

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITOR 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 ORGANIZE DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL BELL CORP.

NOTICE OF MOTION

France Boisvert and Daniel Fontaine will make a Motion to a judge presiding over the Commercial List, at a date and time to be scheduled by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- in person
- by telephone conference
- by video conference

At a Zoom link to be provided by the Court in advance of the motion

THE MOTION IS FOR:

- a. An Order directing that the issues raised by the Applicant Medican Biologiuqe Inc./Medican Organic Inc.'s ("**Medican**" or the "**Applicant**") in its Notice by Debtor Company to Disclaim or Resiliate an Agreement dated May 29, 2024 (the "**Notice of Disclaimer**") are dismissed or permanently stayed on the grounds that this Court does not have jurisdiction to grant the relief the Applicant seeks;
- b. In the alternative, an Order staying the Applicant's Notice of Disclaimer on the grounds that Ontario is not a convenient forum;
- c. In the further alternative, an Order directing pursuant to section 32(2) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") that the following agreements, described in the Notice of Disclaimer, are not to be disclaimed or resiliated:
 - i. Share Purchase Agreement between France Boisvert, Daniel Fontaine, and Medican, and to which intervenes 9430-6347 Quebec Inc. ("**9430 Quebec**"), dated November 11, 2022 (the "**SPA**");
 - ii. Letter of Intent by and between Medican, Daniel Fontaine, France Boisvert, and 9317228 Canada Inc. and to which intervenes 9430 Quebec, dated November 11, 2022 (the "**LOI**"); and
 - iii. Bring-Down Certificate from 9430 Quebec, France Boisvert, and Daniel Fontaine to Medican and 9317228 Canada Inc. ("**931 Canada**"), dated November 4, 2022;(collectively the "**Agreements**")
- d. In the further alternative, an Order that if the Notice of Disclaimer is effective, the Applicant and its directors and officers, being Sean Bovingdon and Rosanna Mastropietro, provide an indemnity in favour of the Moving Parties for all corporate actions taken and any and all liabilities incurred by

9430 Quebec from November 11, 2022 to the date of any Order of this Court disclaiming or resiliating the Agreements;

- e. The Moving Parties' costs of this motion; and,
- f. Such other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- a. Sections 11, 18.6 and 32 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
- b. Rules 2.03, 3.02, 21.01, and 37 of the Rules of Civil Procedure, R.R.O 1990, Reg. 194, as amended;

Background to Agreements

- c. 9430 Quebec was owned and operated by France Boisvert and Daniel Fontaine and carried on business as a cannabis producer from the property municipally known as 5000 Chemin Murphy, Vaudeuil-Dorion, Quebec, J7V 8P2 (the "**Property**");
- d. Pursuant to the SPA, Medican acquired all of the issued and outstanding shares of 9430 Quebec from France Boisvert and Daniel Fontaine (the "**Sellers**");
- e. The LOI and SPA contained certain terms and conditions to the sale of 9430 Quebec, including, *inter alia*, the execution of a lease between 931 Canada and 9430 Quebec, as well as Health Canada approving the change of control of a Cultivation License held by 9430 Quebec and the start of the process of obtaining a Processing License from Health Canada;
- f. The LOI provided the parties with an exclusivity period until April 30, 2023 (the "**Outside Date**") to conduct due diligence and work toward completing the transaction;

- g. The Sellers assisted Medican with the process of obtaining the Health Canada approvals and understand that 9430 Quebec obtained both the Cultivation License and Processing License;
- h. On November 11, 2022, 931 Canada (as landlord) and 9430 Quebec (as tenant) executed a Lease for the property (the "**Lease**");
- i. Section 1 of the Lease provided the term of the Lease would commence on the date the Landlord's Work (as defined in Schedule 'B' of the Lease) is accepted by the tenant pursuant to Section 3.4 thereof;
- j. Section 3.4 of the Lease provided that the landlord shall have five (5) months to complete the Landlord Work from November 11, 2022 (the "**Effective Date**"), and that if the Landlord Work was not completed within five (5) months of the Effective Date and the parties could not come to some other agreement in writing, the tenant could either elect to accept the Landlord Work, as built, or to terminate the Lease on the Effective Date;
- k. Schedule 'B' of the Lease specified that the landlord would undertake air conditioning work and that the tenant and landlord would then coordinate the completion of the balance of the Landlord Work, which the tenant was responsible to ensure was completed to its satisfaction prior to taking possession of the Property and to which the landlord would contribute \$100,000.00;
- l. The Sellers and Medican worked together to complete the Landlord Work, and the Landlord completed certain Landlord Work, including excavation work on the parking facility at the Property and air conditioning work;
- m. As of April 11, 2023, the Tenant had not terminated the Lease under section 3.4 thereof;
- n. In or about June 2023, the tenant advised the landlord that it wanted to carry out additional electric work and septic system work that it required for an occupation permit,

- o. On or about July 20, 2023, representatives of 931 Canada and Medican on behalf of 9430 Quebec agreed by email that the landlord (931 Canada) had completed \$53,821.26 of work and that the remaining funds owing, being \$46,178.74, would be credited against five (5) months' of rent from August 2023 to December 2023, in satisfaction of the landlord's obligations under section 3.4 and Schedule 'B' of the Lease. From this point any remaining "Landlord Work" or any other work the tenant wished to undertake, including but not limited to the electrical system and septic system, would be the responsibility of the tenant to be done under its direction and at its costs;
- p. Consistent with the agreement on July 20, 2023, the outstanding amounts owing for the Landlord Work were credited against rent for the months of August 2023 to December 2023, and 9430 Quebec began paying rent to the landlord on January 1, 2024 until May 1, 2024;
- q. As of July 20, 2023, all of the conditions to the completion of the Agreements and the Lease were satisfied and all of the parties, being Medican, the Sellers, 9430 Quebec, and 931 Canada have conducted themselves in accordance with the terms and conditions of the Agreements and Lease being binding and in full force and effect;

Jurisdiction of Issues in Dispute

- r. The Moving Parties are strangers to the CCAA proceedings who are domiciled in Quebec;
- s. 9430 Quebec is a corporation incorporated and domiciled in Quebec;
- t. Medican is a corporation incorporated and domiciled in Quebec;
- u. The Agreements and Lease specify they are to be governed by the laws of Quebec and that any disputes thereunder would be under the exclusive jurisdiction of competent courts sitting in the Judicial District of Montreal;

- v. The issues raised in the Notice of Disclaimer do not have a real and substantial connection to Ontario – the parties expressly adopted the law of Quebec and the forum of the Judicial District of Montreal, the parties are located in Quebec and carry on business in Quebec, the relevant contracts were negotiated and agreed to in Quebec, the relevant contracts involve the sale of shares of a company incorporated and domiciled in Quebec (9430 Quebec) from individuals residing in Quebec (the Sellers) to a company incorporated and domiciled in Quebec (Medican), and the lease of real property located in Quebec (the Property);
- w. In the alternative, if the Court determines it has jurisdiction, the Moving Parties submit the Province of Ontario is *forum non conveniens* and that the Province of Quebec and the Judicial District of Montreal are clearly the more appropriate forum;

Purported Disclaimer

- x. If this Court determines it has the jurisdiction and that it is the more appropriate forum, the Moving Parties submit that the Notice of Disclaimer is of no force or effect and is simply an attempt to undo binding Agreements that were accepted and agreed to prior to the Initial Order of Justice Osborne dated February 28, 2024 (the “**Initial Order**”);
- y. The sole reason provided by the Applicant for the disclaimer of the Agreements was that 9430 Quebec allegedly did not receive an occupancy permit as a result of certain unresolved Landlord Work with respect to the septic system, and that the Agreements never closed as a result;
- z. Medican has not provided the Moving Parties with any evidence or particulars to support this allegation;
- aa. Medican takes this position despite the fact that it never terminated the Lease by April 11, 2023 and then expressly accepted the status of the Landlord Work, as built, by email on July 20, 2023;
- bb. From July 20, 2023 onward, any remaining “Landlord Work” as outlined in Schedule ‘B’ of the Lease or any other work 9430 Quebec wished to undertake was the sole responsibility of the

9430 Quebec, and Medican and/or 9430 Quebec were aware at this time of the remaining work required to obtain an occupancy permit and accepted responsibility to complete such work in consideration for outstanding amounts being credited toward rent owing for the months of August 2023 to December 2023;

- cc. Consistent with the agreement on July 20, 2023 and the parties mutual acceptance of the Agreements and Lease and the waiver of all conditions under the Agreements and the Lease, Medican has continued to operate 9430 Quebec from the Property and has paid rent under the Lease until May 1, 2024 without issue;
- dd. At all material times, the parties have conducted their affairs consistent with the Agreements and Lease being final and binding and the Moving Parties state that the Agreements and the Lease were accepted and agreed to prior to the Initial Order;
- ee. In addition, the Moving Parties' state that Medican and/or 9430 Quebec have repeatedly adopted and affirmed the Agreements and the Lease by their conduct and waived any conditions precedent or closing requirements outlined in the LOI, SPA, or Lease prior to the Initial Order;
- ff. It is inconceivable that Medican is giving notice of its intention not to be bound by the Agreements for the first time on March 29, 2024 on the basis of events it had knowledge of and explicitly agreed to undertake nearly a year prior on or about July 20, 2023;
- gg. The purpose of the CCAA and in particular, section 32 thereof, is not to undo transactions completed prior to the Initial Order and the Court does not have jurisdiction under section 32 to grant the relief sought;
- hh. It is prejudicial to the Sellers, who organized their affairs and agreements under the laws of Quebec and who have understood and been led to believe by Medican that the Agreements and Lease had closed, to suddenly be forced to have these issues decided a year later on a summary basis by a court in Ontario;

- ii. Medican has been operating 9430 Quebec since November 11, 2022 under its sole care and control, and at no time have the Sellers been consulted on any dealings involving 9430 Quebec and they have no knowledge of any of its actions taken during that time;
- jj. Medican has neglected and/or refused to confirm what specific liabilities 9430 Quebec has incurred from November 11, 2022 onward while the company was under its care and control;
- kk. Medican is not acting in good faith with respect to proposed Notice of Disclaimer;
- ll. The proposed Notice of Disclaimer will likely cause the Sellers significant financial hardship and will also subject them to considerable financial uncertainty with respect to what liabilities 9430 Quebec has incurred while they had no operational control or oversight of its corporate actions;
- mm. The proposed Notice of Disclaimer will not enhance the prospects of a viable compromise being made by the Applicants and is not related to the CCAA proceedings;
- nn. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- a. The Affidavit of Daniel Fontaine to be sworn and all exhibits attached thereto;
- b. The Affidavit of Claude Lapointe to be sworn and all exhibits attached thereto;
- c. Such further and other evidence as counsel may advise and this Honourable Court may admit.

Date: June 25, 2024

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

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Proceeding commenced at Toronto

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