

**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

**WRITTEN OPENING STATEMENT OF THE CLAIMANT,
FINAL BELL HOLDINGS INTERNATIONAL LTD.
(SUMMARY TRIAL RETURNABLE APRIL 22 AND 23, 2024)**

April 16, 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 Bell Holdings International Ltd.

TO: **THE SERVICE LIST**

TABLE OF CONTENTS

	Page No.
PART I - INTRODUCTION.....	1
PART II - SUMMARY OF FACTS	3
A. The Parties.....	3
<i>i. The Witnesses.....</i>	<i>3</i>
1. Kay Jessel – Final Bell Director	3
2. Keith Adams – Final Bell’s Chief Financial Officer	4
3. Matthew Milich – BZAM’s CEO	4
4. Sean Bovingdon – BZAM’s Former CFO	5
5. Deepak Alappatt – Cortland’s Managing Director, Risk	6
<i>ii. One Other Notable Individual – Bassam Alghanim</i>	<i>6</i>
B. Negotiations Lead to Letter of Intent from BZAM to Purchase FBC	7
C. Final Bell’s Rationale for the Transaction.....	8
D. Parties Engage in Due Diligence Prior to Signing Binding Agreement	9
<i>i. Parties Exchange Historic and Forward-Looking Financial Information.....</i>	<i>10</i>
E. BZAM Makes Material Representations Concerning its Future Performance.....	11
<i>i. Representation #1: No Reason Cortland Facility Would not be Extended</i>	<i>12</i>
<i>i. Representation #2: BZAM was Current with its Tax Obligations</i>	<i>13</i>
1. Summary of Excise Tax Process in Cannabis Industry	13
2. BZAM Represented its Excise Taxes were Current and Under Control	14
<i>ii. Representation #3: BZAM was not on the Brink of Insolvency</i>	<i>15</i>
<i>iii. Representation #4: BZAM would not Terminate its CFO Without Cause.....</i>	<i>17</i>
F. December 5, 2023: Parties Execute Binding Share Exchange Agreement	18
G. Changes to BZAM’s Circumstances after December 5, 2023 and Before Closing ...	20
<i>i. Cortland Informs BZAM on December 13 of No Intention to Extend Facility.....</i>	<i>20</i>
<i>ii. BZAM Forms Intention Before Closing to Terminate Its CFO Without Cause....</i>	<i>21</i>
H. January 5 (or 8), 2024: SEA Closes with No Changes to BZAM’s Representations	22
I. Post-Closing Material Changes to BZAM’s Finances and Operations.....	23
<i>i. BZAM Does not Attempt to Extend Cortland Credit Facility.....</i>	<i>23</i>
<i>ii. January 11, 2024: BZAM Terminates Its CFO, Misleads Public.....</i>	<i>23</i>
<i>iii. February 2, 2024: BZAM Refinances on Excise Tax Arrears Repayment Plan... </i>	<i>25</i>

<i>iv.</i>	<i>February 12, 2024: BZAM Files B300 Forms Outside of Normal Course</i>	<i>27</i>
<i>v.</i>	<i>BZAM Arranges to Seek CCAA Protection Shortly After Closing.....</i>	<i>28</i>
J.	BZAM CCAA and Stalking Horse Bid Will Permit Stone Pine to “Scoop” FBC	29
K.	Additional Evidence to Come – Milich’s Cross, Possibly Others.....	29
L.	BZAM Tries to Distract the Court from the Relevant Facts	30
	PART III - STATEMENT OF ISSUES AND APPLICABLE LAW	30
A.	A Comment on the Process Leading up to this Trial.....	30
B.	The Issues.....	31
C.	Principles of Rescission of Contracts	32
<i>i.</i>	<i>Fraud or Recklessness as to Truth of a Statement.....</i>	<i>32</i>
<i>ii.</i>	<i>Equitable Compensation in Addition to or in Lieu of Rescission</i>	<i>33</i>
<i>iii.</i>	<i>Rescission Available Even if Third Parties Affected.....</i>	<i>35</i>
D.	Principles of Contractual Interpretation	36
E.	Factual Matrix Includes Need to Rely on Counterparty’s Representations	38
F.	SEA Defined Terms Should be Given Plain Meaning for Ordinary Words	39
G.	Rescission is Possible, Supplemented by Equitable Damages.....	40
H.	Court Can Direct a Reference as to Remedy if Necessary	42
	PART IV - ORDER REQUESTED.....	42

PART I - INTRODUCTION

1. The issue on this summary trial is whether a purchaser of assets is entitled to knowingly or recklessly make false or misleading statements inducing the seller to agree to a sale involving consideration in the form of equity in the merged entity and unsecured debt. Final Bell seeks to rescind its share exchange agreement with BZAM after BZAM sought CCAA protection less than two months after Final Bell sold its Canadian subsidiary, Final Bell Canada, to BZAM.
2. Final Bell claims that BZAM made the following misrepresentations in circumstances where it knew the representations were false or else was reckless as to their truth:
 - (a) That there was no reason why the Cortland Credit Facility would not be extended beyond March 2024;
 - (b) That BZAM was not in default of its tax obligations and would not default on those obligations after closing;
 - (c) That BZAM was not on the brink of insolvency when the parties entered into and/or closed on the transaction; and
 - (d) That BZAM would not terminate its CFO without cause immediately after closing on the transaction.
3. Together, these misrepresentations falsely portrayed BZAM as a company that was worthy of Final Bell joining forces with to take on the Canadian cannabis market.
4. In fact, and contrary to its representations to Final Bell:
 - (a) Cortland informed BZAM in December 2023 that it would not extend the facility;
 - (b) BZAM failed to file its excise tax returns on time and did not disclose its intention to attempt to renegotiate a tax arrears repayment plan to Final Bell;
 - (c) BZAM was insolvent less than two months after closing; and
 - (d) BZAM formed the intention in December 2023 to terminate its CFO without cause within days of closing on the agreement with no replacement lined up.

5. BZAM suggests that Final Bell should not have relied on BZAM's representations made during the due diligence period. This position lacks common sense and conflicts with the express terms of the parties' agreement.

6. BZAM "paid" for Final Bell Canada by issuing it \$13.5 million in equity and granting it an \$8 million unsecured promissory note. Through this CCAA process, BZAM's largest shareholder and second largest secured creditor seeks to "scoop" the Final Bell Canada assets by wiping this consideration from the restructured company's balance sheet; he only intends to repay Cortland's secured debt and the debt owed to his own holding company in exchange for all of BZAM's assets. Final Bell will recover nothing.

7. This outcome would be manifestly unfair. This Court should grant Final Bell's claim and rescind the share exchange agreement because BZAM made false or misleading statements that induced Final Bell into executing and closing on the agreement, and the misrepresentations were material and relied upon by Final Bell.

8. Cortland is participating in this proceeding to argue that rescission would be unfair to it. Final Bell does not agree. But even so, this Court has the authority, either under the CCAA or its equitable jurisdiction, to award Final Bell a remedy that does not permit BZAM's other stakeholders from profiting from BZAM's false or misleading misrepresentations. This includes an award of equitable damages or an award that amends the stalking horse bid to require that it compensate Final Bell for its loss of its Canadian subsidiary as a term of approval.

9. What follows is Final Bell's opening statement. The evidentiary record, while robust, is not yet complete. For example, Final Bell will be cross-examining Milich on many material issues. BZAM may be cross-examining Final Bell's witnesses. In its closing submissions, Final

Bell will revisit these facts, summarize the law, and ask this Court to fashion an equitable remedy that ensures that BZAM and its stakeholders do not profit from false or misleading representations knowingly or recklessly made to Final Bell.

PART II - SUMMARY OF FACTS

A. The Parties

10. Final Bell Holdings International Ltd. (“**Final Bell**”) is a corporation incorporated under the laws of British Columbia.

11. Until January 5, 2024, Final Bell was the owner of all of the shares of Final Bell Canada Inc. (“**FBC**”), a corporation incorporated under the laws of Ontario.

12. BZAM Ltd. is a corporation incorporated under the laws of Canada. BZAM Ltd. wholly-owns or has a controlling interest in the other Applicants to the CCAA proceeding in which this rescission claim has been brought, which are referred to herein, save for FBC and its subsidiary Final Bell Corp., as “**BZAM**”.

i. The Witnesses

13. Final Bell adduced evidence from two of its representatives: Kay Jessel, its Executive Director, and Keith Adams, its CFO since November 9, 2023.

1. Kay Jessel – Final Bell Director

14. Kay Jessel has been a director of Final Bell since the inception of its predecessor company, of which he was also a director. Between March and November 2023, Jessel acted as Final Bell’s interim CFO until the appointment of Mr. Adams as its permanent CFO. Jessel’s background is in investment banking, private asset management, and investor relations. He has a

Diplom Kaufmann (the German equivalent of an MBA) from Universität Hamburg and has held director positions in public and private companies in North America and Europe.¹

2. *Keith Adams – Final Bell’s Chief Financial Officer*

15. Keith Adams is Final Bell’s CFO, a position he’s held since November 9, 2023. Adams is a certified public accountant and certified management accountant with over forty years’ experience, including in executive roles in the cannabis integration and supply chain management space.²

16. As explained throughout these submissions, Adams was heavily involved in Final Bell’s due diligence review of BZAM’s disclosure leading up to the execution of the share exchange agreement (the “SEA”) on December 5, 2023.

3. *Matthew Milich – BZAM’s CEO*

17. Matthew Milich is BZAM’s only affiant in this proceeding. He was the managing director of Bassam Alghanim’s family office for approximately ten years before he was appointed BZAM’s President in 2019. He has been its senior-most officer since then. When BZAM merged with The Green Organic Dutchman (“TGOD”) in 2022, Milich assumed the role of CEO of the combined entity.

¹ Affidavit of Kay Jessel sworn March 18, 2024 (“**Jessel Affidavit #1**”), ¶1, 3, and 4; Motion Record (“**MR**”), Tab B, pp. 20-21. Exhibit 1 to the Cross-Examination of Kay Jessel held April 10, 2024 (“**Jessel Cross**”).

² Affidavit of Keith Adams sworn March 18, 2024 (“**Adams Affidavit #1**”), ¶1-4; MR, Tab C, pp. 189-90. Exhibit 1 to the Cross-Examination of Keith Adams held April 10, 2024 (“**Adams Cross**”).

18. Milich was cross-examined on portions of his affidavit evidence. He will be called as a live witness at the hearing to complete his cross-examination. For this reason, Final Bell will refrain from making detailed comments about this evidence because it is not yet complete.

4. *Sean Bovingdon – BZAM’s Former CFO*

19. Sean Bovingdon was BZAM’s CFO from November 2023 until approximately January 24, 2024, when it was announced he was “resigning” from his position effective April 30, 2024 to pursue other opportunities. In fact, Bovingdon was told on January 11, 2024, six days after the closing of the SEA, that he was being terminated by BZAM without cause.

20. As BZAM’s CFO, Bovingdon was central to overseeing and reviewing BZAM’s financial disclosure to Final Bell during the due diligence period leading up to the signing of the SEA. It is therefore notable that BZAM elected not to adduce evidence-in-chief from Bovingdon in response to this claim. The testimony from Bovingdon in this proceeding is the result of Final Bell’s insistence that his evidence be gathered in the form of an out-of-court examination.

21. As explained in detail below, Bovingdon’s testimony and answers to undertakings reveal the true state of affairs at BZAM prior to and shortly after closing on the SEA, which was not disclosed by BZAM in its witness’s affidavits. For example, Bovingdon admitted that BZAM’s January 25, 2024 public statement concerning his departure as its CFO, which stated that Bovingdon was “leaving” BZAM “to pursue other opportunities,” was incorrect.³ Bovingdon’s

³ Transcript of Examination of Sean Bovingdon held April 8, 2024 (“**Bovingdon Cross**”), pp. 42-43, qq. 168-70; BZAM Press Release dated January 25, 2024, Exhibit “KK” to the Affidavit of Matthew Milich sworn March 25, 2024 (“**Milich Affidavit #3**”), BZAM Responding Motion Record (“**RMR**”), Tab 1-KK, p. 809.

evidence revealed several other misleading statements by BZAM, which explains why BZAM was unwilling to adduce an affidavit from him.

22. Bovingdon will not be testifying live at the hearing.

5. *Deepak Alappatt – Cortland’s Managing Director, Risk*

23. Deepak Alappatt is the Managing Director, Risk with Cortland Credit Lending Corporation (“**Cortland**”), BZAM’s senior secured lender and its DIP lender. Alappatt testified that following the purchase of FBC by BZAM, FBC’s accounts receivable accounted for approximately thirty per cent of BZAM’s borrowing base – meaning it increased BZAM’s ability to access the revolver portion of the Cortland credit facility to fund its operations.

24. Cortland relies on Alappatt to argue that it would be prejudiced if the SEA is rescinded. But Alappatt’s evidence is based on documents he reviewed to prepare his affidavit but did not append to his affidavit, so his evidence should be considered with caution.

25. More importantly, Alappatt confirmed at his cross-examination that the stalking horse bid would repay the debt owed to Cortland in full, and to date there is no indication from the stalking horse bidder that it will withdraw its bid if Final Bell’s claim succeeds.⁴

26. Alappatt will not be testifying live at the hearing.

ii. *One Other Notable Individual – Bassam Alghanim*

27. A non-witness, non-party to this proceeding is central to questions concerning the appropriate remedy. Bassam Alghanim is BZAM’s largest shareholder, holding approximately

⁴ Transcript of Cross-Examination of Deepak Alappatt held April 8, 2024 (“**Alappatt Cross**”), pp. 31-32, qq. 93-96.

37% of the shares in the company; the principal behind Stone Pine Capital Ltd., BZAM's second secured creditor; and the principal of 1000816625 Ontario Inc., the stalking horse bidder.⁵ He is also the Chairman of BZAM.

28. Alghanim's stalking horse bid seeks to purchase BZAM in exchange for full payment of the secured debt owed to Cortland and Stone Pine, but will leave Final Bell with no ability to recover on its debt or equity claims. He stands the most to benefit from BZAM's insolvency.

B. Negotiations Lead to Letter of Intent from BZAM to Purchase FBC

29. On October 31, 2023, after a few weeks of discussions and negotiations between representatives of BZAM and Final Bell, BZAM's board of directors delivered a non-binding letter of intent ("LOI") to Final Bell. BZAM was offering to purchase under a share exchange agreement all of the issued and outstanding shares of FBC.⁶

30. The LOI proposed to purchase FBC in exchange for:

- (a) 90 million shares of BZAM;
- (b) FBC's retention of \$4 million of existing accounts payable to its present parent/affiliate supplier; and
- (c) BZAM's assumption of \$4 million in debt owing by FBC to its present parent/affiliate, bearing interest at 0%, with a maturity date of March 31, 2025, and secured on the same basis and *pari passu* with the secured debt held by Stone Pine Capital Ltd.⁷

31. Among other things, the LOI proposed that:

- (a) the proposed transaction and its terms and conditions would be set out in a definitive agreement and related disclosure letters, documents, and ancillary

⁵ First Report of the Monitor dated March 6, 2024, ¶4(i).

⁶ Jessel Affidavit #1, ¶5; MR, p. 21.

⁷ The LOI is Exhibit 1 to Jessel Affidavit #1; MR, Tab B-1, p. 35.

agreements that are customary for a transaction of this nature, which it collectively defined as the “Transaction Documents”;

- (b) the definitive agreement would contain the customary terms and conditions for the transaction, including representations and warranties of each of FBC and BZAM, customary deal protections, and conditions to closing, which included no material adverse change and other “customary” conditions;
- (c) BZAM would cooperate with Final Bell on its due diligence of BZAM and its business, operations and financial performance and would promptly furnish Final Bell with any materials reasonably requested; and
- (d) the parties agree to give each other prompt written notice of any material change in or affecting their respective business, affairs, operations, assets, liabilities or capital.⁸

32. Final Bell signed the LOI on November 1, 2023.⁹

C. Final Bell’s Rationale for the Transaction

33. On November 1, 2023, Robert Meyer, Final Bell’s CEO, explained the rationale for Final Bell to approve the transaction as including:

- (a) The combined entity would continue to procure its packaging and hardware through 14th Round, an affiliate of Final Bell, with access to banking facilities to pay 14th Round;
- (b) Combining BZAM’s existing footprint with FBC would create the fourth or fifth largest player in Canada and offers cost and revenue synergies to the merged entity;
- (c) The deal creates a new dominant player in Canada with a portfolio of leading brands, efficient manufacturing technology and supply chain management; and
- (d) As a non-control investor, Final Bell would have immediate access to liquidity shareholding when markets improve.¹⁰

⁸ LOI, MR, Tab B-1, pp. 35-40.

⁹ Jessel Affidavit #1, ¶6; MR, Tab B, p. 21.

¹⁰ Email from Robert Meyer to the Board of Final Bell dated November 1, 2023; Exhibit 6 to Jessel Cross.

34. Meyer's rationale also referred to FBC as a "cash drain" on Final Bell. BZAM relies on this to suggest that Final Bell was a motivated seller. But the "cash drain" was not due to significant losses at Final Bell, but due to the fact that cash held by FBC was "trapped" in Canada and could not be used to pay intercompany payables to U.S. entities so long as they had common ownership.¹¹

35. Later, when Final Bell was considering whether to enter into the SEA, its board of directors reviewed a slide deck with an updated explanation of the rationale for the transaction. The rationale outlined in this deck cited similar reasons as the rationale summarized by Meyer in his November 1 email. When questioned about this deck at his cross-examination, Adams insisted there was no "need" or "strong desire" for Final Bell to sell FBC to BZAM, and it could have found another way to unlock the cash.¹²

D. Parties Engage in Due Diligence Prior to Signing Binding Agreement

36. Final Bell engaged in a due diligence process to assess BZAM's financial condition before it entered into the binding SEA. Adams led the due diligence process for Final Bell.¹³

37. Throughout November 2023, Adams worked closely with Milich and Bovingdon, BZAM's CEO and then CFO, respectively, who provided Adams with financial information about BZAM. Final Bell's board relied on the information provided by BZAM in deciding to enter into a share exchange agreement with BZAM for the sale of FBC.¹⁴

¹¹ Adams Affidavit #2, ¶23; Reply MR, Tab B, pp. 21-22.

¹² Final Bell Due Diligence Readout; Exhibit 2 to Jessel Affidavit #1, MR, Tab B-2, p. 44. Adams Cross, pp. 159-62, qq. 655-65.

¹³ Adams Affidavit #1, ¶5; MR, Tab C, p. 190.

¹⁴ Affidavit of Keith Adams sworn April 1, 2024 ("Adams Affidavit #2"), ¶7; Final Bell Reply Motion Record ("Reply MR"), Tab B, p. 16. Bovingdon Cross pp. 20-21, qq. 76-79.

38. In particular, Bovingdon participated in the disclosure of BZAM information to Final Bell as part of Final Bell's due diligence, sent Final Bell emails with BZAM information, and engaged in direct discussions with Adams via telephone and Zoom.¹⁵

i. Parties Exchange Historic and Forward-Looking Financial Information

39. The information provided to Final Bell by BZAM during the due diligence process included both historic and forward-looking financial information. The historic financial information provided to Final Bell included BZAM's unaudited financial statements for the three and nine months ending September 30, 2023 ("**BZAM Q3 2023 Financial Statements**"), the latest financial statements available from BZAM.¹⁶

40. The forward looking financial information provided to Final Bell by BZAM included a PowerPoint deck containing *pro forma* financials for BZAM through the end of 2024 following its integration of FBC after the closing of the transaction (the "**Project Tower PowerPoint**").¹⁷

41. These *pro forma* financials were based on a financial model for the integrated BZAM and FBC business (the "**BZAM/FB Spreadsheet**") that were prepared for BZAM by the investment bank, Clarus Securities Inc. ("**Clarus**"). The Project Tower PowerPoint containing BZAM's *pro forma* financials and BZAM/FB Spreadsheet containing the financial model for the integrated company were provided to Final Bell by BZAM.¹⁸ The combined model also included forward-looking *pro forma* information that Final Bell provided to BZAM and Clarus.

¹⁵ Bovingdon Cross, pp. 19-20, qq. 70-75.

¹⁶ Adams Affidavit #1, ¶17; MR, Tab C, p. 193.

¹⁷ Project Tower PowerPoint, MR Tab C-1, pp. 208-220.

¹⁸ Affidavit of Matthew Milich sworn March 25, 2024 ("**Milich Affidavit #3**"), ¶29. Adams Affidavit #1, ¶9-10; MR, Tab C, p. 191.

42. BZAM also sent Final Bell a standalone *pro forma* financial statement for its 2023 and 2024 fiscal years (the “**BZAM Standalone Model**”). The BZAM Standalone Model contained information that Adams sought from Final Bell by email sent November 13, 2023. By email sent November 14 in response to Adams’s request, Milich wrote,

[...] we are in the middle of our 2024 budget/forecast (normally would complete for final review/approval in 1st week of December). Having said that, we are working hard in parallel on a proforma model for the combination which will be incorporating the latest, in-progress 2024 budget/forecast. I’m assuming we will want to review the proforma together, so anticipating you will be able to see the 2024 numbers, debt schedule, etc. as part of that.¹⁹

43. As promised by Milich, the BZAM Standalone Model included a debt schedule, among other things, which represented that on its own, without merging with FBC, BZAM had access to debt throughout 2024 and would be able to maintain positive cash flow until September 2024.²⁰

E. BZAM Makes Material Representations Concerning its Future Performance

44. The representations BZAM made to Final Bell included material representations about its current and future finances and operations. Specifically, BZAM made material representations in four areas:

- (a) That there was no reason why the \$34 million Cortland credit facility would not be extended beyond its original maturity date in March 2024;
- (b) That BZAM was not default of its tax obligations and would not default on its obligations after closing;
- (c) That BZAM was not on the brink of insolvency at the time that the parties entered into and closed on the SEA; and

¹⁹ The BZAM Standalone Model is Exhibit “O” to Milich’s Affidavit #3. The emails between Adams and Milich are Exhibit “4” to Adams Affidavit #2, Reply MR, p. 41.

²⁰ BZAM Standalone Model, Exhibit “O” to Milich’s Affidavit #3.

(d) That BZAM would not terminate its CFO without cause immediately after closing on the SEA.

i. *Representation #1: No Reason Cortland Facility Would not be Extended*

45. BZAM had a \$34 million credit facility with Cortland, comprised of base debt and a “revolver” facility. The funds available under the revolver depended on a complex formula that included calculating BZAM’s accounts receivable, sales, and other performance metrics. During the due diligence period, BZAM represented to Final Bell that it would have approximately \$7 million in financing available to it through the Cortland Credit Facility as of Q4 2023 and it expected to have between \$5-7 million under the Cortland Credit Facility available to it throughout 2024.²¹

46. The forward-looking information that BZAM provided to Final Bell represented that BZAM would continue to have access to approximately \$5-7 million under the Cortland Credit Facility throughout 2024. The BZAM/FB Spreadsheet provided to Final Bell also indicated that \$5-7 million in credit would be available to BZAM throughout 2024 and did not indicate that there was any uncertainty about its renewal.²²

Cortland Facility ¹		2023	2024	2024	2024	2024
		Dec-31	Mar-31	Jun-30	Sep-30	Dec-31
Maximum Revolving Facility Limit		\$34,000	\$34,000	\$34,000	\$34,000	\$34,000
AR		\$18,322	\$19,926	\$22,076	\$22,805	\$23,596
Inventory		\$48,202	\$47,740	\$47,321	\$47,220	\$44,779
% of Eligible AR	85%	\$15,574	\$16,937	\$18,764	\$19,384	\$20,056
% of Eligible Inventory	15%	\$7,230	\$7,161	\$7,098	\$7,083	\$6,717
Eligible Total		\$22,804	\$24,098	\$25,862	\$26,467	\$26,773
Potential AR advance cash	85%	\$13,238	\$14,397	\$15,950	\$16,476	\$17,048
Potential Inventory advance cash	25%	\$1,808	\$1,790	\$1,775	\$1,771	\$1,679
Maximum Capacity (limit of \$14,000)		\$14,000	\$14,000	\$14,000	\$14,000	\$14,000
Balance		\$7,024	\$7,446	\$8,007	\$8,255	\$8,119
Available		\$6,976	\$6,554	\$5,993	\$5,745	\$5,881

²¹ Adams Affidavit #1, ¶23; MR, Tab C, p. 195.

²² Project Tower PowerPoint, MR, Tab C-1, p. 220. BZAM Standalone Model, Exhibit O to Milich Affidavit #3; RMR, Tab 1-O, p. 342. BZAM/FB Spreadsheet, MR Tab C2, p. 225.

47. In November 2023, Final Bell was aware that the Cortland Credit Facility was due to mature in late March 2024. However, Bovingdon informed Adams that he saw “no reason” why BZAM did not think it could not get an extension to the Cortland Credit Facility. This representation was recorded by Adams in a contemporaneous email and admitted by Bovingdon at his examination.²³

48. As explained further below, the facts supporting Bovingdon’s representation changed on December 13, when Cortland informed Bovingdon in writing that it would not extend the maturity date. It is undisputed that BZAM did not share that communication or its contents with Final Bell before closing on the SEA on January 5.

i. Representation #2: BZAM was Current with its Tax Obligations

1. Summary of Excise Tax Process in Cannabis Industry

49. The following explanation as to how excise tax is charged, collected, and payable in the cannabis industry is from Bovingdon’s testimony at his out-of-court examination:

- (a) The cannabis vendor charges the purchaser excise tax when it makes the sale, so that the amount of tax charged is included on the invoice to the purchaser;
- (b) The vendor receives payment of the excise tax when the purchaser pays the invoice;
- (c) At the end of the month after excise tax is charged, the vendor calculates the total excise tax from the month prior, files a “B300” form, and then has administrative leave to actually pay the excise tax for the month prior five days after the subsequent month end.²⁴

50. Bovingdon explained how this timing works for the month of November:

²³ Adams Affidavit #1, ¶24; MR, Tab C, p. 195. Exhibit 6 to Adams Affidavit #1; MR, Tab C-6, p. 309. Bovingdon Cross, pp. 33-34, qq. 131-33.

²⁴ Bovingdon Cross, pp. 73-74, qq. 274-279.

285 Q. Okay. So let's back up.

If you are charging in November of the calendar year -- just to make sure I transpose this correctly -- you calculate the excise tax payable at the end of December --

A. Ordinarily.

286 Q. Ordinarily. And you pay it in the first week of January, ordinarily?

A. Correct.²⁵

2. *BZAM Represented its Excise Taxes were Current and Under Control*

51. BZAM sent Final Bell information about its outstanding excise tax and GST liabilities during the due diligence process. This information showed it had \$6,356,000 in outstanding excise tax arrears payable as of December 5, 2023 (the date of the SEA) and \$1,472,000 in GST arrears. These arrears were disclosed to Final Bell as subject to payment plans with the CRA.²⁶

52. By email sent November 28, 2023, Adams specifically asked Bovingdon about the CRA payment plans and was seeking to verify that BZAM's cash flow included the paydown of the plans. Bovingdon responded that day and informed Adams that Final Bell's tax liabilities were reflected in its *pro forma* cash flow model as part of the decrease in accounts payable ("AP") in 2024.²⁷

53. Through Bovingdon and the *pro forma* model, BZAM represented to Final Bell that its tax liabilities were under control. Bovingdon admitted he understood that Adams wanted to

²⁵ Bovingdon Cross, pp. 75-76, qq. 285-86.

²⁶ Adams Affidavit #1, ¶33; MR, Tab C, p. 198. BZAM Disclosure Letter dated December 5, 2023, Exhibit "8" to Adams Affidavit #1, MR, Tab C-8, p. 340.

²⁷ Email from Bovingdon to Adams dated November 28, 2023; MR, Tab C-7, pp. 312-313. Adams Affidavit #1, ¶36; MR, Tab C, p. 198.

know where the CRA liabilities were in the balance sheet and that they were accounted for in the material being sent to Final Bell.²⁸

54. Moreover, in the SEA, BZAM represented to Final Bell that all Tax Returns (as defined in the SEA) have or will have been timely filed and that all material Taxes shown to be due on such Tax Returns have or will be timely paid on or before the Closing Date.²⁹

55. As explained below, this representation was recently discovered by Final Bell to be false, and that BZAM knew or was reckless as to their truth when the statements were made.

56. On April 12, 2024, BZAM answered a question taken under advisement at Bovington's April 8, 2024 examination and produced its excise tax filings (Form B300) for the period spanning August through November 2023. The documents revealed that BZAM's B300 forms for August and November 2023 were not filed until February 12, 2024, long after they were due. As a consequence, BZAM failed to properly account for almost \$3 million of excise taxes that were payable prior to the closing date of the SEA.³⁰

ii. Representation #3: BZAM was not on the Brink of Insolvency

57. During the due diligence period, BZAM sent Final Bell *pro forma* cash flow statements representing that BZAM would have positive cash flows throughout 2024 and had more than sufficient cash to fund its near-term operations and capital expenditure. BZAM's *pro forma* statements showed that the amount of cash available to BZAM following its acquisition of FBC would not fall below \$5.9 million at any point in 2024.³¹

²⁸ Bovington Cross, pp. 29-30, qq. 116-17.

²⁹ SEA, article 3.31; MR, Tab B-4, p. 90.

³⁰ BZAM Answers to Undertakings dated April 12, 2024, Tabs 3-A and 3-D.

³¹ Adams Affidavit #1, ¶14; MR, Tab C, p. 192. Project Tower PowerPoint, MR Tab C1, p. 218.

58. Although BZAM's Q3 2023 Financial Statements included a note stating that the BZAM had "insufficient cash on hand to fund its planned operations", the *pro forma* cash flow statements represented otherwise. They showed that BZAM would have sufficient cash available to fund its operations for the foreseeable future and was not on the brink of insolvency.³²

59. Milich has testified that Final Bell should have taken heed of BZAM's going concern note in its financial statements to understand that it was at risk of imminent failure. But its predecessor TGOB had included the same note in its financial statements for fiscal years 2019, 2020, 2021, and 2022.³³ With that track record, the inclusion of a going concern note in the financial statements is not indicative of an imminent risk of insolvency.

60. Moreover, the Q3 2023 Financial Statements were historical. As explained above, Milich represented to BZAM in November 2023 that its *pro forma* statements were based on its most up to date budgeting for its 2024 fiscal year beginning January 1, 2024. The *pro forma* statements, which were prepared while BZAM was undertaking its annual budget review, arguably represent what BZAM says it expected in terms of its financial performance in fiscal 2024.³⁴

61. It is also notable that, as set out below, the definition of "Purchaser Books and Records" in the SEA includes "plans and projections", and that BZAM represented in the SEA that its accounting and financial Purchaser Books and Records were properly and accurately kept and complete in all material respects. While it is understood that a *pro forma* model is not a guarantee that the results will mirror the projections, in these circumstances, BZAM cannot

³² Adams Affidavit #1, ¶18; MR, Tab C, p. 194.

³³ Bovingdon Cross, p. 48, qq. 189-90.

³⁴ Reply MR, Tab B-4, p. 41. Bovingdon Cross, p. 56, qq. 225-26.

reasonably suggest that the *pro forma* model it disclosed to Final Bell during the due diligence process does not make a representation concerning the overall health of its cash flow.

iii. Representation #4: BZAM would not Terminate its CFO Without Cause

62. In the context of this transaction, and having regard to the Transaction Documents (as defined in the SEA) and the terms of Cortland Credit Facility, both in place when the SEA was negotiated, signed and, amended as required under the SEA, there was an implied representation from BZAM to Final Bell that it would not terminate Bovingdon, its CFO, shortly after closing in circumstances where it did not have cause to do so and had no candidate lined up to replace him.

63. This representation is found, among other things, in the following documents:

- (a) The SEA, in which BZAM represented that there were no pending settlements under any applicable employment laws which place any financial obligation on BZAM;
- (b) The Fourth Amendment to the Cortland Credit Facility, dated as of November 3, 2022, which redefined “Change of Control” at BZAM to mean, among other things, if Bovingdon ceases to be the CFO of BZAM, and Cortland is not satisfied, in its reasonable discretion, with the arrangements made to replace him; and
- (c) Likewise, the Second Amended and Restated Credit Agreement, dated January 8, 2024, but which was circulated in draft form in December 2023, includes the same definition of “Change of Control”.³⁵

64. As explained below, in December 2023—unbeknownst to Final Bell—Milich formed an intention to terminate Bovingdon as BZAM’s CFO immediately after closing on the SEA. He never disclosed this intention to Final Bell. What’s worse, when BZAM announced Bovingdon’s

³⁵ SEA, article 3.23(e), MR, Tab B-4, p. 88. Fourth Amendment to the Amended and Restated Credit Agreement, dated as of November 3, 2022, article 2.9; Exhibit “2” to the Alappatt Cross. Second Amended and Restated Credit Agreement dated January 8, 2024 (“SARCA”), Schedule “C” – Defined Terms; Exhibit “1” to the Alappatt Cross.

departure, it misrepresented the circumstances of his departure so as to cover up the fact that it was initiated by Milich within days of closing on the SEA.

F. December 5, 2023: Parties Execute Binding Share Exchange Agreement

65. BZAM and Final Bell executed the binding SEA on December 5, 2023. At closing, BZAM would acquire FBC in exchange for ninety million (90,000,000) shares of BZAM at a deemed price per share of \$0.15, for a face value of \$13,500,000.00.³⁶ The SEA also provided that, as part of the closing of the transaction, FBC would issue promissory notes totalling \$8 million to Final Bell or its affiliates, to be guaranteed by BZAM.³⁷

66. The SEA authorized Final Bell to nominate a director to sit on BZAM's board.³⁸ Final Bell nominated Jessel.

67. Key defined terms of the SEA include:

- (a) "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact required or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made.
- (b) "Ordinary Course" means, with respect to an action taken by a Person, that such action is (i) consistent with the past practices of the Person and is taken in the ordinary course of business of the normal operations of the Person or its business, and (ii) would be similar in nature to actions customarily taken in the ordinary course of the day to day operations of other Persons that are in the same line of business as such Person.
- (c) "Purchaser Books and Records" means all books of account, financial statements, tax records, personnel records of the Purchaser Employees, historic documents relating to the assets or business of the Purchaser Entities, sales and purchase records, cost and pricing information, business reports, plans and projections and

³⁶ SEA, article 2.2, MR, Tab B-4, p. 74.

³⁷ The notes were originally divided into a \$4 million secured note and a \$4 million unsecured note. Before closing, the parties replaced the two notes with a single, unsecured note for \$8 million with specified terms of repayment over time.

³⁸ SEA, Article 8.1(s), MR, Tab B-4, p. 116.

all other documents, files, correspondence and other information of a Purchaser Entity (whether in written, electronic or other form).

- (d) “Purchaser Employee” means any full-time or part-time employee of the Purchaser.
- (e) “Tax Return” means any return (including any information return), report, statement, schedule, notice, election, designation, form or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority, in connection with the determination, assessment, collection or payment of any Tax, or in connection with the administration, implementation or enforcement of, or compliance with, any Law relating to any Tax.
- (f) “Transaction Documents” means, among other things, the SEA and all other agreements, certificates and instruments or documents given pursuant to the SEA.³⁹

68. The SEA required the parties to exchange disclosure letters as of December 5, 2023, which are incorporated by reference into the SEA and form an integral part of the agreement.⁴⁰

69. Article 3 of the SEA sets out numerous representations by BZAM, including that:

- (a) Except as set out in the Purchaser Disclosure Letter, or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since September 30, 2023, BZAM’s business has been carried out in the Ordinary Course;
- (b) BZAM is not in breach of any Purchaser Material Contracts, which term includes the Cortland Credit Facility;
- (c) All accounting and financial Purchaser Books and Records have been fully, properly and accurately kept and are complete in all material respects;
- (d) There are no pending settlements under any applicable employment Laws which place a financial obligation upon BZAM;
- (e) All Tax Returns of BZAM that are required to be filed prior to the Closing Date have or will have been timely filed;

³⁹ SEA, Article 1, MR, Tab B-4, pp. 69-72.

⁴⁰ SEA, Article 1.5, MR, Tab B-4, p. 73.

- (f) No written agreement or document extending the period of assessment or collection of any Tax payable which relates to the assets of BZAM is currently in effect; and
- (g) No Transaction Document contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in the document not misleading in light of the circumstances under which they were made.⁴¹

70. BZAM's disclosure letter dated December 5, 2023, was signed by Milich and states, among other things, that BZAM "is current with all its tax returns and filings, and current with all due payments", with the exception of the specific enumerated liabilities subject to payments plans with the CRA that BZAM disclosed to Final Bell as part of the due diligence process, as reviewed above.⁴²

71. In summary, both during the due diligence period and in the SEA, BZAM made numerous representations to Final Bell that relate to its ability to remain solvent in the months immediately following the merger of FBC with BZAM. These were material representations that Final Bell was relying upon, as its rationale for entering into a transaction whereby it would become BZAM's second largest shareholder and largest unsecured creditor and depended on the merged entity remaining solvent.

G. Changes to BZAM's Circumstances after December 5, 2023 and Before Closing

i. Cortland Informs BZAM on December 13 of No Intention to Extend Facility

72. On December 13, 2023, Cortland and BZAM exchanged emails concerning a draft of the Second Amended and Restated Credit Agreement ("SARCA"). Upon reviewing the draft, Bovingdon asked Cortland a question concerning the maturity date:

⁴¹ SEA, Article 3.8, 3.20, 3.23, 3.29(e), 3.31, and 3.37; MR, Tab B-4, pp. 78-92.

⁴² BZAM Disclosure Letter, MR, Tab C-9, p. 340.

Please advise on how section 3 (c) (iii) monthly payments from March 24, 2024 are relevant if the facility matures on March 24, 2024 per 10 (a)? **Should the Maturity date be 2025?**⁴³

73. In response, Rachael Andrew, Cortland's in-house legal counsel, wrote:

Hi Sean,

I'll chime in on the business points and leave the remainder to the Cassels team:

1. Maturity Date: maturity date is March 24, 2024 – Cortland isn't granting TGOD an extension at that time. The amort payments have been pushed out to the same date as the Maturity Date as we'd look to implement that in the future if TGOD requests an extension to the Maturity Date.⁴⁴

74. It is undisputed that BZAM did not forward this email or share its information to Final Bell before closing on the SEA.

75. In the circumstances, even if Bovingdon's email to Andrew was not a formal request to extend the facility, BZAM could no longer credibly say that it saw **no reason** why it could not get an extension to the Cortland Credit Facility. Bovingdon suggested the maturity date should be 2025, and Cortland flat-out rejected that suggestion and told BZAM it is not granting an extension. This is a material change to BZAM's previous representation to Final Bell.

ii. BZAM Forms Intention Before Closing to Terminate Its CFO Without Cause

76. As established above, the SEA and the terms of the Cortland Credit Facility, both in effect during the due diligence period and upon closing of the SEA, represented to Final Bell that

⁴³ Exhibit "4" to the Bovingdon Cross [emphasis added]. The SARCA is exhibit "1" to the Alappatt Cross.

⁴⁴ *Ibid.* [emphasis added].

BZAM would not terminate Bovingdon as its CFO without cause immediately after the SEA closed.

77. Despite this representation, Milich admitted on cross-examination that he formed an intention to terminate Bovingdon's employment as BZAM's CFO prior to January 5, 2024—the closing date of the SEA.⁴⁵ But he only informed Bovingdon of his termination without cause on January 11, 2024 – **six days after the SEA closed.**⁴⁶

78. Milich and Bovingdon both testified that the termination was without cause and not related to Bovingdon's performance.

79. Final Bell submits that BZAM knew or ought to have known that Final Bell would assume Bovingdon would not be terminated during the sensitive period when FBC was being merged with BZAM. BZAM made a material misrepresentation by omission by failing to disclose to Final Bell the material information that BZAM intended to terminate Bovingdon's employment as CFO of the combined entity six days after closing on the SEA with no suitable candidate in place to replace him.

H. January 5 (or 8), 2024: SEA Closes with No Changes to BZAM's Representations

80. On January 8, 2024 BZAM acquisition of FBC closed. Jessel of Final Bell was appointed to the BZAM board on the same day.⁴⁷

⁴⁵ Milich Cross, pp. 16-17, qq. 61-63.

⁴⁶ Milich Cross, pp. 14-15, qq. 50-57. Bovingdon Cross, pp. 35-37, qq. 137-46.

⁴⁷ Jessel Affidavit #1, ¶17; MR, Tab B, p. 23.

81. As part of the closing, the parties were required to deliver an “Officer’s Bring-Down Certificate” to each other. These certificates, signed by an authorized officer, identified any material changes to the representations in the SEA.

82. The BZAM Bring-Down Certificate did not identify any changes to its representations.⁴⁸

I. Post-Closing Material Changes to BZAM’s Finances and Operations

83. After closing, BZAM experienced material changes to its finances and operations that it knew about before closing, and which revealed representations to Final Bell to be false or misleading. These changes concern the Cortland Credit Facility, Bovingdon’s status as CFO, a tax arrears repayment plan, and late-filing of excise tax forms.

i. BZAM Does not Attempt to Extend Cortland Credit Facility

84. It is undisputed that after January 5, 2024, BZAM made no attempt to extend the maturity date of the Cortland Credit Facility. No explanation has been given for this failure. Certainly between January 5 and February 6, when BZAM understood it may need to restructure due to an alleged “funding gap”, it had the opportunity to formally request an extension, but neglected to do so.

ii. January 11, 2024: BZAM Terminates Its CFO, Misleads Public

85. It has already been established that Milich formed an intention to terminate Bovingdon as BZAM’s CFO before closing. He acted on that less than a week after the SEA closed. It is undisputed that on January 11, 2024, Milich called Bovingdon and informed him that he was being terminated without cause, effective at some date in the near future.

⁴⁸ Reply MR, Tab B-1, p. 25.

86. After thirteen days of negotiations, on January 24, 2024, BZAM and Bovingdon finalized the terms of his separation from the company.⁴⁹

87. At the board meeting held that day, BZAM informed its directors, including Jessel, of Bovingdon's departure. The minutes of that meeting suggest the directors were not informed that the termination was instigated by Milich or that it was the result of a plan he formed in December 2023:

Departure of Chief Financial Officer ("CFO")

Mr. Milich noted that Mr. Bovingdon, CFO, would be departing from the Corporation with an effective date of April 30, 2024, to allow for a smooth transition of the role. A press release announcing his departure would be forth coming as soon as his separation agreement was finalized.⁵⁰

88. As promised, BZAM published a press release about Bovingdon's departure on January 25:

VANCOUVER, BC, Jan. 25, 2024 /CNW/ - BZAM Ltd. ("BZAM") (CSE: BZAM) (US-OTC: BZAMF) announced today that Sean Bovingdon, Chief Financial Officer, **will be leaving his position on April 30, 2024 to pursue other opportunities.** He will remain in his role to ensure a smooth transition, including through the announcement of the Company's results for the fiscal year ending December 31, 2023.⁵¹ [Emphasis added.]

89. At this cross-examination, Bovingdon admitted that the press release did not accurately represent the facts of this dismissal:

168 Q. As part of the discussions between January 11th and January 24th, at some point, there was an agreement reached between you

⁴⁹ Separation Agreement, Exhibit "2" to the Bovingdon Cross.

⁵⁰ Minutes of BZAM Directors' Meeting held January 24, 2024; Exhibit "JJ" to Milich Affidavit #3, RMR, Tab 1-JJ, p. 807.

⁵¹ BZAM Press Release dated January 25, 2024; Exhibit "KK" to Milich Affidavit #3, RMR, Tab 1-KK.

and BZAM to portray your departure to the public as you leaving the position; correct?

A. I don't think that's accurate. More a wording that would suggest it is transition and leaving for other opportunities.

169 Q. Right. Which, at the time, was not, in fact, the case; correct?

A. No.

170 Q. As in I was correct? My proposition is correct?

A. Correct.⁵²

90. Final Bell only learned this true state of affairs in the course of this litigation, and only because it insisted that Bovingdon attend an examination in advance of the cross-examination of BZAM's and Cortland's affiants.

iii. February 2, 2024: BZAM Refinances on Excise Tax Arrears Repayment Plan

91. In his affidavit sworn in support of BZAM's application for CCAA protection, Milich disclosed that on February 2, 2024, BZAM entered into an excise tax arrears repayment plan with CRA. Final Bell's Redfern requests sought all relevant documentation concerning the negotiation of this repayment plan.⁵³

92. In response to Final Bell's Redfern request, BZAM disclosed a cover email from CRA and the enclosed letter from CRA concerning the repayment plan:

Subject: Excise Duty arrears for 08/09/10/11, 2023
Balance: \$3,234,494.93

Thank you for proposing an arrangement to pay the amount you owe on your account.

⁵² Bovingdon Cross, pp. 42-43, qq. 168-70.

⁵³ Affidavit of Matthew Milich sworn February 28, 2024 ("Milich Affidavit #1"), ¶62. BZAM's responses to Final Bell's Redfern Requests are found at Exhibit "1" to the Bovingdon Cross – see request #16..

We confirm that the terms of your arrangement are as follows:

Due date of first payment: February 15, 2024

Number of payments: 24

Payment interval (days): 30

Amount of each payment: \$164,474.00⁵⁴

93. Bovingdon testified that this plan was a renegotiation of one of the excise tax arrears repayment plans BZAM disclosed to Final Bell in the SEA. Final Bell asked for the documents concerning the planned refinancing, and received in answers to undertakings an email sent September 25, 2023, by Preet Parmar, BZAM's Senior manager, Finance, to Bovingdon, explaining that BZAM's intention at the time was to pay the amounts due under the July 2023 repayment plan until December 2023, at which point it would renegotiate a new payment plan with CRA.⁵⁵

94. In his February 28 affidavit, Milich did not disclose that the February 2 repayment plan was a refinancing of an older repayment plan. Nor is there any evidence in the record suggesting that BZAM's plan to only pay its July 2023 plan until December 2023 was disclosed to Final Bell.

95. Final Bell submits that this omission amounts to a fraudulent misrepresentation by omission, because BZAM knew in November and December 2023 that it did not intend to complete the payments set out in the July 2023 repayment plan, but it did not disclose this fact to Final Bell.

⁵⁴ Exhibit 6 to Bovingdon Cross.

⁵⁵ Email dated September 25, 2023, Bovingdon Answers to Undertakings, Tab 2-C.

iv. February 12, 2024: BZAM Files B300 Forms Outside of Normal Course

96. The CRA letter referred to excise tax arrears for August through November 2023. At the Bovingdon examination, Final Bell asked for production of BZAM Management Inc.'s B300 forms for the period August through November 2023. Those forms were delivered to Final Bell on April 12, 2023 in Bovingdon's answers to undertakings.

97. The B300 forms confirm what Final Bell alleges in this claim: BZAM was in default of its excise tax filings and payments. Recall that Bovingdon testified that in the ordinary course, a company is required to file its B300 form and pay its excise taxes within the first five days of the second month following the month in question. Thus, for August 2023, the B300 form and payment were due by October 5, 2023, and for November 2023, the B300 form and payment were due by January 5, 2023 (the closing date).

98. The Bovingdon answers to undertakings reveal that BZAM did not file its B300 forms for those months until February 12, 2024 – weeks or months after they were due.⁵⁶ In contrast, the form for September 2023 was filed on October 30, 2023, and the form for October 2023 was filed on November 28, 2023 – both within the range Bovingdon testified as “ordinary”. But the B300 forms for August and November 2023 were filed outside the ordinary range, contrary to representations BZAM made to Final Bell prior to closing on the SEA.

⁵⁶ Bovingdon Answers to Undertakings, Tabs 3-A and 3-D.

v. *BZAM Arranges to Seek CCAA Protection Shortly After Closing*

99. The minutes of BZAM’s board meeting held February 6, 2024, indicate that this is the first time BZAM management identified a \$5 million “funding gap”. The minutes record the following discussion:

As a result of such analysis, Management further advised that a potential restructuring of the Corporation under a formal insolvency process may be the only viable option to preserve and maximize value of the Corporation and its stakeholders. Mr. Milich noted that management had made some initial inquiries with potential restructuring advisors.⁵⁷

100. The minutes of BZAM’s board meeting held February 8 and 12, 2024, expand on this discussion. In attendance on February 12 were BZAM’s now-insolvency counsel and a representative of FTI, now the Monitor of BZAM. The minutes record the following discussion:

As a follow up to the board of directors (the “Board”) meeting held two days prior, Mr. Milich noted that a few preliminary steps had been taken, for example: management initiated the engagement of external advisors, and management prepared a revised cashflow forecast and a revised 2024 budget. Mr. Milich presented the revised cashflow forecast to the Board, informing the Board that the forecast was based on the initial consultation with the external advisors. The revised cashflow forecast contemplated a potential restructuring plan, which could include a filing under the *Companies’ Creditors Arrangement Act* (“CCAA”) as soon as February 21, 2024.

Mr. Bovingdon then went through the week-by-week cashflow details with the Board, and discussed the risks and assumptions related thereto. Mr. Bovingdon shared certain insights that were communicated by the advisors related to a potential CCAA filing. Mr. Schnarr then asked management for a memo prepared by the external advisors with advice related to a potential CCAA filing for the Board’s review.

[...]

⁵⁷ Minutes of BZAM Directors’ Meeting held February 6, 2024; RMR, Tab 1-LL, p. 812.

Mr. Milich added that he had preliminary discussions with Cortland Credit Lending Corporation (“Cortland”), who indicated its continued support for the Corporation in a potential restructuring.

Management was tasked with preparing an outline of steps and relevant dates associated with a potential CCAA filing for the Board’s review.⁵⁸

101. Final Bell submits that the fact that BZAM was considering CCAA protection within weeks of closing on the SEA is further evidence of its knowingly false representations or recklessness as to the truth of its representations to Final Bell during the due diligence period and during the “bring down” period up to January 5, 2024.

J. BZAM CCAA and Stalking Horse Bid Will Permit Stone Pine to “Scoop” FBC

102. It is undisputed that under the SISF, an entity affiliated with Bassam Alghanim, the principal of Stone Pine and the largest shareholder of BZAM, has made a stalking horse bid that, if successful, will fully repay the secured debt owed to Cortland and Stone Pine, but will not compensate Final Bell for its unsecured debt or equity. If the stalking horse bid is successful, Final Bell will receive no recovery for its losses, meaning it will have sold FBC to BZAM for a fraction of the agreed-upon sales price.

K. Additional Evidence to Come – Milich’s Cross, Possibly Others

103. As noted above, Final Bell will be cross-examining Milich at the trial. BZAM has not yet confirmed whether it will be cross-examining Adams and Jessel. At this stage, the evidence is mostly complete, but Milich, as BZAM’s only affiant, is a key witness and the Court will have to be mindful of the fact it has not seen or heard the challenge to many salient issues in his affidavit.

⁵⁸ Minutes of BZAM Directors’ Meeting held February 8 and 12, 2024; RMR, Tab 1-MM, p. 815.

L. BZAM Tries to Distract the Court from the Relevant Facts

104. In its Responding Motion Record and cross-examinations of Adams and Jessel, BZAM attempts to “put Final Bell on trial” by advertent to, among other things, the price it paid for Final Bell Canada when it purchased the company in November 2022 for approximately \$7.4 million, Final Bell’s cease-trade order made by the British Columbia Securities Commission in August 2023, the resignation of its auditor in November 2023, and other publicly available information concerning Final Bell that BZAM pulled from SEDAR.

105. Final Bell initially objected to the relevance of these facts and documents, but later lifted those objections—not because the facts are relevant, but because they are red herrings not worth fighting over at a time-constrained trial.

106. Final Bell submits that BZAM’s efforts to distract from its many misrepresentations to Final Bell only serve to further support Final Bell’s claim.

PART III - STATEMENT OF ISSUES AND APPLICABLE LAW

A. A Comment on the Process Leading up to this Trial

107. In an ordinary trial, an opening statement would not contain argument. It would be limited to an outline of the applicable legal principles and avoid arguing the party’s case. But this is not an ordinary trial.

108. This summary trial was scheduled on an extremely expedited basis due to concerns about the potential for undue interference with the SISP. The SISP, which was sought shortly after BZAM was granted CCAA protection, imposes tight timelines for bids under the sales process, which constrained the parties’ ability to pursue proper documentary and oral discoveries. Instead, the parties agreed to a hybrid trial procedure that involved:

- (a) An exchange of affidavits as their witnesses' primary evidence in chief, with brief "warm ups" at the hearing for any witness who was being cross-examined in Court;
- (b) A "Redfern" documentary request process whereby parties would request documents from the opposing party in lieu of an exchange of affidavits of documents;
- (c) Cross-examinations out of court on the witnesses' affidavits to address matters the examining party believes are suited to a paper record; and
- (d) Continued cross-examinations in court of any witness the adverse party seeks to examine in front of the Trial Judge.

109. The parties' opening statements are being delivered between steps "c" and "d." While much of the evidence is in the record, there is more evidence to come. For this reason, while this statement includes some argument on the issues, it intentionally avoids making a full argument, as there is more relevant evidence to come from Milich, and possibly Adams and Jessel, at the hearing.

B. The Issues

110. Final Bell submits that there is in essence only one issue for this Court to consider: has Final Bell established on a balance of probabilities that it is entitled to the remedy of rescission, and in addition or in the alternative, equitable compensation?

111. The bases for Final Bell's claim to rescission are the misrepresentations BZAM made during the negotiation, execution, and closing of the SEA, as described above. BZAM knew its representations were false, or else was reckless as to their truth. The misrepresentations were material to Final Bell's evaluation of the risk of the SEA transaction, and Final Bell relied on them, at least in part, in its decision to enter into the SEA.

112. Together, the misrepresentations painted a portrait of a corporation that was sufficiently stable to justify Final Bell's rationale for entering into the SEA in exchange for thirty percent of

the combined entity's equity and \$8 million in unsecured debt. It is not mere speculation to suggest that Final Bell would not have closed on the SEA on January 5, 2024, if BZAM had informed it that:

- (a) Cortland had informed BZAM on December 13, 2023, that Cortland was not granting TGOD an extension of the Second ARCA when it matured on March 24, 2024.
- (b) BZAM had failed to file its B300 excise tax returns for August and November 2023 within the time required and was therefore not current with its excise tax filings;
- (c) BZAM intended to ask CRA in January 2024 for permission to "refinance" its July 2023 excise tax repayment plan with CRA;
- (d) BZAM was so thinly capitalized that it did not have sufficient cash available to it to ensure it would be solvent for more than eight weeks after closing; and
- (e) BZAM intended to inform its CFO six days after closing that his employment was being terminated without cause, with no replacement candidate in sight.

113. If this Court finds that BZAM misled Final Bell on these facts, or any one of them, then it should not be difficult to find that the representations were material and that Final Bell relied on them, at least in part, when it decided to close on the SEA.

C. Principles of Rescission of Contracts

i. Fraud or Recklessness as to Truth of a Statement

114. Rescission is the traditional remedy when a contract is found to be unconscionable, and therefore unenforceable. The remedy of rescission in such circumstances extinguishes the agreement as from the beginning ("*void ab initio*") so that it is as if it never existed. The objective of the remedy is to restore the parties to their original positions as far as possible.⁵⁹

⁵⁹ *Rick v. Brandsema*, 2009 SCC 295 at [para. 66](#); Dominic O'Sullivan, Steven Elliott and Rafal Zakrzewski, *The Law of Rescission*, 2nd ed. (Oxford: University Press, 2014) [*The Law of Rescission*], at paras. 13.01 — 13.02.

115. The general principles and requirements for rescission are set out by the Court of Appeal for Ontario in *Deschenes v. Lalonde*:

- (a) The equitable remedy of rescission is available for a false or misleading representation that induces a contract;
- (b) Rescission requires proof that the misrepresentation was material and was relied on by the party seeking to rescind the contract;
 - (i) A “material misrepresentation” is one that must relate to a matter that would be considered by a reasonable person to be relevant to the decision to enter the agreement, though it need not be the sole inducement for acting;
 - (ii) Whether a contracting party relied on the misrepresentation, at least in part, to enter into the agreement is a question of fact to be inferred from all the circumstances of the case and evidence at trial.⁶⁰

116. A misrepresentation may occur either by the active making of a statement that is not true or by failing, in certain circumstances, to disclose material information to the other party and then entering into the contract knowing that the other side is operating under a mistaken assumption.⁶¹

117. Put another way, a fraudulent misrepresentation is a statement either known to be false or made not caring whether it is true or false, which is also referred to as “recklessness”.⁶²

ii. Equitable Compensation in Addition to or in Lieu of Rescission

118. Rescission, as an equitable remedy, is meant to put the contracting parties back in the positions they were in before entering into the contract. Perfect restoration is not required – even where the parties cannot be restored precisely to the state they were in before the contract was

⁶⁰ *Deschenes v. Lalonde*, 2020 ONCA 304 at [para 29](#).

⁶¹ *1323257 Ontario Ltd. (Hyundai of Thornhill) v. Hyundai Auto Canada Corp.*, 2009 CanLII 494 (ON SC) at [para 72](#).

⁶² *Barclays Bank v. Metcalfe & Mansfield*, 2011 ONSC 5008 at [para 156](#); aff’d [2013 ONCA 494](#).

signed, courts may still grant and tailor the rescission remedy because it is an equitable remedy focussed on practical justice, not rigid technicalities.⁶³

119. If rescission is not available or appropriate, or if it will not make the claimant whole, then the Court can order equitable compensation as a remedy for unconscionable dealing as an alternative to, or in conjunction with, an order for rescission. Thus, a defendant may be required to not only to return the property subject to the contract to the claimant, or pay its market value, but also to account for the benefits the defendant received through possession of the property.⁶⁴

120. Rescission and equitable compensation operate together to relieve and prevent unconscionability and unfairness. They are flexible remedies, as explained by the Supreme Court of Canada in *Rick v Brandsema*:

[W]hen rescission is unavailable because restitution, as a practical matter, cannot be made, damages in the form of "equitable compensation" are imposed to provide relief to the wronged party. This is because, as the British Columbia Court of Appeal said in *Dusik v. Newton* (1985), [1985 CanLII 406 \(BC CA\)](#), 62 B.C.L.R. 1: "Where rescission is impossible or inappropriate, it would be inequitable for the defendant to retain the benefits of the unconscionable bargain" (p. 47)."⁶⁵

121. In a recent case where a plaintiff successfully demonstrated they were induced to purchase real property under false pretences and rescission was alleged by the defendant vendor to be inappropriate, Justice Centa ordered equitable compensation as an alternative award.

Justice Centa determined that equitable compensation would be best achieved by:

⁶³ *1000425140 Ontario Inc. v. 1000176653 Ontario Inc.*, 2023 ONSC 6688 at [para 157](#).

⁶⁴ *Rick v. Brandsema*, 2009 SCC 10 at [paras. 66–67](#); *The Law of Rescission* at paras. 17.01 — 17.09; GHL Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Thomson Reuters Canada Limited, 2011) at 762.

⁶⁵ *Rick v. Brandsema*, 2009 SCC 10 at [paras. 66](#).

- (a) The plaintiff would sell the property on the open market to an arm's-length purchaser for the highest market price available for a cash-only purchase; and
- (b) The defendant would pay damages to the plaintiff equal to the sum of the difference between the purchase price paid by the plaintiff to the defendant and the price obtained by the plaintiff on the sale to the third-party purchaser, plus taxes and other payments paid by the purchaser after the purchase.⁶⁶

122. Justice Centa's judgment demonstrates the creativity and flexibility to be applied by the Court to ensure that an innocent victim of a fraudulent misrepresentation is made whole and that non-arm's length parties who benefited from the impugned transaction contribute to the remedy, so that the plaintiff was put in the position it was in prior to entering into the contract.

iii. Rescission Available Even if Third Parties Affected

123. An order for rescission may be appropriate, despite intervening third party rights, if rescission can have some practical effect in restoring the parties' pre-contract positions. While equity will protect the property rights of innocent third-party purchasers, in many cases this can be achieved without barring the remedy of rescission. The courts may do what is practically just.⁶⁷

124. In circumstances where some of the property subject to the contract has ended up in the hands of a third party such that it cannot be returned to its original owner, the court may award the original owner alternate relief aimed at restoring its pre-contractual position. The Supreme Court noted in *Nesbitt v Redican*, "the practice has always been for a Court of Equity to give relief by way of rescission whenever by the exercise of its powers it can do what is practically just, though it cannot restore the parties precisely to the state they were in before the contract".⁶⁸

⁶⁶ *1000425140 Ontario Inc. v. 1000176653 Ontario Inc.*, 2023 ONSC 6688 at [para 168](#).

⁶⁷ *The Law of Rescission* at para. 20.24

⁶⁸ *Urban Mechanical Contracting Ltd. v. Zurich*, 2022 ONCA 589 at [para. 60](#); *Redican v. Nesbitt*, 1923 CanLII 10 (SCC) at [p. 153](#) [emphasis added].

125. More recently, the Court of Appeal for Ontario confirmed that it is an incorrect principle of law to hold that rescission may never be ordered where it would adversely affect third parties. Rather, rescission may be available even if a third party acquires an interest in the contract property which renders *restitutio in specie* impossible.⁶⁹

D. Principles of Contractual Interpretation

126. In addition to the principles of rescission, this Court will have to consider the principles of contractual interpretation in order to interpret the material terms of the SEA.

127. It is commonly understood that contractual interpretation requires a “practical, common sense approach not dominated by technical rules of construction”.⁷⁰

128. The Supreme Court of Canada confirmed in *Sattva* that contracts are to be read “as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”. This approach advances the object of contractual interpretation: to ascertain the parties’ objective intentions and give effect to their reasonable expectations.⁷¹

129. In carrying out the interpretive exercise, the court must consider principles of commercial reasonableness and business efficacy. Contracts must be construed in a “positive and purposive manner” in order to “understand the structure of the agreement reached by the parties, the purpose of the transaction and the business context in which the contract was intended to

⁶⁹ *Urban Mechanical Contracting Ltd. v. Zurich*, 2022 ONCA 589 at [para. 85](#); *Stewart v. Complex 329 Ltd.* (1990), 1990 CanLII 7839 (NB KB) at [p. 20](#); *Trans-Canada Trading Co. v. M. Loeb Ltd.*, [1947 CanLII 340 \(ON SC\)](#); *McCarthy v. Kenny*, 1939 CanLII 333 (ON SC) at [p. 563](#).

⁷⁰ *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633 at [para 47](#).

⁷¹ [Sattva Capital Corp v Creston Moly Corp, 2014 SCC 53](#) at ¶ 47 [*Sattva*], Claimant’s Book of Authorities (“BOA”) Tab 1.

operate”. The words of the contract cannot be divorced from the factual matrix, including the business principles underlying the parties’ agreement. This is because the objective of commercial contractual interpretation is to give effect to the parties’ true intention, expressed as a whole, at the time the contract was made.⁷²

130. The Supreme Court in *Sattva* explained how and why it was doing away with previously understood rules to establish a modern approach to contractual interpretation in Canada:

- (a) “[T]he interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction”;
- (b) “The overriding concern is to determine “the intent of the parties and the scope of their understanding” [...]. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”;
- (c) “The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement”;
- (d) The surrounding circumstances must never be allowed to overwhelm the words of that agreement; and
- (e) The relevant surrounding circumstances “consist only of objective evidence of the background facts at the time of the execution of the contract..., that is knowledge that was or reasonably ought to have been within the known of both parties at or before the date of contracting”.⁷³

⁷² [Resolute FP Canada Inc v Ontario \(Attorney General\), 2019 SCC 60](#) at ¶ 142, BOA Tab 2. [Sattva](#) at ¶ 47, BOA Tab 1. [Ventas, Inc v Sunrise Senior Living Real Estate Investment Trust](#), 2007 ONCA 205 at ¶ 24, BOA Tab 3.

⁷³ [Sattva](#) at ¶ 47-48, 57-58, BOA Tab 1 [citations omitted].

131. In this case, the Court will have to interpret several portions of the SEA to determine what BZAM represented, what Final Bell relied upon, and whether those representations were accurate when made.

E. Factual Matrix Includes Need to Rely on Counterparty's Representations

132. Final Bell submits that the SEA should be interpreted in the context in which it was made. It was a detailed, formal, robust agreement made approximately five weeks after the parties entered into a non-binding LOI that contemplated an exchange of financial information for the purpose of both parties conducting due diligence on the other. It was understood in this context that the information exchanged during this due diligence period would form the representations upon which each party would rely in agreeing to enter into and close on the SEA, which explains why the representations sections of the SEA are so detailed for both sides.

133. The factual matrix of the SEA also includes the fact that it was never intended to be a purchase for cash or similarly liquid and secure consideration, but rather in exchange for equity in the combined entity and (mostly) unsecured debt. The parties were to remain in business for the foreseeable future, which meant they both needed to be assured that the other was a worthy partner.

134. In particular, Final Bell was entrusting its Canadian subsidiary to BZAM, so it needed assurance that the combined entity would be sufficiently capitalized and operated to ensure that it survived past the one-year lock-up period agreed to in the LOI and confirmed in the SEA.

F. SEA Defined Terms Should be Given Plain Meaning for Ordinary Words

135. The SEA is a complicated document with dozens of defined terms. But its language is not complex or overly technical. For example, the definition of “Purchaser Books and Records” is long, but easy to decipher:

“Purchaser Books and Records” means all books of account, financial statements, tax records, personal records of the Purchaser Employees, historic documents relating to the assets or business of the Purchaser Entities, sales and purchase records, cost and pricing information, customer and supplier lists and files, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, **plans and projections and all other documents, files, correspondence and other information of a Purchaser Entity (whether in written, electronic, or other form).**⁷⁴ [Emphasis added].

136. This definition is relevant to the representation by BZAM in the SEA that its books and records are accurate and complete in all material respects:

3.23 Books and Records

(a) All accounting and financial Purchaser Books and Records have been fully, properly and accurately kept and are complete in all material respects. [...] ⁷⁵

137. This representation is found in Article 3 of the SEA (“Representations and Warranties of the Purchaser”), which includes the following introductory language before it sets out dozens of representations under thirty-seven headings:

The Purchaser makes the following representations to the FBC Shareholder, and **acknowledges and agrees that the FBC Shareholder is relying upon such representations and**

⁷⁴ SEA, Article 1, section 1.1; MR, Tab B-4, p. 70.

⁷⁵ SEA, Article 3, section 3.23; MR, Tab B-4, p. 84.

warranties in connection with the execution, delivery and performance of this Agreement.⁷⁶ [Emphasis added.]

138. Final Bell submits that this contractual representation, which incorporates the defined term by reference, is contractual confirmation of a common sense, plain-meaning proposition: that it was entitled to rely on BZAM's plans and projections as part of its due diligence of the transaction, and to the extent a plan or projection contained a material misrepresentation that BZAM knew was false or else was reckless as to its truth, it does not lie in BZAM's mouth to now say that Final Bell should not have relied on BZAM's projections.

139. Final Bell submits that the terms of the SEA should be interpreted as directed by the Supreme Court and the Court of Appeal for Ontario: as a whole, giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.

140. If this Court interprets the SEA as it should, it will not be difficult for it to conclude that, prior to January 5, 2024, BZAM knew that certain representations it made to Final Bell during the due diligence period or in Article 3 of the SEA were false, or else it was reckless as to their truth.

G. Rescission is Possible, Supplemented by Equitable Damages

141. In the context of a CCAA proceeding, where it is clear BZAM in its current form and structure will not continue to operate, it is fair and equitable for this Court to rescind the SEA and return Final Bell Canada to Final Bell. If this Court finds that BZAM knowingly or

⁷⁶ SEA, Article 3; MR, Tab B-4, p. 76.

recklessly made false statements to Final Bell to induce Final Bell to enter into the SEA, then BZAM has no interest in the remedy the Court awards to right this wrong.

142. The only interested party to intervene in this proceeding is Cortland, the senior secured lender and DIP lender. But Cortland will not be prejudiced by a rescission – *if the Court orders the stalking horse bidder to close on its bid for the BZAM’s assets*. If the stalking horse bid is approved by this Court and closes on schedule, then Cortland will be repaid in full, with no loss due to the removal of FBC from the BZAM group of companies.

143. The only party who can claim to suffer a “loss” will be the stalking horse bidder, which is the alter-ego of Stone Pine, BZAM’s largest shareholder and its second secured lender. But if rescission is granted, Stone Pine will be no worse off than it was before the SEA closed.

144. After January 5, 2024, Stone Pine expressly refused to lend additional funds to BZAM “in its current form” and was only willing to so do via a restructuring that would wipe Final Bell’s debt and equity off BZAM’s balance sheet. Having lent no additional funds to BZAM, the stalking horse bidder cannot claim to be prejudiced by the loss of an asset BZAM had no equitable right to possess. Returning the parties to the position they were in before January 5, 2024 will not prejudice Stone Pine or its alter-ego, because they were already on the path to suffering the loss of their equity and debt in BZAM as a result of its imminent insolvency, which was known to it, or should have been known, but hidden from Final Bell.

145. As the largest shareholder and second secured lender to BZAM, Stone Pine should not be permitted to retain the benefits of the unconscionable bargain BZAM induced Final Bell to enter into. It will be no worse off if the shares and assets of FBC are returned to Final Bell, together with sufficient funds to make Final Bell whole for any damage to FBC since January 5, 2024.

H. Court Can Direct a Reference as to Remedy if Necessary

146. Ultimately, the Court does not have to determine the precise remedy to award to Final Bell if rescission is warranted. If the Court concludes that rescission should be granted, but determines that it is impossible or inappropriate, or an incomplete remedy, then the Court can direct a reference whereby the parties can adduce additional evidence and make further submissions concerning how to fairly and equitably compensate Final Bell.

PART IV - ORDER REQUESTED

147. The record in this proceeding is not yet complete. More evidence is to come, after which Final Bell will make its closing submissions. At the completion of this summary trial, Final Bell will ask this Court to make an Order:

- (a) Rescinding the SEA;
- (b) In addition or in the alternative to rescission, awarding Final Bell equitable compensation;
- (c) If necessary, directing a further hearing or reference to determine the amount and form of equitable compensation;
- (d) Costs of this proceeding, on such terms as are just to ensure they are paid and not left unpaid due to this restructuring; and
- (e) Such further and other Relief as to this Honourable Court may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of April, 2024.



Andrew Winton & David Ionis

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.

SCHEDULE “A”
LIST OF AUTHORITIES

Cases

1. *Rick v. Brandsema*, [2009 SCC 295](#).
2. *Deschenes v. Lalonde*, [2020 ONCA 304](#).
3. *1323257 Ontario Ltd. (Hyundai of Thornhill) v. Hyundai Auto Canada Corp.*, [2009 CanLII 494 \(ON SC\)](#).
4. *Barclays Bank v. Metcalfe & Mansfield*, [2011 ONSC 5008](#); aff'd [2013 ONCA 494](#).
5. *1000425140 Ontario Inc. v. 1000176653 Ontario Inc.*, [2023 ONSC 6688](#).
6. *Urban Mechanical Contracting Ltd. v. Zurich*, [2022 ONCA 589](#).
7. *Redican v. Nesbitt*, [1923 CanLII 10 \(SCC\)](#).
8. *Stewart v. Complex 329 Ltd.* (1990), [1990 CanLII 7839 \(NB KB\)](#).
9. *Trans-Canada Trading Co. v. M. Loeb Ltd.*, [1947 CanLII 340 \(ON SC\)](#).
10. *McCarthy v. Kenny*, [1939 CanLII 333 \(ON SC\)](#).
11. *Sattva Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#).
12. *Resolute FP Canada Inc v Ontario (Attorney General)*, [2019 SCC 60](#).
13. *Ventas, Inc v Sunrise Senior Living Real Estate Investment Trust*, [2007 ONCA 205](#).

Secondary Sources

14. Dominic O'Sullivan, Steven Elliott and Rafael Zakrzewski, *The Law of Rescission*, 2nd ed. (Oxford: University Press, 2014).
15. GHL Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Thomson Reuters Canada Limited, 2011).

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**WRITTEN STATEMENT OF THE CLAIMANT,
FINAL BELL HOLDINGS INTERNATIONAL LTD.**

LAX O'SULLIVAN LISUS GOTTLIEB LLP
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.