

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

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. (collectively the "Applicants" and each an "Applicant")

Applicants

**FACTUM OF THE APPLICANTS
(Returnable May 17, 2024)**

May 15, 2024

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PART I: OVERVIEW

1. BZAM Ltd. ("**BZAM**"), BZAM Holdings Inc., BZAM Management Inc., BZAM Cannabis Corp., Folium Life Science Inc., 102172093 Saskatchewan Ltd., The Green Organic Dutchman Ltd. ("**TGOD**"), Medican Organic Inc., High Road Holding Corp. ("**FBC**"), and Final Bell Corp. doing business as BZAM Labs (collectively, the "**Applicants**" or the "**Company**") were granted creditor protection and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice Court (Commercial List) (the "**Court**") dated February 28, 2024.
2. This Factum is filed in support of a motion by the Applicants seeking an order (the "**Stay Extension Order**"), among other things:
 - (a) extending the Stay Period (as defined below) to and including July 15, 2024; and
 - (b) approving the Third Report of the Monitor dated May 14, 2024 (the "**Third Report**"), the Prior Reports (as defined below) and the activities of the Monitor described therein.
3. The Applicants seek the Stay Extension Order to preserve the *status quo* and afford the Applicants the breathing space and stability required to implement certain restructuring objectives and take steps to seek the approval of the Stalking Horse Purchase Agreement (as defined below).

PART II: FACTS

4. The facts underlying this motion are more fully set out in the affidavit of Matthew Milich sworn May 10, 2024 (the "**Fourth Milich Affidavit**").¹ The facts underlying the Applicants'

¹ Affidavit of Matthew Milich sworn on May 10, 2024 [*Fourth Milich Affidavit*], Applicants' Motion Record dated May 10, 2024 at Tab 2 [*Motion Record*]

financial circumstances and the reasons for commencing these CCAA proceedings (these "**CCAA Proceedings**") are set out in greater detail in the affidavit of Matthew Milich sworn on February 28, 2024 in support of the Initial Order (the "**Initial Affidavit**") and are not repeated herein.²

5. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Fourth Milich Affidavit, the Initial Affidavit, and the affidavits of Matthew Milich sworn March 1, 2024 and March 25, 2024.³

A. Background

6. BZAM is the ultimate parent company to several companies in the cannabis industry in Canada.⁴ Through its subsidiaries, it engages in the production, cultivation, processing and distribution of cannabis and cannabis related products.⁵

7. On February 28, 2024, the Court granted the Initial Order, which, among other things:

- (a) declared that the Applicants are parties to which the CCAA applies;
- (b) appointed FTI as the Monitor;
- (c) granted an initial stay of proceedings in favour of the Applicants, the Non-Applicant Stay Parties, and their respective Directors and Officers, until and including March 8, 2024 (the "**Initial Stay Period**");
- (d) extended the benefit of the stay of proceedings and other aspects of the Initial Order to the Non-Applicant Stay Parties and their respective Directors and Officers;

² Affidavit of Matthew Milich sworn on May 10, 2024 [*Initial Milich Affidavit*], Motion Record at Tab 2, Exhibit "A".

³ *Ibid*; Affidavit of Matthew Milich sworn on March 1, 2024, Motion Record at Tab 2, Exhibit "B"; Affidavit of Matthew Milich sworn March 25, 2025 at Tab 2, Exhibit "C".

⁴ *Fourth Milich Affidavit* at para 7, Motion Record at Tab 2.

⁵ *Initial Milich Affidavit* at para 39, Motion Record at Tab 2, Exhibit "A"; *Fourth Milich Affidavit* at para 7, Motion Record at Tab 2.

- (e) approved TGOD's ability to borrow up to a principal amount of \$2,400,000 under a debtor-in-possession credit facility (the "**DIP Loan**") from the Company's existing senior secured creditor, Cortland Credit Lending Corporation ("**Cortland**" and in its capacity as lender, the "**DIP Lender**") with the other Applicants acting as guarantors under the DIP Loan; and
- (f) granted the Administration Charge, the DIP Lender's Charge and the Directors' Charge.⁶

8. At the comeback hearing on March 8, 2024, the Court granted an amended and restated Initial Order (the "**ARIO**") which, among other things:

- (a) granted an extension of the Initial Stay Period to and including May 25, 2024 (the "**Stay Period**");
- (b) increased the maximum principal amount that the Applicants can borrow under the DIP Loan to \$41,000,000; and
- (c) increased the maximum quantum of the (i) Administration Charge from \$500,000 to \$1,000,000, (ii) DIP Lender's Charge from \$2,400,000 to \$41,000,000 (plus accrued and unpaid interest, fees and costs), and (iii) Directors' Charge from \$5,300,000 to \$12,900,000.⁷

The SISP

9. On March 8, 2024, the Court also granted an Order (the "**SISP Approval Order**") which, among other things:

⁶ *Fourth Milich Affidavit*, *supra* note 1 at para 9, Motion Record at Tab 2.

⁷ *Ibid* at para 10.

- (a) authorized and approved BZAM's execution of a share subscription agreement (the "**Stalking Horse Purchase Agreement**") among BZAM and 1000816625 Ontario Inc. (the "**Stalking Horse Purchaser**") dated March 1, 2024, *nunc pro tunc*, including the Bid Protections;
- (b) approved a sale and investment solicitation process (the "**SISP**") in which the Stalking Horse Purchase Agreement served as the "**Stalking Horse Bid**"; and
- (c) granted a Court-ordered charge over the Property in favour of the Stalking Horse Purchaser as security for payment of the Bid Protections, with the priority set out in the ARIO.⁸

10. Following the SISP Approval Order, the Monitor and the Applicants took steps to advance the SISP in accordance with the timelines contemplated therein, including soliciting and reviewing a number of LOIs.⁹ On April 16, 2024, following certain discussions between the Monitor and the potential bidders, the Monitor and the Applicants determined that none of the LOIs constituted a Qualified Bid, and, with the consent of the DIP Lender, terminated the SISP.¹⁰

Litigation with Final Bell

11. On March 18, 2024, Final Bell Holdings International Ltd. ("**Final Bell**") served a notice of motion alleging that the Applicants had made numerous false misrepresentations which induced Final Bell into entering and closing the Share Exchange Agreement.¹¹ Pursuant to the notice of

⁸ *Ibid* at para 12.

⁹ *Ibid* at paras 14-15.

¹⁰ *Ibid* at para 16.

¹¹ *Ibid* at para 17.

motion, Final Bell sought an order rescinding the Share Exchange Agreement, which was originally returnable on April 22 and 23, 2024 (the "**Original Hearing Date**").¹²

12. In response to certain supplemental productions made by BZAM, Final Bell sought an adjournment of the Original Hearing Date, which was granted by the Court on April 19, 2024.¹³ Following the adjournment, the Applicants and Cortland filed motions for security of costs, which have been scheduled for a half day hearing on June 4, 2024.¹⁴

13. On May 3, 2024, Final Bell abandoned its rescission claim and now seeks (i) equitable damages in lieu of rescission, and (ii) a declaration that such damages are subject to a constructive trust (the "**Amended Claim**").¹⁵ The Amended Claim is currently scheduled to be adjudicated on September 18 and 19, 2024.¹⁶

B. The Applicants' Activities Since the Granting of the Initial Order

14. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things,

- (a) stabilize their business and continue their ordinary course operations;
- (b) implement certain restructuring steps to maximize and preserve value for the Applicants' stakeholders;
- (c) diligently comply with all steps under the agreed-upon litigation timetable in connection with the Final Bell litigation, including preparing a responding affidavit,

¹² *Ibid.*

¹³ *Ibid* at para 18.

¹⁴ *Ibid* at para 19.

¹⁵ *Ibid* at para 20.

¹⁶ *Ibid.*

making documentary productions, defending out-of-court examinations, and conducting out-of-court cross-examinations of Final Bell witnesses; and

- (d) along with the Monitor, implement a sales process in accordance with the terms of the SISP.¹⁷

C. The Stay of Proceedings

15. The Stay Period under the ARIO will expire on May 25, 2024.¹⁸ Pursuant to the proposed Stay Extension Order, the Applicants are seeking to extend the Stay Period, including in respect of the Non-Applicant Stay Parties, to and including July 15, 2024 (the "**Stay Extension**").¹⁹

16. The Applicants, with the assistance of the Monitor, have prepared a revised cash flow forecast (the "**Revised Cash Flow Forecast**"), which demonstrates that the Applicants will have sufficient cash to support the Applicants' ordinary course operations and the costs of these CCAA Proceedings throughout the Stay Extension.²⁰ The Revised Cash Flow Forecast is attached as Appendix "A" to the Third Report.²¹

D. The Monitor's Reports and Activities

17. The proposed Stay Extension Order also seeks approval of the Third Report and certain reports that were previously filed by the Monitor in these CCAA Proceedings, being:

- (a) the report of the proposed Monitor (as FTI Consulting Canada Inc. then was) dated February 28, 2024 (the "**Pre-Filing Report**");

¹⁷ *Ibid* at para 22; Third Report of the Monitor dated May 14 at para 12 [*Third Report*].

¹⁸ *Ibid* at para 21.

¹⁹ *Ibid*.

²⁰ *Ibid* at para 26.

²¹ *Third Report, supra* note 17, Exhibit "A" [*Third Report*].

- (b) the first report of the Monitor dated March 6, 2024 (the "**First Report**"); and
 - (c) the second report of the Monitor dated April 17, 2024 (the "**Second Report**", and together with the Pre-Filing Report and the First Report, the "**Prior Reports**"),
- and the activities of the Monitor described therein.²²

PART III: ISSUES

18. The issues to be considered on this motion are whether this Court should:
- (a) extend the Stay Period granted under the ARIO to and including July 15, 2024; and
 - (b) approve the Third Report, the Prior Reports, and the activities of the Monitor described therein.

PART IV: LAW AND ANALYSIS

A. The Stay Period Should be Extended

19. The Stay Period is currently set to expire on May 25, 2024.²³ Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the stay of proceedings for "any period the court considers necessary".²⁴ To grant such an extension, the Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.²⁵

20. The jurisdiction vested in Courts to stay proceedings under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA".²⁶ These purposes include,

²² *Fourth Milich Affidavit*, *supra* note 1 at para 28, Motion Record at Tab 2.

²³ *Ibid* at para 21.

²⁴ *Companies' Creditors Arrangement Act, RSC 1985, c. C-36* s 11.02(2) [CCAA]; *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

²⁵ *CCA*, *supra* note 24, s 11.02(2) and s 11.02(3); *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967 at para 23.

²⁶ *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 24.

among others, enabling the continuation of the applicants' business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring.²⁷ Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides applicants with breathing room while they seek to restore solvency and emerge from the CCAA Proceedings on a going-concern basis.²⁸

21. The Applicants have acted, and continue to act, with good faith and due diligence in these CCAA Proceedings and have acted at all times in accordance with the CCAA and the various orders of the Court.²⁹ Despite their best efforts to restructure their business and operations in an efficient and timely manner, the Applicants, until very recently, were unable to implement certain restructuring steps related to the FBC business given Final Bell's now abandoned rescission claim.³⁰ Since receiving notice of Final Bells' intention to abandon its rescission claim, the Applicants have made progress towards implementing these restructuring objectives – but require additional time to complete these steps without further disruption.³¹

22. The proposed Stay Extension is appropriate in the circumstances, as it will allow the Applicants to, among other things:

- (a) operate their business in the ordinary course without disruption;
- (b) execute certain restructuring objectives, such as disclaiming leases, reducing headcount, and rationalizing other costs; and

²⁷ *Ibid*; [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#) at para 15; [Target Canada Co, 2015 ONSC 303](#) at para 8; [Re Timminco Limited, 2012 ONSC 2515](#) at para 15.

²⁸ [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#) at para 14; [Target Canada Co, 2015 ONSC 303](#) at para 8; [Canwest Global Communications Corp, 2011 ONSC 2215](#) at paras 24-25; [Re Timminco Limited, 2012 ONSC 2515](#) at para 15; [Re Clover Leaf Holdings Company, 2019 ONSC 6966](#) at para 19.

²⁹ *Fourth Milich Affidavit, supra* note 1 at para 22, Motion Record, Tab 2; *Third Report, supra* note 17 at para 28.

³⁰ *Ibid* at para 24.

³¹ *Ibid*.

(c) take steps to seek approval of the Stalking Horse Purchase Agreement.³²

23. These considerations are essential to the restructuring efforts of the Applicants, as they will improve the operational efficiency of the business, preserve value for the benefit of the Applicants' stakeholders and consolidate redundant and/or unnecessary capital expenditures.³³

24. The Revised Cash Flow Forecast appended to the Third Report demonstrates that the Applicants are projected to have sufficient cash over the proposed Stay Extension period to enable the Applicants to meet its day-to-day obligations.³⁴ The Monitor, the DIP Lender, the Stalking Horse Purchaser and Stone Pine are of the view that the Stay Extension is appropriate in the circumstances, and the Applicants are also not aware of any creditors who are or would be prejudiced in any meaningful way by the proposed Stay Extension.³⁵

25. Taken together, the Applicants submit that the proposed Stay Extension is in the best interests of the Applicants and their stakeholders, consistent with the purposes of the CCAA and appropriate in the circumstances.

B. Approval of the Monitor's Reports and Activities

26. It has become a usual practice in CCAA proceedings for a Monitor (or an applicant on its behalf) to bring a motion to approve its reports.³⁶ This Court has recognized a number of policy and practical reasons for the Court to approve a Monitor's activities and provide a level of protection for a Monitor during the CCAA proceedings.³⁷ Specifically, Court approval:

(a) allows the Monitor to move forward with next steps in the CCAA proceedings;

³² *Ibid* at paras 21, 24-25.

³³ *Ibid* at para 24.

³⁴ *Ibid* at para 26; *Third Report*, *supra* note 17 at para 27 and Exhibit "A".

³⁵ *Ibid*; *Third Report*, *supra* note 17 at para 28.

³⁶ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 2; *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras 13-14.

³⁷ *Ibid*; *Ibid*.

- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.³⁸

27. In recognizing the critical role the Monitor plays in CCAA proceedings, the Court in *Re Crystallex International Corp.* approved the Monitor's activities as set out in its reports:

Approval is sought of the actions of the Monitor as disclosed in its second and third report. I have no hesitation in approving these actions. A Monitor plays a crucial role in any CCAA restructuring, and this is particularly so in this case. The Monitor is to be commended for the way in which it has participated and in its efforts to bring a consensual resolution of matters as they have arisen. This assistance is invaluable. I approve the actions of the Monitor as set out in its second and third report.³⁹

28. Furthermore, the Court has advised that the benefit of any approval in respect of the Monitor's reports and its activities should be limited to the Monitor itself and should not extend to the Applicants or other third parties.⁴⁰

³⁸ [Target Canada Co. \(Re\), 2015 ONSC 7574](#) at para 23.

³⁹ [Crystallex International Corp., Re, 2012 ONSC 2125](#) at para 125.

⁴⁰ [Target Canada Co. \(Re\), 2015 ONSC 7574](#) at para 21; [Nordstrom Canada Retail, Inc., 2023 ONSC 4199](#) at para 22.

29. Since its appointment, the Monitor has, in its various reports, provided helpful commentary to the Court and stakeholders on the progress of these CCAA Proceedings and the Final Bell litigation. The Applicants submit that the Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order. Notably, there has been no evidence put forward on this motion to the contrary.

30. Further, the approval sought here is limited to the Monitor's activities, as described in the Monitor's reports, and does not extend to other third parties or the Applicants. As such, the Applicants submit that the requested relief is in line with the case law, and appropriate and fair in these circumstances.

31. For these reasons, the Applicants believe it is appropriate for this Court to approve the Third Report, the Prior Reports, and the activities of the Monitor referred to therein.

PART V: RELIEF REQUESTED

32. For the foregoing reasons, the Applicants respectfully requests that this Honourable Court grant the Stay Extension Order, substantially in the form included at Tab 3 of its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15TH DAY OF MAY 2024

Bennett Jones LLP

Bennett Jones LLP

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Canwest Global Communications Corp, 2011 ONSC 2215](#)
2. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
3. [Crystallex International Corp., Re, 2012 ONSC 2125](#)
4. [Laurentian University of Sudbury, 2021 ONSC 1098](#)
5. [Laurentian University of Sudbury, 2022 ONSC 2927](#)
6. [Nordstrom Canada Retail, Inc., 2023 ONSC 4199](#)
7. [Re Clover Leaf, 2019 ONSC 6966](#)
8. [Re Timminco Limited, 2012 ONSC 2515](#)
9. [Re US Steel Canada Inc, 2014 ONSC 6145](#)
10. [Target Canada Co, 2015 ONSC 303](#)
11. [Target Canada Co. \(Re\), 2015 ONSC 7574](#)
12. [U.S. Steel Canada Inc, \(Re\), 2015 ONSC 2523](#)

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. Court File No.: CV-24-00715773-00CL 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.

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