

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

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

Applicants

**AIDE MEMOIRE OF FINAL BELL HOLDINGS INTERNATIONAL LTD.
(CASE CONFERENCE RETURNABLE APRIL 19, 2024)**

April 19, 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**

Introduction

1. The purpose of this case conference is to determine whether the trial scheduled to be heard Monday, April 22 needs to be adjourned due to the April 18, 5:20 pm disclosure by BZAM of documents it was obligated to disclose on April 12. These documents materially alter the evidence relied upon by Final Bell—to its prejudice—in its opening statement and trial strategy decisions. The only fair remedy is to adjourn the trial to permit Final Bell to conduct limited documentary and oral discovery to unravel this shifting fact situation.

2. This trial was originally scheduled and timetabled on an urgent and expedited basis to account for the deadline for “Qualified Bids” under the SISP; however, on April 17 the Monitor and BZAM determined that there was no need to proceed to Phase Two of the SISP, which results in the Stalking Horse Bid becoming the successful bid under the SISP. The next deadline under the SISP Process is May 21, which relieves some of the time pressure previously governing the timing of this trial.

BZAM’s Inconsistent and Unexplained Evidence Concerning Excise Tax Arrears

3. As explained in detail in Final Bell’s Opening Statement, a key issue in this case is the timing of BZAM’s filing of excise tax forms (“B300”) and payment of its excise tax liabilities.

This has been a core issue from the outset:

- (a) Keith Adams’s March 18 affidavit identified alleged misrepresentations by BZAM concerning its excise tax liabilities;¹

¹ Motion Record, Tab C, pp. 197-201.

- (b) BZAM's affiant, Matthew Milich, testified in his March 25 affidavit that BZAM did not make any misrepresentations on this issue;²
- (i) Notably, BZAM did not adduce evidence from its former CFO and current consultant Sean Bovingdon;
- (c) Final Bell's Redfern requests included requests for delivery of documents concerning excise tax liabilities, and BZAM delivered documents in response;
- (i) The requests included a request for,
- all relevant documentation concerning the negotiation of the temporary payment plan BZAM's subsidiary entered into on February 2, 2024, in which it agreed to pay the CRA \$164,474 monthly in excise taxes;³
- (d) On April 4 BZAM on April produced the letter from CRA dated February 2, 2024 concerning the repayment plan, which referenced excise tax arrears for the period spanning August-November 2023:
- Excise Duty arrears for 08/09/10/11, 2023
Balance: \$3,234,494.93⁴
- (e) Final Bell insisted on examining Bovingdon for the hearing. At his out-of-court examination held April 8, following answers to questions concerning this document, it became apparent that BZAM had not made full disclosure of relevant documents concerning the payment plan referenced in this document,

² Milich Affidavit #3, ¶74-75.

³ Exhibit "1" to Bovingdon Cross, request 16. This plan was referenced in Milich's February 28 affidavit sworn in support of the initial application but was not attached thereto.

⁴ Enclosed at Tab "1".

leading to Final Bell's request that BZAM produce, among other things, its B300 forms for the period spanning August through November 2023;

- (f) On Friday, April 12, at 6:18 pm, BZAM delivered its answers to undertakings, which enclosed B300 forms for August and November 2023 indicating the forms were filed on February 12, 2024;⁵
- (g) On Monday, April 15, at 9:23 am, Final Bell informed BZAM that it did not require Bovington to attend at trial for oral examination;
- (h) On Tuesday, April 16, Final Bell delivered its opening statement for the upcoming trial;
 - (i) Its statement relied on the August and November 2023 B300 forms produced by BZAM on April 12 to supports its claim that BZAM made a material misrepresentation prior to closing on the SEA;
- (i) On Thursday April 18, at 5:20 pm, BZAM delivered new B300 forms for August and November 2023 indicating that the forms were filed in September and December, respectively, contrary to the evidence disclosed the week prior;

⁵ Excerpts of these forms are attached at Tab "2".

- (i) The letter to Final Bell was dated April 17 and entitled “Letter to Lax April 17 2024”. The metadata for the document was cleared such that it is impossible to determine when the letter was created and originally composed. A request for this metadata was refused.

Final Bell Requires Brief Adjournment and Additional Discovery to Avoid Unfair Trial

4. As a result of BZAM’s delayed disclosure of relevant documents concerning its pre-closing excise tax liabilities, including the delayed and contradictory disclosure of documents in answer to undertakings, Final Bell has been prejudiced in its ability to present its case at the trial starting Monday. The BZAM evidence raises many more questions on this issue that Final Bell should now be permitted to explore via additional, topic-specific documentary disclosure and limited oral examination for discovery (not out-of-court cross-examination) of Bovington.

5. Alternatives to an adjournment do not address this unfairness, but rather compound it. The remedy for last-minute disclosure of documents by a party is not for the innocent party to have to compromise its ability to prepare its case. For example, in *Quadrangle v. Canada (A-G)*, in similar circumstances, this Court held:

It is clear to me, even in this very early day of trial, obviously, that it's clear from the submissions of both parties that the discussions between this particular Crown witness and representatives of the plaintiffs and/or their potential investors could be of potential significance in this trial which I pause again to observe which arises out of alleged misrepresentations, some of which at least were made orally.

In the circumstances, I'm satisfied that a short adjournment given that the transcript was delivered to the defendant only yesterday is appropriate for this reason also in order to allow the defendant an opportunity to explore the circumstances of the transcript through additional questions put to the plaintiffs by way of undertakings.⁶

6. In the current case, similar relief should be afforded to Final Bell, with the exception that Final Bell should be permitted to orally examine Bovington seeing as BZAM did not adduce evidence from him as a witness for its case in chief and Final Bell elected not to call him as a witness under rule 53.07 based on the record as it was finalized on April 12.

Conclusion

7. This matter is one of fundamental trial fairness. The circumstances of BZAM's filing of its B300 forms and payment of its excise taxes for the period spanning August through November 2023 is a core issue. BZAM has delivered inconsistent evidence on this issue, both in response to Redfern requests and answers to undertakings, thereby undermining the integrity of the expedited gathering of evidence for this trial.

8. Given the relaxed urgency with respect to the SISP timetable, there is no prejudice to BZAM or other stakeholders in this CCAA proceeding if a brief adjournment is granted to afford Final Bell an opportunity to conduct limited additional documentary and oral discovery.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of April, 2024.

⁶ *Quadrangle v Canada (A-G)*, December 4, 2023 Transcript, pp. 68-70, attached at Tab 3.

-7-

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.

Tab 1

Western Quebec TSO (Laval Site)
Ottawa ON K1A 0L5

February 02, 2024

BZAM MANAGEMENT INC.
1570 - 200 BARRARD ST
VANCOUVER BC V6C 3L6Account Number
70583 6518 RD0004

Dear Sir or Madam:

Subject: Excise Duty arrears for 08/09/10/11, 2023
Balance: \$3,234,494.93Thank you for proposing an arrangement to pay the amount you owe
on your account.

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: \$164,474.00The payment arrangement shown above is acceptable only if you
meet all the following conditions:

- you file your current-year returns by the deadlines and pay
any taxes owing by the due dates.

Interest will continue to add up until you pay the full amount you
owe. You can find the rates at canada.ca/taxes-interest-rates.

These are the ways you can pay:

- Use your financial institution's telephone or online banking
services
- Use My Payment at canada.ca/cra-my-payment to pay with your
debit card using Interac Online
- Pay by pre-authorized debit through My Business Account at
canada.ca/my-cra-business-account

.../2

National ATP Office
395 Terminal Ave.
6th Floor
Ottawa ON K1A 0L5Toll Free : 1-833-541-3081
Fax : 866-936-7600
Web site : canada.ca/taxes

- Pay in person at your financial institution or at an automated banking machine. You will need a personalized remittance voucher. If you do not have a voucher, you can get one by calling the Canada Revenue Agency at 1-800-959-5525

You can also mail your payment to:

Canada Revenue Agency
PO Box 3800 STN A
Sudbury ON P3A 0C3

If you mail your payment, write your full business number on your cheque or money order so we can process it correctly. Please make cheques and money orders payable to the Receiver General for Canada.

For other payment options, go to canada.ca/payments.

For more information about our collections policies, go to canada.ca/cra-collections.

You must follow this arrangement and make your payments on time. If you don't, we may have to take legal action without further notice. For example, we may garnish your income, direct the sheriff to seize and sell your assets, and use any other legal means to collect the amount you owe.

We appreciate your immediate attention to this matter.

Yours truly,

A. Ghrairi (1246)
Collections Officer

Tab 2



Canada Revenue Agency

File a B300, Cannabis Duty and Information Return

Confirmation

Business number: 70583 6518 RD0004
Business name: BZAM MANAGEMENT INC.
Period covered : 2023-08-01 to 2023-08-31
Filing date : 2024-02-12



Thank you. Your confirmation number is W664641573

Your B300, Cannabis Duty and Information Return has been successfully filed. Please keep a copy of this confirmation for your records. Do not send us a paper copy of your return.

Unpackaged product inventory

Finished cannabis extracts

Province/territory where sale was made	Duty (\$)	Additional duty (\$)	Adjustment to the additional duty (\$)
Alberta	82,928.40	248,785.20	95,159.86
British Columbia	60,490.05	181,470.15	0.00
Manitoba	23,414.70	0.00	0.00
Newfoundland and Labrador	6,472.50	19,417.50	0.00
Nova Scotia	0.00	0.00	0.00
Ontario	137,228.79	411,686.37	27,507.27
Prince Edward Island	0.00	0.00	0.00
Saskatchewan	12,222.15	36,666.45	5,770.13
Yukon	0.00	0.00	0.00

Duty payable :	\$487,623.42
Additional Duty Payable :	\$1,323,705.87
Adjustment to the additional duty payable :	\$271,817.42

Total amount payable : \$2,083,146.71

Screen ID: B-RD-B300-CNF

Date modified: 2021-06-29



Canada Revenue Agency

File a B300, Cannabis Duty and Information Return

Confirmation

Business number: 70583 6518 RD0004
Business name: BZAM MANAGEMENT INC.
Period covered : 2023-11-01 to 2023-11-30
Filing date : 2024-02-12



Thank you. Your confirmation number is W972474665

Your B300, Cannabis Duty and Information Return has been successfully filed. Please keep a copy of this confirmation for your records. Do not send us a paper copy of your return.

Unpackaged product inventory

Finished cannabis extracts

Province/territory where sale was made	Duty (\$)	Additional duty (\$)	Adjustment to the additional duty (\$)
Alberta	20,203.32	60,609.96	20,564.58
British Columbia	28,884.00	86,652.00	0.00
Manitoba	6,725.55	0.00	0.00
Newfoundland and Labrador	3,390.00	10,170.00	0.00
Northwest Territories	1,448.40	4,345.20	0.00
Nova Scotia	0.00	0.00	0.00
Ontario	73,585.92	220,757.75	17,700.09
Prince Edward Island	420.00	1,260.00	0.00
Saskatchewan	9,336.30	28,008.90	4,236.15
Yukon	0.00	0.00	0.00

Duty payable : \$193,020.09

Additional Duty Payable :	\$553,761.71
Adjustment to the additional duty payable :	\$124,806.05
Total amount payable :	\$871,587.85

Screen ID: B-RD-B300-CNF

Date modified: 2021-06-29

Tab 3

1 I also observed that Mr. Lyons, the
2 witness who now recalls the additional
3 conversations is going to be called as a witness at
4 trial for the plaintiffs, with the result that the
5 defendant will have an opportunity to explore his
6 recollection and the basis for it during
7 cross-examination of him directly as opposed to
8 simply through answers to undertakings and the
9 evidence of other witnesses.

10 That reinforces my view that an
11 adjournment, albeit a short one, is appropriate.

12 Secondly, the Attorney General
13 submits that it was advised just yesterday, one day
14 before trial, of the existence of a transcript of a
15 telephone conversation between a representative of
16 the Crown who is anticipated to be an important
17 witness at trial, and an individual who was
18 considering an investment in the plaintiffs related
19 to the subject matter of this trial and this dates
20 from 2011.

21 The defendant requests an
22 adjournment to explore the circumstances of this
23 newly discovered transcript.

24 The plaintiffs acknowledge the
25 transcript was provided late and just on the eve of

1 trial, but submit that they themselves just learned
2 of the existence of the transcript only the very
3 same day they notified the defendant and provided a
4 copy of the transcript itself.

5 The plaintiffs also submit that the
6 substance of the evidence disclosed by the
7 transcript is not new, and the Crown witness who is
8 a party to the telephone conversations knows what
9 was said during that conversation with the result
10 that there is nothing of substance new in the
11 transcript and therefore no prejudice to the
12 defendant in it being adduced without an
13 adjournment.

14 It is clear to me, even in this very
15 early day of trial, obviously, that it's clear from
16 the submissions of both parties that the
17 discussions between this particular Crown witness
18 and representatives of the plaintiffs and/or their
19 potential investors could be of potential
20 significance in this trial which I pause again to
21 observe which arises out of alleged
22 misrepresentations, some of which at least were
23 made orally.

24 In the circumstances, I'm satisfied
25 that a short adjournment given that the transcript

1 was delivered to the defendant only yesterday is
2 appropriate for this reason also in order to allow
3 the defendant an opportunity to explore the
4 circumstances of the transcript through additional
5 questions put to the plaintiffs by way of
6 undertakings.

7 However, in respect of this second
8 issue also, in my view, only a short adjournment is
9 required. The issue, while of potential importance
10 is surgical and narrow in scope and in nature, in
11 my view, a lengthy adjournment is neither necessary
12 nor desirable.

13 Finally, and thirdly, the defendant
14 takes issue with a new expert report delivered by
15 Ms. Lemay, the proposed expert report for the
16 plaintiffs that was delivered last week on
17 November 22. It is common ground that this report
18 is late given the timelines required under the
19 rules.

20 However, it's also common ground
21 that this report represents further response to the
22 report delivered by Mr. Marsden, proposed expert
23 for the Crown, and that report itself was delivered
24 only some weeks earlier on October 30.

25 The primary position of the Crown is

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

**FINAL BELL'S AIDE MEMORE
(CASE CONFERENCE RETURNABLE
APRIL 12, 2024)**

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.