

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM
MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE
SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN
ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD
HOLDING CORP. and FINAL BELL CORP.

Applicants

**AIDE MEMOIRE OF
CORTLAND CREDIT LENDING CORPORATION**

June 3, 2024

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Corporation

TO: **THE SERVICE LIST**

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**AIDE MEMOIRE OF
CORTLAND CREDIT LENDING CORPORATION**

RE: SCHEDULING THRESHOLD MOTION

1. Cortland Credit Lending Corporation ("**Cortland**") delivers this Aide Memoire to address the scheduling of a threshold motion that, in Cortland's submission, will be dispositive of the litigation brought by Final Bell Holdings International Ltd. ("**Final Bell**").
2. The threshold issue arises as a result of Final Bell's delivery of its Further Amended Notice of Motion in which it withdrew its claim for rescission. In lieu, Final Bell seeks a remedy that is inappropriate to grant; namely, the imposition of a constructive trust over certain assets of BZAM that are subject to Cortland's court-ordered super priority DIP charge.
3. The relief sought by Final Bell is unavailable for several reasons, including the ARIO that granted Cortland's DIP charge with super priority over all claims, and expressly

including super priority over all trusts. That charge was granted on notice to Final Bell, was unopposed by Final Bell (whose counsel appeared at the hearing) and was not appealed by Final Bell.

4. Granting Final Bell a constructive trust, contrary to the priorities ordered in the ARIO, would be contrary to the established Supreme Court of Canada jurisprudence on DIP charges, and would completely undermine and upend the insolvency process in Canada.¹ As explained by Justice Côté, writing for the majority in *Canada v. Canada North Group Inc*, [2021 SCC 30](#):

[30] Super-priority charges in favour of the monitor, financiers and other professionals are required to derive the most value for the stakeholders. They are beneficial to all creditors, including those whose claims are protected by a deemed trust. The fact that they require super priority is just a part of “[t]he harsh reality . . . that lending is governed by the commercial imperatives of the lenders” (*Indalex*, at para. 59). It does not make commercial sense to act when there is a high level of risk involved. For a monitor and financiers to put themselves at risk to restructure and develop assets, only to later discover that a deemed trust supersedes all claims, smacks of unfairness [...]

5. As forecasted in the Monitor’s Third Report, dated May 14, 2024, prior to any determination of the Final Bell’s claims, Cortland’s pre-filing loans will be fully repaid and the only amount that will be outstanding to it will be its DIP financing. As such, there will be no proceeds from the stalking horse purchase transaction beyond repayment of the DIP financing.

¹ In addition, as detailed in Cortland’s Reply Factum filed in connection with its security for costs motion, the well-established caselaw is clear that the Court will not impose a constructive trust, particularly in the CCAA context, where doing so would trump a secured creditor generally.

6. As the constructive trust sought by Final Bell cannot take priority to Cortland's Court-ordered DIP charge, the claims of Final Bell are, practically speaking, moot as there will be no proceeds to satisfy its claims.

7. Cortland therefore submits that this threshold issue should be decided as soon as possible, and well in advance of the intended two-day summary trial. There is no point in further straining the resources of the parties or the Court when the entire litigation may be dealt with summarily.

8. As the threshold motion intends to deal with a narrow and discrete legal issue, it can be heard on an expedited basis and should not, in Cortland's view, require longer than a two-hour hearing. Cortland therefore proposes that the motion be scheduled at the earliest possible date. It is worth noting that Final Bell has already seen Cortland's arguments as set out in Cortland's Reply Factum on the security for costs motion delivered on May 29, 2024.

9. All counsel are available for the hearing of the threshold motion on June 21, 2024 if the Court has availability on that date.

10. Even if the Court disagrees with Cortland's position on the threshold legal issue, there will then still be sufficient time to proceed with the summary trial currently scheduled for September, and even if that is accelerated to August.

11. As the Court has observed first-hand, and as is evident from the materials filed on the security for costs motions, this litigation has resulted in significant legal fees being expended by all parties. Cortland submits that the parties should not be forced to continue

to incur even more fees if this threshold issue will quickly and finally dispose of the litigation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of June, 2024.

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Applicants
Court File No. CV-24-00715773-00CL

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PROCEEDING COMMENCED AT
TORONTO

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