

**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 FINAL BELL HOLDINGS INTERNATIONAL LTD.
(SCHEDULING APPOINTMENT RETURNABLE MAY 6, 2024 AT 2 PM)**

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Andrew Winton LSO#: 54473I
awinton@lolg.ca
Tel: 416 644 5342

David Ionis LSO#: 79542U
dionis@lolg.ca
Tel: 416 956 0117

Brendan Bohn LSO#: 81443O
bbohn@lolg.ca
Tel: 416 956 5084

Lawyers for Final Bell Holdings International Ltd.

TO: **THE SERVICE LIST**

1. The purpose of this scheduling appointment is to set hearing dates and, if necessary, timetables for the summary trial of Final Bell's claim and for motions for security for costs.

A. Final Bell Claim not Urgent – Rescission Claim Withdrawn & Record Complete

(i) *Rescission Claim Withdrawn – Final Bell Seeking Equitable Damages & Constructive Trust*

2. Since Final Bell commenced its motion in mid-March to seek to rescind the Share Exchange Agreement with BZAM, it has become increasingly but unfortunately clear that rescission is no longer a viable remedy. Final Bell Canada has materially deteriorated as a business and returning it to Final Bell is no longer feasible. In particular:

- (a) Multiple key employees of Final Bell Canada have left BZAM; and
- (b) The business formerly operated under the Final Bell Canada brand has deteriorated significantly since merging with BZAM's operations, to the point where there it has little to no remaining value as a standalone entity.

3. In light of these developments, after the initial hearing date was adjourned, Final Bell reluctantly determined that it is no longer practicable for it to seek rescission of the Share Exchange Agreement. There is nothing left for BZAM to return to Final Bell if rescission were granted.

4. Final Bell is aware that the SISP Process requires approval of the Stalking Horse Bid by May 21, 2024. It communicated its withdrawal of its rescission claim to BZAM, Cortland, and the Monitor so that the Stalking Horse Bid can proceed in due course. Final Bell informed these parties of its intention to amend its notice of motion to limit its claim to one for equitable

damages in lieu of rescission and a claim to a constructive trust over the proceeds of sale of BZAM's shares or assets, as the case may be.¹ Final Bell will deliver a further amended notice of motion this week.

(ii) Evidentiary Record Now Complete

5. As reviewed with the Court on April 25, by letter sent April 22 Final Bell requested additional documents from BZAM related to the excise tax issue.

6. On April 29, BZAM delivered some, but not all, of the documents Final Bell requested. Final Bell reviewed the documents and determined that it does not need to examine Sean Bovington, BZAM's former CFO, about the documents. This means the issue raised with the court on April 25 is moot.

7. This also means that the out-of-court record for the pending hearing is now complete and the hearing can be scheduled. As BZAM has indicated it will not be cross-examining Final Bell's affiants, the only live witness will be Matthew Milich, whose cross-examination will require up to two hours of court time.

8. Final Bell proposes that the court schedule a half-day hearing for oral opening statements and live evidence, and a full day for the parties to deliver closing submissions. The hearing dates need not be on consecutive days, nor is there the same urgency to schedule the hearing now that Final Bell's claim will not affect the closing of the Stalking Horse Bid.

¹ A copy of its letter sent May 3, 2024 is attached as **Appendix 1**.

B. BZAM and Cortland's Motion for Security for Costs Can Proceed in Due Course

9. As explained at the last conference, on April 24, BZAM and Cortland delivered motion records and factums for motions for security for costs without prior notice to Final Bell. The Monitor was made aware of BZAM's intention to bring its motion at a private meeting the Monitor held with BZAM's counsel on April 19 – the day the summary trial was adjourned.² The only party unaware that these motions were in the works was Final Bell.

10. The moving parties collectively seek approximately \$900,000 in security for costs. Final Bell's response to the motions will rely on, among other things, the merits of its claim and the manner in which BZAM conducted itself in response to the claim. Following its review of the documents received April 29, Final Bell informed BZAM of its intention to deliver its responding record on or before May 9.

11. BZAM takes issue with this proposed date, but given the motion is unlikely to be heard any time soon, and that BZAM has already delivered its factum in support of its motion, it will suffer no prejudice if it receives Final Bell's responding record on May 9. It is assumed this date will not be disputed at the conference.

12. One evidentiary issue remains unresolved: BZAM and Cortland delivered Bills of Costs to support the quantum of security sought by each, but they refuse to deliver redacted dockets to support the hundreds of hours they claim has been spent to date. BZAM seeks security for 681 hours of work performed, or to be performed, by 7 timekeepers; and Cortland seeks security for 457 hours of work performed, or to be performed, by 6 timekeepers. Given the costs the parties

² Email chain between the Monitor, BZAM's counsel, and Cortland's counsel attached as **Appendix 2**.

allege they have incurred or will incur (\$635,712 by BZAM, \$402,723 by Cortland), Final Bell submits it is entitled to review the parties' dockets, redacted for privilege, to support the Bills of Costs, as required under the *Rules*.

13. Final Bell should not be restricted to asking the Court to infer there has been overlawyering, or that time is being otherwise improperly associated with this matter, where actual evidence of time spent and tasks performed is available and required under the *Rules* to be included in a Bill of Costs.

14. Given the magnitude of the amounts sought as security and the number of timekeepers involved in circumstances where this claim is just one aspect of a larger *CCAA* proceeding, Final Bell submits it is only fair and reasonable that it be provided with dockets that are redacted for privilege so it can respond to the motion on all issues.

15. Final Bell intends to serve its responding record on May 9. At this point, unless dockets are delivered by end of day May 6, which is unlikely, it will have to deliver a supplementary record following receipt of dockets if they are produced.

16. Final Bell estimates it will require 90 minutes to deliver its oral submissions in response to the motion. Assuming BZAM and Cortland seek an equal amount of time for their submissions, the motion will require a half day.

17. BZAM and Cortland have already served and filed their moving factums. Final Bell proposes to deliver its responding factum four days before the hearing date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of May, 2024.

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

Suite 2750, 145 King Street West

Toronto ON M5H 1J8

Andrew Winton LSO#: 54473I

awinton@lolg.ca

Tel: 416 644 5342

David Ionis LSO#: 79542U

dionis@lolg.ca

Tel: 416 956 0117

Brendan Bohn LSO#: 81443O

bbohn@lolg.ca

Tel: 416 956 5084

Lawyers for Final Bel Holdings International Ltd.

Appendix 1

Andrew Winton

Direct 416 644 5342
awinton@iolg.ca

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
www.iolg.ca

The logo for Lax O'Sullivan Lisus Gottlieb is a dark blue square with the firm's name in white, stacked vertically: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

Lax
O'Sullivan
Lisus
Gottlieb

May 3, 2024

BY EMAIL

Joseph Blinick
Bennett Jones LLP
1 First Canadian Place, Suite 3400
P.O. Box 130
Toronto ON M5X 1A4

Colin Pendrith
Cassels Brock & Blackwell LLP
Suite 3200, Bay-Adelaide Centre - North
Tower
Toronto ON M5H 0B4

Dear Counsel:

Final Bell Claim v BZAM Ltd. *et al.* - Various Issues & Updates

I am writing with respect to three issues concerning the upcoming hearing of Final Bell's claim against BZAM Ltd. *et al.*:

Updated Documentary Production

On April 30, 2024, Final Bell Holdings International Ltd. filed its annual audited financial statements for the year ended March 31, 2024 and the related management's discussion and analysis on SEDAR. A copy of these documents is enclosed. We are delivering these documents to update Final Bell's April 4, 2024 Response to BZAM's Redfern Requests, as these documents were not available prior to this week. In the event that Final Bell is able to release interim financial statements for the quarters subsequent to March 31, 2024, we will deliver those to you upon receipt.

Pre-Hearing Record Now Complete

On April 29, 2024, BZAM delivered additional documents in response to our April 22 document request, but it refused to produce all of the documents requested. In many cases, entire categories of documents were refused. At trial, we will rely on this refusal if necessary to ask the Court to draw the adverse inference that the documents would have supported Final Bell's claim and undermined BZAM's and Cortland's defences. We understand the defendants will debate that position, but we wanted to put you on notice of our intention so there is no complaint when we seek the adverse inference at trial.

As we informed you via email earlier this week, upon review of the additional documents BZAM disclosed on April 29, 2024, we did not need to conduct a further examination of Mr. Bovingdon. This confirms that the pre-hearing record is now complete.

Withdrawal of Rescission Claim, Restricting Claim to Equitable Damages and Constructive Trust

We understand that since Mr. Milich's cross-examination on April 8, 2024, more former employees of Final Bell Canada have left BZAM. We further understand that the business formerly operated under the Final Bell Canada brand has deteriorated significantly since it merged with BZAM's operations, to the point where there is little value left in Final Bell Canada as a standalone entity.

Having regard to these developments, and with an awareness that the SISP Process requires approval of the Stalking Horse Bid by May 21, 2024, Final Bell has determined that it is no longer feasible for it to seek rescission of the Share Exchange Agreement, as there is effectively nothing left for BZAM to return to Final Bell if rescission is granted.

In light of these circumstances, we will be amending our notice of motion to confirm that Final Bell's claim will be limited to one for equitable damages in lieu of rescission, and that Final Bell claims a constructive trust over the proceeds of sale of BZAM's shares or assets, as the case may be, to support its claim (see, e.g., [Credifinance Securities Limited v DSLC Capital Corp., 2011 ONCA 160, ¶33](#)).

We will deliver a further amended notice of motion in due course to plead this change in the relief sought. We wanted to alert you to it as soon as the determination was made so that BZAM can proceed with its sale approval motion.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Andrew Winton', with a long horizontal flourish extending to the right.

Andrew Winton

Enclosures

cc: Brendan Bohn / David Ionis, *Lax O'Sullivan Lisus Gottlieb LLP*
Mike Shakra / Tom Feore, *Bennett Jones LLP*
Natalie E. Levine / Jonathan Shepherd, *Cassels Brock & Blackwell LLP*
Maria Konyukhova / Nick Avis, *Stikeman Elliott LLP*

Appendix 2

From: [Maria Konyukhova](#)
To: [Joseph Blinick](#); [Rosenberg, Jeffrey](#)
Subject: RE: BZAM

Ok for me

Maria Konyukhova

Direct: 416-869-5230

Mobile: 416-319-1632

Email: mkonyukhova@stikeman.com

From: Joseph Blinick <BlinickJ@bennettjones.com>
Sent: Friday, April 19, 2024 2:45 PM
To: Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>; Maria Konyukhova <MKonyukhova@stikeman.com>
Subject: RE: BZAM

Sorry, can we adjourn a few? 3:15? Stuck in another meeting.

Joseph Blinick, *Partner**, Bennett Jones LLP
*Denotes Professional Corporation
T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716) | M. [416 803 7301](tel:4168037301)

From: Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>
Sent: Friday, April 19, 2024 2:24 PM
To: Maria Konyukhova <MKonyukhova@stikeman.com>; Joseph Blinick <BlinickJ@bennettjones.com>
Subject: RE: BZAM

Works for me.

From: Maria Konyukhova <MKonyukhova@stikeman.com>
Sent: Friday, April 19, 2024 2:23 PM
To: Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>; Joseph Blinick <BlinickJ@bennettjones.com>
Subject: [EXTERNAL] Re: BZAM

Just stepped out for a bite. Can we do in 15?

Maria Konyukhova

Direct: 416-869-5230

Mobile: 416-319-1632

Email: mkonyukhova@stikeman.com

From: Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>
Sent: Friday, April 19, 2024 2:22:14 PM
To: Joseph Blinick <BlinickJ@bennettjones.com>; Maria Konyukhova <MKonyukhova@stikeman.com>
Subject: RE: BZAM

Let's do teams.

Jeff

From: Joseph Blinick <BlinickJ@bennettjones.com>
Sent: Friday, April 19, 2024 2:21 PM
To: Maria Konyukhova <MKonyukhova@stikeman.com>
Cc: Rosenberg, Jeffrey <jeffrey.rosenberg@fticonsulting.com>
Subject: [EXTERNAL] RE: BZAM

I will call you shortly if that works. Or happy to set up a Teams if you both want to be on.

Joseph Blinick, *Partner**, Bennett Jones LLP
*Denotes Professional Corporation
T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716) | M. [416 803 7301](tel:4168037301)

From: Maria Konyukhova <MKonyukhova@stikeman.com>
Sent: Friday, April 19, 2024 1:59 PM
To: Joseph Blinick <BlinickJ@bennettjones.com>
Cc: Jeffrey Rosenberg (jeffrey.rosenberg@fticonsulting.com) <jeffrey.rosenberg@fticonsulting.com>
Subject: RE: BZAM

Ok. Let me know when you want to connect about next steps before I reach out to Andrew.

Maria Konyukhova

Direct: 416-869-5230
Mobile: 416-319-1632
Email: mkonyukhova@stikeman.com

From: Joseph Blinick <BlinickJ@bennettjones.com>
Sent: Friday, April 19, 2024 1:37 PM
To: Maria Konyukhova <MKonyukhova@stikeman.com>
Cc: Jeffrey Rosenberg (jeffrey.rosenberg@fticonsulting.com) <jeffrey.rosenberg@fticonsulting.com>
Subject: RE: BZAM

Top of my list.

Joseph Blinick, Partner*, Bennett Jones LLP
*Denotes Professional Corporation

T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716) | M. [416 803 7301](tel:4168037301)

From: Maria Konyukhova <MKonyukhova@stikeman.com>

Sent: Friday, April 19, 2024 1:37 PM

To: Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Jeffrey Rosenberg (jeffrey.rosenberg@fticonsulting.com) <jeffrey.rosenberg@fticonsulting.com>

Subject: BZAM

Now that we have the time, perhaps the company should consider bringing a motion for security for costs?

Maria Konyukhova

Direct: 416-869-5230

Mobile: 416-319-1632

Email: mkonyukhova@stikeman.com

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Stikeman Elliott LLP Barristers & Solicitors

[5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada](#)

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Stikeman Elliott LLP Barristers & Solicitors

[5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada](#)

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Applicants

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

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FINAL BELL'S AIDE MEMORE
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LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Andrew Winton LSO#: 54473I
awinton@lolg.ca

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