

**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.  
(Re Cortland Request to Schedule Threshold Meta-Motion)**

June 3, 2024

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Lawyers for Final Bell Holdings International Ltd.

TO: **THE SERVICE LIST**

### **Cortland Concerned about Final Bell's Claim for Equitable Relief Since Day One**

1. On March 18, 2024, Final Bell served its motion record in support of its motion to rescind the January 5, 2024 SEA. The Notice of Motion expressly stated that if rescission was unavailable, Final Bell sought a further hearing to determine an appropriate alternative remedy.<sup>1</sup> The Court directed that Final Bell's motion would be heard as a summary trial returnable April 22 and 23, 2024.

2. Although no wrongdoing is alleged against Cortland, Cortland intervened in Final Bell's claim by delivering a responding record and participating at cross-examinations held on April 8 and 10. It also insisted on being afforded an opportunity to deliver an opening statement and make submissions independent of BZAM's role at the trial.

3. On April 16, 2024, Final Bell amended its notice motion to clarify that if rescission would not put Final Bell in the same position it was in before closing on the SEA, then it sought equitable compensation.<sup>2</sup>

### **Final Bell Delivered Written Opening Statement and Monitor Delivered Its Report**

4. The pre-hearing record for the summary trial closed on April 12, 2024, when the parties exchanged answers to undertakings. On April 16, 2024, Final Bell delivered its Opening Statement and on April 17 the Monitor delivered its Second Report. It is arguable that delivery of these trial-related submissions commenced the trial process.

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<sup>1</sup> The relevant excerpt of Final Bell's Notice of Motion is enclosed at **Tab A**.

<sup>2</sup> The relevant excerpt of Final Bell's Amended Notice of Motion is enclosed at **Tab B**.

5. In its report, the Monitor concluded its comments concerning the availability of rescission as a remedy by directing the Court to a Confidential Supplement which outlines certain potentially relevant information regarding the Court's ability to rescind the SEA.<sup>3</sup> Final Bell has not seen the Confidential Supplement, but it assumed it contains information intended to persuade the Court that rescission is unavailable due to changes at BZAM since January 5, 2024.

6. On Friday, April 19, the trial was adjourned due to BZAM's disclosure of relevant documents on the evening of April 18. This created a problem for the orderly staging of the CCAA proceeding: it was unlikely that the summary trial would be heard before the May 21 deadline for the Court to approve the Stalking Horse Bid.

**Cortland Attends Two Hearings Without Mentioning Request for Rule 21 "Meta-Motion"**

7. After it received BZAM's additional documents, by letter sent May 3, 2024, Final Bell informed the parties that it was withdrawing its rescission claim and was only proceeding with a claim for equitable damages and a constructive trust, with reference to supporting case law. Final Bell also took the position that the pre-hearing evidentiary record for its claim was closed.<sup>4</sup>

8. On May 6, 2024, the parties attended a case conference to schedule BZAM's and Cortland's motions for security for costs, set a timetable for the exchange of motion materials, and to fix outside dates for the hearing of Final Bell's motion. Cortland filed a seven-page aide memoire. It made no mention of a possible motion within a motion (as Justice Perell has termed it, a "meta-motion") in its aide memoire or at the conference.

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<sup>3</sup> The relevant excerpt of the Monitor's Second Report is enclosed at **Tab C**.

<sup>4</sup> Letter from A. Winton to counsel sent May 3, 2024 attached at **Tab D**.

9. To be fair, Cortland did not receive Final Bell's Further Amended Notice of Motion until just before the hearing of the conference. But eleven days later, on May 17, the Court heard a stay extension motion. The Monitor's Third Report included an update on the status of Final Bell's claim and reported that the next step in the proceeding was the scheduling of a motion to approve the Stalking Horse Bid. The Monitor did not advise of any intention by Cortland to schedule a Rule 21 meta-motion, nor did Cortland's counsel raise the issue with the Court.

10. Meanwhile, Final Bell finalized its joint responding motion record in response to the motions for security for costs, received reply records from BZAM and Cortland, delivered responding factums to both motions, and BZAM and Cortland delivered extensive reply factums. Cortland's reply materials do not mention a Rule 21 motion, which is relevant to the Court's consideration of the justness of the case.

### **Appellate Jurisprudence Weighs Against Rule 21 Motion Brought Effectively "Mid-Trial"**

11. Cortland's proposed Rule 21 motion is problematic for many reasons:

- (a) It asks the Court to predetermine the availability of an equitable remedy that the Court of Appeal has described as potentially available depending on the unique circumstances of the case, especially in an insolvency context;<sup>5</sup>
- (b) It asks the Court to schedule what will be, in effect, a mid-trial Rule 21 motion in circumstances where the pre-hearing evidentiary record is complete and put before the Court in the security for costs motions, at which the Court will consider the merits of Final Bell's claim. The Court of Appeal disapproves of this process due to the real danger that incomplete or untested evidence might seep into the Rule 21 analysis;<sup>6</sup>
- (c) It would be unjust for this Court to order Final Bell to post hundreds of thousands as security for costs if Cortland is permitted "short-circuit" the trial process by bringing a Rule 21 motion, which it could have brought before the parties incurred significant costs to adduce evidence and prepare opening statements;

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<sup>5</sup> See *Credifinance Securities Limited v. DSLC Capital Corp.*, [2011 ONCA 160 at para 44](#).

<sup>6</sup> *Holgate v. Sheehan Estate*, [2015 ONCA 717 at para 30](#).

- (d) Final Bell has been put to considerable time and expense to respond to the pending motions for security for costs. Since mid-March, Cortland's position has been that Final Bell's claim for equitable relief justifies its full participation at trial. It now seeks to derail all that has transpired to date by asking the Court to hear a Rule 21 motion at which the Court will have to assume that BZAM knowingly engaged in fraudulent conduct to induce Final Bell to enter into the SEA at a time when BZAM was insolvent.

12. This is the latest in a series of steps by BZAM and Cortland to avoid a hearing of Final Bell's claims. BZAM withheld relevant documents and the responding parties brought tactical security for costs motions in an effort to derail the timely and efficient hearing of Final Bell's claim. Final Bell has a strong *prima facie* case that BZAM knowingly misled it prior to closing on the SEA. The summary trial should be scheduled for the earliest available dates to be adjudicated on the record, without the need to respond to an interim motion.

13. In the alternative, if the Court schedules a Rule 21 motion as the next step in the proceeding, it should adjourn the security for costs motions *sine die*, with an award of cost thrown away to Final Bell, as it would be unjust to order Final Bell to post hundreds of thousands in security for costs if Cortland could have saved the parties significant time and expense by front-loading the legal issue of the availability of an equitable remedy for Final Bell that takes priority over all of some of Cortland's claim, which was a live issue since day one.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 3rd day of June, 2024.



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Andrew Winton

June 3, 2024

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Lawyers for Final Bell Holdings International Ltd.

**TAB A**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH  
ROAD HOLDING CORP. AND FINAL BELL CORP.**

Applicants

**NOTICE OF MOTION  
(Order Rescinding Share Exchange Agreement)**

Final Bell Holdings International Ltd. will make a Motion to the Honourable Justice Peter J. Osborne on a date to be determined by the Court at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

In person;

**THE MOTION IS FOR**

1. An Order rescinding the share exchange agreement dated December 5, 2023, between BZAM Ltd., Final Bell Canada Inc., and Final Bell Holdings International Ltd.;

-2-

2. In the alternative, if rescission is not possible, an Order directing a further hearing to determine an appropriate alternative remedy for Final Bell Holdings International Ltd.; and

3. Such further and other Relief as to this Honourable Court may seem just.

## THE GROUNDS FOR THE MOTION ARE

### Overview

4. On January 8, 2024, the Applicant, BZAM Ltd. (“**BZAM**”) and Final Bell Holdings International Ltd. (“**Final Bell**”) completed a transaction (the “**Transaction**”) whereby Final Bell sold its Canadian subsidiary, Final Bell Canada Inc. (“**FBC**”), to BZAM. Final Bell received ninety million (90,000,000) shares of BZAM valued at 15 cents (\$0.15) per share and an \$8 million promissory note in exchange for all the outstanding shares of FBC. The total consideration Final Bell received in exchange for FBC was valued at \$21,500,000 when the Transaction closed.

5. Prior to the closing of the Transaction, Final Bell conducted extensive due diligence on BZAM. As part of the due diligence process, BZAM made detailed representations to Final Bell concerning the financial condition of BZAM for the purpose of persuading Final Bell to enter into the Transaction in exchange for equity and unsecured debt.

6. These representations, which Final Bell’s board relied on in deciding to approve the transaction, included:

- i. BZAM had sufficient cash to fund its operations and would experience positive cash flows throughout 2024;

**TAB B**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH  
ROAD HOLDING CORP. AND FINAL BELL CORP.**

Applicants

**AMENDED NOTICE OF MOTION  
(Order Rescinding Share Exchange Agreement)**

Final Bell Holdings International Ltd. will make a Motion to the Honourable Justice Peter J. Osborne on a date to be determined by the Court at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

In person;

**THE MOTION IS FOR**

1. An Order rescinding the share exchange agreement dated December 5, 2023, between BZAM Ltd., Final Bell Canada Inc., and Final Bell Holdings International Ltd.;

2. In addition or in the alternative, if rescission will not put Final Bell Holdings International Ltd. in the same position as it was in before it entered into the share exchange agreement, an order for equitable compensation, is not possible, and/or an Order directing a further hearing to determine an appropriate alternative remedy for Final Bell Holdings International Ltd.;

2.1 Costs of this proceeding; and

3. Such further and other Relief as to this Honourable Court may seem just.

## **THE GROUNDS FOR THE MOTION ARE**

### **Overview**

4. On January 8, 2024, the Applicant, BZAM Ltd. (“**BZAM**”) and Final Bell Holdings International Ltd. (“**Final Bell**”) completed a transaction (the “**Transaction**”) whereby Final Bell sold its Canadian subsidiary, Final Bell Canada Inc. (“**FBC**”), to BZAM. Final Bell received ninety million (90,000,000) shares of BZAM valued at 15 cents (\$0.15) per share and an \$8 million promissory note in exchange for all the outstanding shares of FBC. The total consideration Final Bell received in exchange for FBC was valued at \$21,500,000 when the Transaction closed.

5. Prior to the closing of the Transaction, Final Bell conducted extensive due diligence on BZAM. As part of the due diligence process, BZAM made detailed representations to Final Bell concerning the financial condition of BZAM for the purpose of persuading Final Bell to enter into the Transaction in exchange for equity and unsecured debt.

6. These representations, which Final Bell’s board relied on in deciding to approve the transaction, included:

**TAB C**

99. The Monitor's view is that, given the limited liquidity available to BZAM during the Due Diligence Process, the Monitor would have expected FBHI to request confirmation from Cortland that it would extend the Credit Agreement or otherwise seek inclusion of same as a condition precedent or covenant of BZAM in the Share Exchange Agreement.

**K. AVAILABILITY OF RESCISSION**

*Integration*

100. The Monitor understands from the Third Milich Affidavit that BZAM's position is that the business of FBC has been integrated into the combined organization since the FBC Transaction closed as evidenced by the following:
- (a) Company Wide Staff Integration: BZAM has reduced headcount by over 60 positions across the combined organization. Each functional area of the business such as the executive team, operations, commercial and the functional areas are acting as one and continuing to integrate their teams, processes, workflows and systems;
  - (b) Product Portfolio Integration: BZAM has already undertaken a comprehensive SKU rationalization across the entire organization to focus on certain brands, product segments, and specific SKUs. Numerous SKUs have been delisted or discontinued to focus on a complimentary portfolio of brands and products across the organization;
  - (c) Production Integration: BZAM has integrated inputs and production processes across the facilities. In some cases, production of certain high-volume products is partially done at one site, then completed and excised at another. With respect to the Jeeters launch in particular, BZAM believes it would not have happened without BZAM's financial and operational support;
  - (d) Excise Tax Integration: BZAM has integrated the excise requirements of BZAM Labs (an FBC subsidiary) into the rest of the organization. At the time of the transaction, BZAM Labs had an excise deposit of only approximately \$438,000,

which was significantly below what it would have required at renewal to function on a stand-alone basis. In keeping with this, the final manufacturing and excise stamping, and hence the excise burden, for the Jeeters Launch was borne by another BZAM subsidiary rather than BZAM Labs;

- (e) Collateral Package Integration: Post-acquisition, FBC and BZAM Labs have been fully integrated into BZAM's collateral package, including the collateral for the Accounts Receivable facility with Cortland as senior-secured lender.
- (f) Back Office Integration: BZAM is in the midst of various back-office integrations (IT and HR systems).
- (g) SKU Listing Consolidation: BZAM has already started reorganizing and/or changing which licences are used to list SKUs with the provincial boards.

101. The Monitor is unable to comment on the accuracy of the integration of FBC as described by Mr. Milich in the Third Milich Affidavit. Among other reasons, the Monitor does not have the specific underlying SKU-level data, does not know which employees were terminated and how critical they were, and whether the above-referenced changes can be undone.

102. The Monitor directs the Court to the Confidential Supplement which outlines certain potentially relevant information regarding the ability to rescind the FBC Transaction.

Prejudice to Cortland

103. The Monitor understands that the availability of credit under both the Credit Agreement and the DIP Facility is subject to a facility limit and borrowing base calculation that relies on the accounts receivable of the Applicants, including FBC.

104. As outlined in the affidavit of Mr. Alappatt, Cortland relied upon the borrowing base certificates when it decided to extend credit to the Applicants and understood that FBC accounted for at least 30% of the Applicants' borrowing base.



**TAB D**

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May 3, 2024

**BY EMAIL**

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Dear Counsel:

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

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

**Updated Documentary Production**

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

**Pre-Hearing Record Now Complete**

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

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

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

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

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

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

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

Yours truly,



Andrew Winton

Enclosures

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

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Applicants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AIDE MEMOIRE OF FINAL BELL HOLDINGS  
INTERNATIONAL LTD.  
(CORTLAND REQUEST TO SCHEDULE RULE 21  
META-MOTION)**

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