partners on account of the tax liability each would incur as a result of the transaction. Those liabilities are calculated by Sanovest to be \$10,232,296 for Sanovest and \$2,132,296 for 599.²² Under the Partnership Agreement, those amounts would have to be distributed first, before any distribution on account of the First Equity Tranche, and yet the 599 Bid does not contemplate any such distribution.²³

30. On the foregoing bases, Sanovest's Initial Bid is either:

- (a) superior to the 599 Bid, if comparing the top-line purchase price of each (and giving no value to the "Redeemable Special Shares"); or
- (b) at least as favourable to 599, given that it contemplates a cash distribution to 599 in the amount of \$7.5 million by way of equity distribution and does not require a determination of tax liabilities arising as a result of the sale of Ecoasis' assets.

31. Apart from the foregoing, the 599 Bid is more prejudicial to Sanovest than the Initial Bid (or Sanovest's Revised Bid, discussed below). Specifically, the 599 Bid:

- (a) results in approximately \$12,364,500 million in taxes being immediately payable by the Partners, of which approximately 83% is borne entirely by Sanovest; and

²⁰ Kusumoto Affidavit at para 25 and Affidavit #6 of Mia Liang made December 1, 2025 ("Liang Affidavit") at Exhibit C (pgs 3 to 4), Exhibit C (pg 31 at paras 54 and 64 and pg 32 at para 60).

²¹ Liang Affidavit at Exhibit B (pg 11 at para 11, pg 12 at para 13 and pg 13 at paras 19 to 20).

²² Kusumoto Affidavit at para 27.

²³ Note that the amounts of the tax liabilities are estimates only. The actual amounts cannot be finally determined until financial statements are completed, which may take months.

(b) does not result in the immediate payment, at closing, of the amount to which Sanovest is entitled on account of the Second Equity Tranche, as such amount will not be known until a claims process is concluded and all tax liabilities are quantified and paid.

The Sanovest Revised Bid

32. On November 21, 2025, after learning that the Receiver did not intend to conduct a further bidding process, and after receiving a copy of the 599 Bid, Sanovest delivered a revised bid (the “Revised Bid”) to the Receiver.

33. The Revised Bid improves upon the Initial Bid, and is patently superior to the 599 Bid. Among other things, the Revised Bid:

- (a) contemplates the payment, at closing, of all unsecured liabilities of Ecoasis, but for the assumption of certain specified unsecured liabilities;
- (b) contemplates the assumption of all secured liabilities of Ecoasis;
- (c) contemplates the payment to 599, in cash at closing, and without deductions or setoff based on prior distributions or claims against 599, of \$8 million on account of its share of the First Equity Tranche and the Third Equity Tranche in consideration for the cancellation of its equity interests in Ecoasis;
- (d) equates to a cash purchase price of \$157,860,000; and
- (e) results in no adverse tax consequences for Ecoasis, 599 or Sanovest (whose tax obligations are instead deferred).²⁴

34. Viewed simply from the perspective of the equity holders (i.e. the only parties whose financial interests are impacted by the competing offers):

- (a) 599 is better off as it: (i) receives cash in the amount of \$8 million, without deduction or setoff, as opposed to “Redeemable Special Shares” of unknown (and likely zero) value; (ii) like the Initial Bid, does not require any determination of tax liabilities arising as a result of the sale of Ecoasis’ assets; and (iii) is not allocated any taxable income from the Developments Partnership; and
- (b) Sanovest is substantially better off as it preserves its debt claims and partnership equity interests and defers its tax liabilities indefinitely.

²⁴ Kusumoto Affidavit at para 31.

35. The Revised Bid is not subject to any conditions, including any financing conditions, apart from court approval, and is contemplated to close before December 31, 2025.

Part 4 LEGAL BASIS

Sanovest's Revised Bid Should be Considered

36. The starting point for this court's determination as to whether to approve the 599 Bid in the face of Sanovest's superior Revised Bid (submitted after the Final Bid Deadline) are the considerations espoused by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair*. Those considerations are:

- (a) Whether the receiver made sufficient efforts to obtain the best price and did not act improvidently;
- (b) The interests of all parties;
- (c) The efficacy and integrity of the process by which offers were obtained; and
- (d) Whether there has been any unfairness in the sale process.

Royal Bank of Canada v. Soundair Corp., [1991] O.J. No. 1137.

37. A receiver's business judgment is entitled to deference and offers will not be set aside "simply" because a later and higher bid is made, and the court may refuse to entertain a late-submitted offer, even for a higher price. However, the BC Court of Appeal has made clear that "in practice, that is only done where the improvement on price is not significant and, in most cases, where it also appears that the late bid is less firmly secured than the recommended one."

British Columbia v. Baron Enterprises Ltd. ("Baron"), 2000 BCCA 317 at para 40.
Bank of Montreal v. Renuka Properties Inc. ("Renuka"), 2015 BCSC 2058 at para 31.

38. Put succinctly, late offers will generally be considered if they significantly enhance the outcome for creditors and stakeholders as the primary objective of every receivership is to maximize value. As noted by Blok J. in *Renuka*, and adopted by Fitzpatrick J. in *Port Capital*, "the primary interest to be considered by the Court is that of the creditors, and to see that the best possible price is obtained".

Renuka, surpa at para 31.
Re Port Capital Development (EV) Inc. ("Port Capital"), 2021 BCSC 1272 at para 101.

QRD (Willoughby) Holdings Inc v MCAP Financial Corporation, 2024 BCCA 318 at paras 70-75.

39. In recent cases, when faced with a motion to approve an offer when there are late bids for greater value, courts have directed an auction or other bidding process. Such an approach could also be invoked in this case to ensure both bidders (and financial stakeholders) have an opportunity to put their best offers forward.

Cameron Stephens Mortgage Capital Ltd v Conacher Kingston Holdings Inc, 2025 ONCA 732 at paras 35-37, 39-41 and 43-44 (“**Conacher**”).
Fox Island Development Ltd. and Advanced Venture Holding Co. Ltd. v. Kensington Union Bay Properties Nominee Ltd. and others, BC Supreme Court Action No. S-244137 (“**Hotel Versante**”), unreported decision of Madam Justice Fitzpatrick made October 23, 2025.

40. Leaving aside the fact that Sanovest’s Revised Bid is materially better than the 599 Bid, in this case, the court’s consideration of Sanovest’s late bid is appropriate, including because:

- (a) 599 has itself disregarded timelines for submission of bids in relation to the sale process (albeit prior to the initiation of the SISP itself);
- (b) Sanovest was transparent and cooperative throughout the process, including by authorizing the Receiver to share its stalking horse bid with 599, while 599 refused to extend Sanovest the same courtesy;
- (c) the SISP expressly contemplates that an auction or further bidding process might occur after the submission of Final Bids, meaning 599 cannot suggest that it did not expect another bidder (including Sanovest) might be able to submit a further bid;
- (d) Sanovest has been consistent throughout the process in the expression of its expectation that an auction or further bidding process might ensue after the submission of Final Bids; and
- (e) Sanovest’s Initial Bid was superior to or least as favourable as the 599 Bid, which, if nothing else, insists upon the continuation of the process to arrive at what can be decisively said to be the best bid.

41. Quite apart from the foregoing, and perhaps of the greatest significance, the SISP has evolved to the point where it is now a contest between the two equity holders. In such circumstances - where one equity holder is seeking to acquire the interests of the other – any

concerns regarding the integrity of a court-supervised sale process, which is primarily focussed on ensuring third-party bidders are not discouraged from participating, are entirely allayed.

42. At this stage, the paramount consideration is whether the “buying” equity holder has paid at least the minimum amount the “selling” equity holder was prepared to accept for its interest in Ecoasis.

Sanovest’s Bid is Materially Better Than the 599 Bid

43. Sanovest’s Revised Bid is patently and materially better than the 599 Bid and, accordingly, should be preferred. The Revised Bid:

- (a) contemplates the assumption of all secured liabilities of Ecoasis;
- (b) ensures payment of all unsecured liabilities of Ecoasis;
- (c) equates to a cash purchase price of \$157,860,000;
- (d) results in no adverse tax consequences for Ecoasis, 599 or Sanovest (whose tax obligations are instead deferred); and
- (e) does not require a decision with respect to disputes concerning the Partnership Agreement and does not require the completion of tax returns before distributions can be made.

44. More importantly, and viewed from the perspective of the equity holders, being the only parties whose financial interests are impacted by the competing offers:

- (a) 599 is better off as it: (i) receives cash in the amount of \$8 million, without deduction or setoff, as opposed to “Redeemable Special Shares” of unknown (and likely zero) value; and (ii) incurs no tax liabilities; and
- (b) Sanovest is substantially better off as it preserves its claims and partnership interests and defers its tax liabilities indefinitely.

45. By way of direct comparison of the competing offers (to the extent that is possible):

- (a) the Revised Bid is equivalent to a cash bid of \$157.86 million, which is greater than the 599 Bid by \$16.4 million;
- (b) 599 will receive cash of \$8 million in exchange for its equity interests, without deduction or setoff, whereas under the 599 Bid, 599 receives “Redeemable Special Shares” in the Purchaser ostensibly valued at \$7.5 million, without evidence as to such value, and without accounting for deductions for previous distributions; and

(c) the Revised Bid results in no adverse tax consequences for the Partners, whereas under the 599 Bid the Partners immediately incurs significant tax liabilities in the amount of \$12,364,500, 83% of which are borne by Sanovest.

46. A comparison of the implications of the 599 Bid versus the Revised Bid is included in the Receiver's Ninth Report.

47. While most other stakeholder interests remain unaffected under either transaction²⁵, there are significant implications for the equity interests, which favour approval of the Revised Bid. There is no prejudice suffered by 599 or the Respondents if the Receiver is directed to transact the Revised Bid. Appropriately, this would result in the Receiver obtaining the best price for the equity holders, rather than the second-best price.

Re 8640025 Canada Inc and Telephone Data Centers Inc, 2017 BCSC 1291 at para 21, rev'd on other grounds by *Re 8640025 Canada Inc*, 2017 BCCA 303.²⁶

48. In situations where the Court is faced with competing bids where creditors are paid in full under both offers, but other stakeholders' interests are treated better under the second, higher offer, the Court should approve the offer that least prejudices stakeholder interests. For example, in the decision of *Toronto-Dominion Bank v Crosswinds Golf & Country Club Ltd*, the Ontario Superior Court did not approve an offer brought forward by a receiver that was \$1 million less than a subsequent late offer. Under either offer in *Crosswinds*, the secured creditor would be repaid in full; however, lien claimants and other creditors would likely receive nothing from the first offer, but stood to benefit from the subsequent offer. On this basis, and given other concerns regarding the receiver's sale process in that case, the Court declined to approve of the receiver's proposed first offer and instructed counsel to "establish a mechanism and timetable to establish the highest and best price...".

Toronto-Dominion Bank v Crosswinds Golf & Country Club Ltd, [2002] O.J. No. 1398 at para 19 (ON SC).

²⁵ The Partnership and Tom Kusumoto are adversely affected if 599 can credit bid, in one form or another, a portion of its \$7.5 million initial equity distribution that it admits in its pleadings in the Bear Mountain Litigation it has promised to those parties to use to satisfy its obligations to them. And Matthews, also a stakeholder, should be not be relieved from the consequences of his prior misconduct if this were permitted.

²⁶ Reversed not on the grounds that the Court had approved a late bid, but because the asset purchase and sale agreement included assets that did not belong to the debtors themselves, and the Monitor did not have the power to sell a third parties' assets.

49. Should this Court decline to exercise its discretion and approve the superior Revised Bid, at the very least, the Receiver should be directed to conduct an auction or other further bidding process in order to maximize value for the equity holders. This is squarely in line with the Court of Appeal's guidance in *Baron* that "where there is uncertainty whether the late bid should prevail, the usual course is to order sealed bids" as well as the approach taken in recent cases.

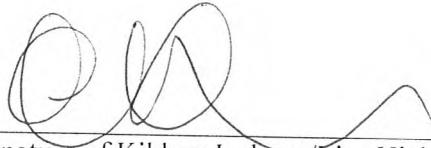
Baron, supra at para 41. See also *Conacher* and *Hotel Versante*.

Part 6 MATERIAL TO BE RELIED ON

50. Affidavit #7 of Tian Kusumoto made December 1, 2025;
51. Affidavit #6 of Mia Liang made December 1, 2025;
52. Eighth Report of the Receiver, Alvarez & Marsal Canada Inc., dated November 24, 2025;
53. Ninth Report of the Receiver, Alvarez & Marsal Canada Inc., dated November 28, 2025.

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

Dated: December 1, 2025



Signature of Kibben Jackson/Lisa Hiebert
Lawyers for Application Respondents

The Solicitors for the Petitioners are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: kjackson@fasken.com / lhiebert@fasken.com (Reference: Kibben Jackson/Lisa Hiebert/329480.00004)