

CANADA / JUDGMENT

Sanovest Holdings Ltd. v. Ecoasis Developments LLP

2025 BCSC 1504

COURT

Supreme Court of British Columbia

DECIDED

6 August 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1504 Sanovest Holdings Ltd. v. Ecoasis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sanovest Holdings Ltd. v. Ecoasis Developments LLP,

2025 BCSC 1504

Date: 20250806

Docket: S243389

Registry: Vancouver

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

Before: The Honourable Mr. Justice P. Walker

Reasons for Judgment

Counsel for the Petitioner:

A. Nathanson, K.C.

K. Jackson

L. Hiebert

J. Cameron

T. Paulson

L. Brusven

Counsel for the Attendee, Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver of the Respondents:

P. Rubin

Counsel for the Attendees, 599315 B.C. Ltd. and Daniel Matthews:

S. Stephens

L. Zhang

Counsel for the Attendee, Bear Mountain Resort and Spa Ltd.:

D. Babcock

Place and Date of Hearing:

Vancouver, B.C.

July 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 6, 2025

Table of Contents

Introduction.. 4

Background.. 5

The Key Parties. 5

Resorts is Insolvent 6

Oppression Proceedings. 7

Receivership Order 7

Sanovest's Application to Amend the Receivership Order 8

Legal Test. 10

Jurisdiction. 10

Test and Factors. 10

Findings. 12

Analysis. 19

Disposition.. 23

Introduction

- [1] The issue raised on this hotly contested application is whether I should amend a receivership order I issued by consent in September 2024 concerning lands and assets known as the "Bear Mountain Resort" to include the operations and business of a related golf course and tennis business owned or operated by one of the respondents, Ecoasis Resort and Golf LLP. The parties refer to that entity as "Resorts" and for convenience, so will I.
- [2] I issued the receivership order by consent ("Receivership Order") on September 18, 2024, following a lengthy and fractious hearing, where nearly every issue was in dispute. The parties ultimately agreed to an order appointing Alvarez & Marsal as receiver and manager ("Receiver") over certain lands ("Lands") beneficially owned by the respondents, Bear Mountain Adventures Ltd. ("BMA") and Resorts, together with all of the assets and undertakings of the other respondents, including Ecoasis Bear Mountain Developments Ltd. ("EBMD"). The parties also agreed to exclude Resorts' business (which includes all of its operations) from the Receivership Order at that time.
- [3] The Lands (28 parcels, both developed and undeveloped and spread over approximately 1,100 acres) encompassed by the Receivership Order are located in a semi-private urban resort community known as Bear Mountain, straddling Langford and the District of Highlands north of Victoria on Vancouver Island. Currently, approximately 3,000 residents reside in 1,600 single-family residences, townhomes, and condominiums at Bear Mountain.
- [4] Resorts' business (managed by EBMD) includes two golf courses and a golf practice facility, including a driving range, putting greens, and a golf club storage space. Also encompassed within Resorts' business and operations (I will refer to both as "Resorts' business") are a tennis club, pro shop, various food and beverage services, and trail access networks on some of the Lands.

- [5] The hearing of the application concluded on July 3, 2025. On July 10, 2025, I advised the parties by memorandum of my decision to grant the order sought to amend the Receivership Order to include Resorts' business, with reasons to follow.

Background

The Key Parties

- [6] For this application, the relevant ownership structure of Resorts and the various Ecoasis entity respondents (who are separate from BMA) is through a tiered layer of entities (again, separate from BMA).
- [7] The parent entity and managing partner is EBMD. Immediately below EBMD in the tier is a limited partnership known as Ecoasis Developments LLP. The parties refer to it either as "Developments" or the "Partnership" (I will refer to it by the former). Below Developments in the tier sits Resorts and below Resorts is BM Golf Course Ltd.
- [8] The applicant, Sanovest Holdings Ltd. ("Sanovest"), and the application respondent, 599315 B.C. Ltd. ("599"), each own 50% of EBMD. Each one also owns 49.75% of the units of Developments (the remaining 0.5% is owned by EBMD). Developments owns 99% of Resorts (EBMD owns the remaining 1%).
- [9] The two principals of the various entities in this proceeding are Mr. Tian Kusimoto and Mr. Daniel Matthews. Mr. Kusimoto is a director of Sanovest. Mr. Matthews is the director and president of 599. Both hold significant positions in the various ownership entities. For example, Mr. Kusimoto is a director and the chief financial officer of EBMD. Mr. Matthews is a director and the chief executive officer and president of EBMD. Both are directors of the remaining corporate respondents (those entities are guarantors of Developments' indebtedness to Sanovest).
- [10] Mr. Kusimoto and Mr. Matthews are at significant odds as to the manner in which the Lands as well as Resorts' business should be sold in order to resolve significant liquidity issues facing EBMD, Developments, Resorts, and their related entities. Their dispute continues to be fractious.
- [11] Sanovest is also the secured lender to Developments, and importantly for this proceeding, Sanovest has a contractual right to seek appointment of a receiver.

Resorts is Insolvent

- [12] According to Sanovest, Developments and its related entities, including Resorts, are insolvent and cannot pay their debts. Sanovest claims it is owed at least \$62 million from Developments (plus accruing interest, at 8% capitalized quarterly), and that Developments has defaulted on its loan obligations.

- [13] The Receiver reports that with the exception of select lot closings, Developments has not conducted any real estate transactions since 2021 due to the ongoing dispute between Sanovest and 599. The Receiver also reports that as at the date the Receivership Order was made, Developments' assets consisted of approximately \$4,925 in cash and 28 parcels of the Lands with an assessed total value of \$85 million; its liabilities totalled over \$64.5 million (including the debt owed to Sanovest).
- [14] I find it beyond question that Resorts is insolvent; it is unable to remit its statutory payables nor pay its accounts payables and trade creditors. Its current cash flow is barely sufficient to meet its ongoing operating expenses, threatening its survival.
- [15] What is also clear is that the assurance I was given by 599 and Mr. Matthews in September 2024 that Resorts itself is profitable, and its problems stem solely from the absence of land sales of property encompassed in the Receivership Order, is not supported by the Receiver's investigation. To the extent the submission regarding the liquidity of its business was correct at that time, it is certainly, I find, no longer the case. In addition to its financial issues, the Receiver advises that Resorts continues to suffer from operational and personnel issues that create significant ongoing instability for its business. Now, with the benefit of the Receiver's investigation, it has become clear that Resorts itself is not, or is no longer, profitable and its problems do not stem solely from the absence of land sales of property encompassed in the Receivership Order.
- [16] While 599 and Mr. Matthews do not dispute Developments' indebtedness to Sanovest, nor that Developments is in default of its loan agreement, they contest the amount owing. They also allege that Sanovest has engaged in oppressive conduct responsible for the liquidity crisis that led to the Receivership Order and the current significant liquidity issues facing EBMD, Developments, Resorts, and their related entities (an assertion vehemently denied by Sanovest).

Oppression Proceedings

- [17] The oppression dispute is the subject of separate proceedings ("Oppression Proceedings") in this court (VA S223937, S226218, S234047, and S234048) and will be determined at trial (the trial date has been or is about to be adjourned with the advent of new counsel being retained by 599).
- [18] The parties are aware, and in fact agreed, that I would not decide the merits of any submissions that engaged issues raised in the Oppression Proceedings.

Receivership Order

- [19] At the hearing that resulted in the Receivership Order, Mr. Kusimoto and Mr. Matthews acknowledged that some or all of the Lands must be sold to resolve the liquidity crisis and pay the debt owed to Sanovest by Developments. They disagreed over how many parcels needed to be sold and whether they should be sold en bloc as urged by Sanovest or through

sales of individual parcels over time as advocated for by 599 and Mr. Matthews. Thus, one of the tasks the Receiver was charged with was to consider the best manner and means in which to sell the parcels of Lands.

- [20] As mentioned above, excluded from the Receivership Order by agreement (but subject to further order of the court) is Resorts' businesses, which the parties agreed at that time would continue to be managed by EBMD (through Mr. Matthews, who has managed Resorts' business since 2013).
- [21] Given the ongoing highly charged dispute between Mr. Kusimoto and Mr. Matthews, including whether Resorts' business was solvent and properly managed by Mr. Matthews, it was agreed that the Receiver would review Resorts' operations and financial circumstances in order to allow the Receiver to provide me with its recommendation as to whether, inter alia, Resorts' business should continue to be managed by EBMD (through Mr. Matthews) and if so on what terms, or whether it should instead be brought within the ambit of the receivership. EBMD and Resorts also agreed to cooperate with and provide access to the Receiver.
- [22] The Receiver's report to court with its advice and recommendations was expected to be delivered to me by November 2024. Instead, shortly before the hearing of the instant application, the Receiver delivered multiple reports ("Reports") it had prepared over time for my review. In them, the Receiver identified numerous financial and operational issues impacting the viability of Resorts' ongoing business, and included the Receiver's ultimate recommendation that Resorts' business now be included within the receivership. I was told delivery of the Reports was delayed to allow Resorts and EBMD the opportunity to provide the Receiver with the requested information, which they did in stages over time.

Sanovest's Application to Amend the Receivership Order

- [23] Ultimately, the parties returned to court in response to Sanovest's application for: an order to amend the Receivership Order to (a) include Resorts' business; and (b) authorize the Receiver to take charge of an arbitration proceeding ("Hotel Arbitration") between it and entities that own or control a hotel ("Hotel") adjacent to Resorts, including collecting an award that Resorts received in the Hotel Arbitration (the Hotel is currently seeking to overturn a decision of a judge of the Court of Appeal dismissing its application for leave to appeal the arbitration award).
- [24] Sanovest maintains that the only reasonable, appropriate, and viable practical solution is to include Resorts' business within the Receivership Order.

- [25] In addition to relying on the issues and concerns identified by the Receiver in the Reports, Sanovest points to certain portions of the transcript of proceedings from the hearing that led to the Receivership Order to support its contention that 599 and Mr. Matthews agreed that Resorts' business would be brought within the receivership if the Receiver recommended it (as it now does).
- [26] Mr. Matthews and 599 are adamantly opposed to the relief sought.
- [27] Mr. Matthews and 599 contend that Sanovest is using its position as the secured lender/ creditor to block any attempts by EBMD, Resorts, and 599 to obtain further loan financing, contrary to the agreement they say was reached during the hearing in September 2024 that resulted in the Receivership Order. They claim that their agreement called for the matter of further loan financing to be discussed and negotiated between Resorts and the Receiver without any involvement and right of veto from Sanovest. They argue that as Sanovest is blocking their attempts to secure further financing contrary to that agreement, this constitutes continuing oppressive conduct by Sanovest (which is an allegation that appropriately falls for determination in the Oppression Proceedings and not on this application).
- [28] During the course of their submissions, Mr. Matthews and 599 suggested various potential solutions to what they contend would avoid unnecessary stigma and costs consequent upon Resorts' business being placed into the receivership that would, in turn, dilute the interests of both 599 and Sanovest.
- [29] One of those solutions called for me to formally direct the Receiver to obtain new financing to advance to Resorts pending the sale of Resorts' business in conjunction with the Lands (the latter falling within the receivership).
- [30] In this respect, one suggestion was that I direct the Receiver to obtain funding of \$6 million to pay what 599 asserts is owed by Sanovest. Another funding suggestion was that I direct the Receiver to secure borrowing in an amount that would pay out Sanovest in part or entirely on the same or better terms than Sanovest's loan. Another was to direct the Receiver to obtain funding generally that it could advance to Resorts, with the loan proceeds to be used to pay unsecured creditors and meet operation expenses as the Receiver determines in its discretion and on terms it (or the court) deems appropriate. Alternatively, they suggested that I allow 599 and Mr. Matthews additional time to secure financing that the Receiver (or the court) considers appropriate without the need for Sanovest's participation and consent.
- [31] Distinct from funding solutions, 599 and Mr. Matthews also suggested that the status quo be preserved, at least for a certain period of time (e.g. for at least two more weeks after the July 3, 2025 hearing date) or such other order the court considers appropriate, pending a positive outcome from the Receiver's sales and marketing process.

- [32] For the reasons that follow, I have determined that it is just and convenient to amend the Receivership Order to include Resorts' business, specifically on the terms proposed by Sanovest and supported by the Receiver.
- [33] My determination is not predicated on the parties' differing interpretations of the agreement they say they reached in September 2024. It is grounded on Resorts' present circumstances, the advice and recommendation from the Receiver, the application of the factors discussed in the case authorities (including *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527), and the absence of any reasonably viable, less intrusive remedy.

Legal Test

Jurisdiction

- [34] This court's jurisdiction to appoint a receiver is grounded in s. 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA] and s. 39 of the Law and Equity Act, R.S.B.C. 1996, c. 253 [LEA]. No party challenges my authority to amend the Receivership Order.

Test and Factors

- [35] The applicable test is whether it is just and convenient to make the order sought for a receiver and manager: *Maple Trade* at para. 13. The onus is on the applicant Sanovest, which it has met: *BG International Limited v. Canadian Superior Energy Inc.*, 2009 ABCA 127 at paras. 16-17.
- [36] In *Maple Trade*, Justice Masuhara summarized a non-exhaustive list of factors to consider when determining whether it is just and convenient to appoint a receiver, which I have excerpted below:
- [25] There are a number of factors that figure in the determination of whether it is appropriate to appoint a receiver. In *Bennett on Receivership*, 2d ed. (Toronto: Carswell, 1999), at p. 130, a list of such factors is set out as follows:
- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
 - b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - c) the nature of the property;
 - d) the apprehended or actual waste of the debtor's assets;
 - e) the preservation and protection of the property pending judicial resolution;

- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

[26] The fact that the finance agreement acknowledged the right of the plaintiff to make application for a receiver is a strong factor in support of the imposition of a receiver.

[37] This list is a collection of factors to be considered holistically: Pandion Mine Finance Fund LP v. Otso Gold Corp., 2022 BCSC 136 at para. 54; Bank of Montreal v. Gian's Business Centre Inc., 2016 BCSC 2348 at para. 23; Schmidt v. Balcom, 2016 BCSC 2438 at para. 74; Coromandel Properties Ltd. (Re), 2023 BCSC 2187 at para. 23; Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477 at paras. 25-54; BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 1953 at paras. 43-44. It is not necessary to consider each factor separately, though the court must consider the potential harm caused by a receivership order to the value of the assets and avoid granting the order if a viable, less intrusive remedy can be fashioned: Schmidt at paras. 74-75.

Findings

[38] The facts set out in this and the other sections of these reasons are my findings of fact.

[39] I will begin with my overarching finding that I accept as accurate the factual information reported by the Receiver, at the time it was contained in each of its Reports, consequent upon its investigation into the viability of Resorts' business and its current management. The Receiver's independent investigation spanned over eight months and included its review and consideration of information provided by and representations from Resorts' management as well as the Receiver's review of Resorts' unaudited financial statements.

[40] A useful summary of the nature and scope of the Receiver's ongoing investigation carried out to date, is aptly encapsulated in this excerpt from its first report dated October 25, 2024 ("First Report"):

8.4 The scope of the Receiver's report on the Resorts' Business included, among other things, an assessment of the following:

- a) Resorts' current and historical financial performance and an assessment of Resorts' financial position;
- b) Resort's near-term liquidity outlook to January 3, 2025 and 11-week cash flow forecast and a review of the underlying assumptions relating to same;
- c) Resorts' one year (2025) forecast including Resorts' near-term transition plan, three-year capital expenditure plan and proposed pay down strategy of aged accounts payable/proposed potential advances from the Receiver;
- d) financial reporting, budgeting and cash management practices; and
- e) general management of the Resorts Business.

[41] The Receiver's investigation extended beyond the January 3, 2025 date referenced in para. 8.4(b) in the excerpt above and continued up to the date of the hearing of Sanovest's application on July 3, 2025.

[42] In carrying out its investigation, the Receiver further advises that it:

- (a) attended multiple in-person meetings with Mr. Matthews and Mr. Kusimoto;
- (b) held meetings with key staff and department leaders including Resorts' general manager, head golf pro, supervisor of golf services, superintendent of agronomy, and development staff who support accounting functions for its business (since, the Receiver determined, they "have a deep understanding and knowledge of the [L]ands and property holdings": First Report at para. 8.5);
- (c) conducted site visits to meet with Resorts' management; and
- (d) pursued delivery of requested information from Resorts on an ongoing basis.

[43] By the time the Receiver issued its fourth report on April 14, 2025 ("Fourth Report"), it had determined that it was now the appropriate time to include Resorts' business in the scope of the Receivership Order:

9.6 It is the Receiver's view that now would be the appropriate time to transition the Resorts Business to the Receivership Proceedings to provide the necessary stability to the Resorts Business in parallel to the Receiver advancing a sales and marketing process for Bear Mountain.

[44] In reaching that conclusion, the Receiver highlighted in the Fourth Report numerous issues with Resorts' business, not limited to financial issues, including:

- (a) Resorts' 17-week fiscal forecast illustrates very near-term liquidity challenges absent a capital injection from the Receiver of at least \$1.35 million (opposed by Sanovest) to fund unsecured creditors in priority to Sanovest as secured creditor, that Resorts says it would repay once the arbitration award from the Hotel Arbitration is collected;
- (b) Resorts' forecast for fiscal year 2025 does not appear realistic since it projects higher revenues and profits than prior years based on significantly higher initiation (membership) fees (the projected increase is approximately 781%); at best, that forecast appears to break-even when initiation fees are normalized;
- (c) Resorts' forecasts for fiscal years 2025 to 2028 also appear optimistic and highly reliant on strong golf revenues tied to real estate sales resulting from a successful marketing and sales process;
- (d) Resorts' forecast for fiscal year 2024 does not budget for advancement of a transition plan that provides near-term capital improvement and offers members and guests an enhanced customer experience until a full-scale clubhouse can be constructed;
- (e) Resorts' aged accounts payable are approximately \$2.7 million inclusive of statutory payables of \$373,663, which were to have been brought current;
- (f) Resorts' financial and operational instability (including liquidity concerns and leadership resignations) may impact the impending marketing and sales process the Receiver anticipates commencing in the near-term; and
- (g) Resorts' liquidity challenges may lead to suboptimal performance or enforcement and/or collection actions by creditors.

[45] Those factual determinations and concerns remain, I find, valid.

[46] By the time Sanovest's current application came on for hearing in early July 2025, Resorts' financial position had deteriorated to the point that maintaining legal representation to resist the Hotel's efforts to set aside the arbitration award from the Hotel Arbitration was in serious jeopardy (significant legal fees remain unpaid).

[47] At the hearing, the Receiver also provided me with its supplement to the Fourth Report ("Supplement"), reiterating its opinion that Resorts' business should be included in the receivership to provide the necessary stability to the business in parallel to the Receiver's efforts to advance a marketing and sales process for both Resorts and the Lands.

[48] The Receiver also confirmed during the hearing that even though some of Resorts' unfilled leadership positions (identified in the Fourth Report) had recently been filled, its recommendation remains unchanged. Resorts continues to lack a comptroller (it is paying an external accounting firm), a food and beverage manager, and a human resources manager (responsible for Resorts' approximately 130 employees).

- [49] The Receiver did not change its determination that Resorts' financial forecasts are unduly optimistic.
- [50] As part of their opposition to the order sought by Sanovest, 599 and Mr. Matthews point to the Receiver's comment in its Fourth Report that its management of Resorts' business would not significantly improve its operations. However, what the Receiver actually says is that absent significant capital to advance a transition plan and other improvements to operations, the Receiver does not view its management of Resorts' business would significantly improve operations.
- [51] I am satisfied and find that the Receiver's recommendation to move Resorts' business into the receivership is grounded on its stated goals to stabilize Resorts' business to the point "where all expenses would be planned to be funded in a timely manner" (see: Fourth Report, para. 9.3), thereby increasing its value in the marketing and sales process to the benefit of all stakeholders.
- [52] In addition to the above-noted findings, I am also satisfied and find that:
- (a) Resorts had to relocate some of its recreational amenities to a different facility on a temporary basis from the Hotel's facilities as a result of its dispute with the Hotel;
 - (b) Resorts lacks the funds and financing to construct its own facilities;
 - (c) some of Resorts' facilities are dated and inadequate to support a luxury golf resort experience;
 - (d) Resorts' accounting team has limited capacity;
 - (e) Resorts lacks a comptroller, which has caused delays and gaps in its financial reporting, including delays in its statutory filings (its filings are now up to date but as noted, those remittances have not been paid);
 - (f) Resorts' revised cash flow forecast for 2025 is predicated on receipt of an advance from the Receiver of \$1.3 million;
 - (g) Resorts' projected net income for the year ending December 31, 2025 is premised on recovery of the arbitration award from the Hotel Arbitration;
 - (h) Resorts does not generate sufficient revenue or have funding capacity to meet its outstanding operational expenses;
 - (i) Resorts continues to suffer from operational and personnel issues that create significant ongoing instability for its business;
 - (j) a considerable portion of the Receiver's costs to date is consequent upon its ongoing efforts to pursue delivery of information from Resorts and to assess the viability of Resorts' business;

- (k) Developments is in default of its loan agreement with Sanovest;
 - (l) When 599 and Mr. Matthews deny waste is occurring, they overlook the need to upgrade Resorts' facilities; and
 - (g) Resorts augments its efforts to raise money by continuing to sell golf memberships at discounted pricing.
- [53] Taking into account the breadth and depth of the Receiver's independent investigation conducted over a period of many months, I prefer the Receiver's report of factual information and advice over the evidence presented on behalf of 599 and Mr. Matthews in their attempt to minimize their operational and liquidity issues. It is clear that the issues identified by the Receiver have not and cannot be resolved absent an injection of capital and the Receiver's involvement to stabilize Resorts' business and to protect the Hotel Arbitration award.
- [54] I also reject the assertion by 599 and Mr. Matthews that the Receiver's determination that seeking additional funding from a third party is inappropriate was influenced by Sanovest's opposition. I accept the Receiver's explanation that it acted prudently in its role as an independent court officer in seeking Sanovest's position. As the Receiver correctly pointed out, and quite apart from its position as the secured creditor, Sanovest is an equal partner and owner with 599; if Sanovest's opposition led to additional litigation, it would erode the value of the assets falling within the receivership and to Resorts, to the detriment of both Sanovest and 599.
- [55] There is no question, I find, that the Receiver has acted independently and prudently throughout in this proceeding, including in its investigation of the viability of Resorts' business and whether it should be brought within the ambit of the receivership.
- [56] I accept the Receiver's advice, excerpted below from the Fourth Report, that seeking the funding requested by Resorts is inadvisable:

9.2 The Receiver is of the view that the Receivership Order grants discretion to the Receiver to borrow funds within the limits set out in the Receivership Order and while the consent of Sanovest is not required, the Receiver would prefer to avoid disputes between the two main interested parties if possible.

9.4 The Receiver advance of \$1.35 million would largely be utilized to fund creditor claims that may not improve the current state of Resorts operations but merely maintain the status quo temporarily. Creditor claims would be stayed if Resorts were added to the Receivership Proceedings and generally, such costs would not be funded in a receivership. The Receiver acknowledges that such claims may ultimately be paid from the sale of Developments and Resorts (depending on total realizations and transaction structure). However, there is no certainty at this stage as to whether proceeds could be sufficient to permit payment of these unsecured claims.

9.5 Although the Receiver has the discretion to advance funds to Resorts, the Receiver (i) is not supportive of paying down creditor liabilities that may otherwise be stayed in a receivership and which may not provide material or long-term benefits to the Resorts Business; and (ii) would prefer to avoid staking steps that may initiate shareholder disputes where such steps would not appear to the Receiver to have material advantages.

[Emphasis added]

- [57] Additionally, I reject the submission of 599 and Mr. Matthews that the Receiver and Sanovest have unjustifiably refused to agree to lending they say they arranged with a third-party lender to Resorts (through Developments) sufficient to supplant Sanovest.
- [58] Indeed, as the details of the financing were disclosed during the hearing, it became clear that the proposed financing was an expression of interest specifically stated not to constitute an offer capable of acceptance. Not only did the proposal include terms providing the lender with a veto over other potential financing for Developments (seemingly overriding the authority granted to the Receiver in the Receivership Order), the putative lender's proposal contains: (a) approximately 15 conditions precedent (some of which cannot be fulfilled at this immediate juncture); (b) a requirement for an appraisal; (c) a significant cash holdback to ensure mandatory monthly interest payments are made (called an "interest reserve"); and (d) a \$50,000 commitment fee. The proposal could also impact the security of the advances that Sanovest has made to fund the receivership.
- [59] Even if the third-party lender's proposal is transitioned into a binding offer, its terms are inferior to those in which Sanovest is currently funding the receivership, such that, as the Receiver advises, maintaining the existing interim financing with Sanovest is in the best interests of stakeholders due to the more favourable and flexible financing terms: Supplement at para. 3.4.
- [60] Lastly, no other financing proposals have been obtained by 599 and Mr. Matthews. I reject their submission that they only recently began to source potential financing when they determined that the Receiver decided against it. It is evident from the transcript of the September 2024 hearing that 599 and Mr. Matthews contemplated securing financing from the outset, subject to negotiation with the Receiver. Resorts has had months to attempt to locate suitable financing. From what I have been told, it is clear that the Receiver has not sat back and refused to look for and consider other potential sources of financing.

Analysis

- [61] Mindful that appointing a receiver is extraordinary relief that should be granted cautiously and sparingly, I nonetheless find that it is just and convenient to do so considering the appropriate test and relevant factors from Maple Trade. Sanovest has well established that the Receivership Order must be amended to include Resorts' business.

- [62] It is clear on the evidence before me that all stakeholders will suffer irreparable harm absent proper management and funding of Resorts' business. Resorts does not have sufficient revenue or a feasible alternative source of funding to maintain its business (e.g., pay creditors, make lease payments for equipment, and outstanding statutory remittances). If Resorts' business is allowed to proceed on its current trajectory, plagued with its financial and operational constraints, the ultimate survival of the business is at significant risk, which would wholly harm all stakeholders beyond Sanovest, including creditors, suppliers, and employees.
- [63] Since Sanovest's security includes Resorts' business, Sanovest's right to recovery is in serious jeopardy. Including Resorts' business into the receivership will preserve the asset.
- [64] As pointed out, Sanovest has the contractual right to appoint a receiver under its security agreement. While the ultimate test the applicant must meet is that it is just and convenient to make an order for a receiver, the fact that a secured creditor has the right to make a private appointment of a receiver is a strong factor to be considered: *Maple Trade* at para. 26; *BCIMC Construction Fund Corporation* at paras. 43-44.
- [65] And, considering the nature of Resorts' business, which is agreed by the parties to be a critical component of the Receiver's planned marketing and sales process of both Resort's business and the Lands, amending the Receivership Order now to include Resorts' business will avoid any further deterioration in its value. With the Receiver in charge, the value of Resorts' business could well increase, which will be to the benefit of all stakeholders. Likewise, through the Receiver's efforts, funding for counsel to enforce the Hotel Arbitration award will be secured.
- [66] While there are additional costs to including Resorts' business in the receivership, these costs will be offset by Resorts otherwise being required to defend the claims of creditors (these claims will be stayed once Resorts' business is included in the receivership) and the time and expense arising from Resorts' managements' current need to engage in ongoing reporting to the Receiver.
- [67] No reasonably viable, less intrusive remedies to including Resorts' business within the receivership have been identified: *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263 at para. 81; *Schmidt* at paras. 69, 75; *Coromandel* at para. 40; *BG International* at para. 16.
- [68] No suitable financing that Resorts has obtained or other appropriate path forward have been identified. Instead, Resorts proposes that the status quo be maintained or that I direct the Receiver to borrow funds for Resorts' use unfettered by the normal constraints of a receivership, or allow it more time to secure financing, or for the court to fashion a remedy to avoid receivership.

- [69] Maintaining the status quo is not a viable option. The financial circumstances of Resorts' business put the viability of its continued operation at significant risk; if it fails, which is, I find, highly likely absent external funding, it will be to the detriment of all stakeholders. The ongoing viability of Resorts' business is important for the ongoing development of the Bear Mountain community and the Receiver's marketing efforts to sell the Lands and Resorts' business.
- [70] Requiring the Receiver to secure financing from Sanovest or a third party to pay an alleged (and disputed) \$6 million indebtedness contested by Sanovest treads on some of the issues to be decided in the Oppression Proceedings, which the parties agree should not be decided in this insolvency proceeding.
- [71] There is no evidence before me that third-party financing on terms equal to or better than existing financing from Sanovest can be obtained, let alone on terms that would not jeopardize Sanovest's security position as lender in the receivership proceeding.
- [72] It is also not appropriate in the circumstances of this case to direct the Receiver to borrow funds, against its recommendation, to pay to Resorts, an entity outside the receivership, where Resorts' use of funds is outside the control of the Receiver absent Resorts' consent or a court order (which engages jurisdictional issues that are unnecessary for me to decide on this application) and does not address the source of funding to pay for the Receiver's role in that respect. It also engages concerns about the potential impact of such funding on Sanovest's security. Involving the Receiver in the decision-making process to distribute funds would also mirror some of the Receiver's duties it would carry out if Resorts' business is brought into the receivership, to the point that would essentially be a de facto receivership.
- [73] Further, procuring funds for Resorts to use to pay unsecured creditors, which would be stayed in receivership, in priority to secured creditors' claims does not align with the purpose and intent of the BIA.
- [74] Last, asking the court to fashion its own remedy in this case, as suggested by 599 and Mr. Matthews, falls outside the court's role in receivership proceedings.
- [75] Without in any way determining the issues in the Oppression Proceedings, I find, at this juncture, that Sanovest's stated willingness to fund Resorts' business once it is encompassed in the receivership in compliance with the Receiver's direction and the Receivership Order is, in view of the issues facing Resorts' business, wholly appropriate.
- [76] In line with the Receiver's recommendation, informed in part from expert advice, Resorts agrees that its business should be sold as part of the Receiver's marketing and sales program. Placing Resorts' business in the receivership will stabilize its business and preserve the value of its assets until the Lands and Resorts' business can be sold. When brought into the receivership, Resorts' business can be appropriately funded through the Receiver's borrowings. Any collection and enforcement actions by creditors will be stayed

and not detract from Resorts' business operations. Resorts' business will be preserved, at least in the short term until it is sold, for the benefit of all stakeholders. Given Resorts' inability to pay its creditors (including its trade creditors) in full and remit its statutory payables on behalf of its employees, it is difficult to discern how placing it into receivership would further erode trust with its critical suppliers and employees.

- [77] The dispute between Mr. Kusimoto and Mr. Matthews remains intractable. Nearly every point is contested, resulting in endless litigation and attendant costs. An independent court's officer is necessary to bring order and stability to Resorts' business; the additional costs of the receivership will be offset by the savings in the parties' ongoing dispute and potential enforcement actions from creditors.
- [78] The Hotel Arbitration should also be brought within the Receiver's control to ensure the award is protected and enforced.
- [79] Thus, in all, I am satisfied that it is necessary to include Resorts' business in the receivership now to avoid the harm caused by a further deterioration of Resorts' business to the point of its failure.
- [80] The balance of convenience overwhelmingly weighs in favour of granting the order sought by Sanovest.

Disposition

- [81] Accordingly, I order the relief sought in Part 1, ORDERS SOUGHT in Sanovest's notice of application dated May 30, 2025 (and filed June 16, 2025), excerpted below:

An order substantially in the form attached hereto as Schedule "B" (the "Amendment to Receivership Order") amending the receivership order granted by this Court on September 18, 2024 (the "Receivership Order") to appoint Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the "Receiver") of the operations and business (the "Resorts' Business") of Ecoasis Resort and Golf LLP (the "Resort Partnership"), including the Resort Partnership's interest in the arbitration proceedings (the "Hotel Arbitration") between the Resort Partnership and Bear Mountain Resort & Spa Ltd., BM Management Holdings Ltd., and BM Resort Assets Ltd. (collectively, the "Hotel Operator") pursuant to section 243 of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3 (the "BIA"), and section 39 of the Law and Equity Act, RSBC 1996, c. 253 (the "LEA").

[Bold in original omitted]

"Walker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/15/2025BCSC1504.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sanovest-holdings-ltd-v-ecoasis-developments-llp-2025>

Prepared on 25 October 2026 · Esheria