

**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.
(August 7, 2024 Case Conference seeking Directions)**

August 6, 2024

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TO: **THE SERVICE LIST**

1. The issue on this case conference is whether Cortland is entitled to seek partial summary judgment on Final Bell's fraud claim in circumstances where the matter is being heard by way of a hybrid trial, with a fully-baked paper record, with the only remaining steps scheduled to take place in six weeks (September 18 and 19) are for the parties to deliver opening statements (Final Bell's statement is already delivered, but it will need to supplement it statement based on facts revealed since the adjournment on April 19), one witness will be cross-examined *viva voce*, and then the parties will deliver closing submissions.

2. This aide memoire is delivered as a supplement to the aide memoire Final Bell delivered on June 3, 2024. Final Bell repeats and relies on the submissions in its June 3 aide, insofar as they are still applicable, which is attached hereto at [Tab 1](#).

3. The motion is described as a motion for "directions", but it is really a mid-trial motion for partial summary judgment. The case for such a motion is weaker now than it was on June 3.

Since June 3:

- (a) The court heard BZAM's and Cortland's motions for security for costs on June 4, 2024. At the motion, both BZAM and Cortland sought security for costs based on the parties proceeding to the two day hearing in September;
- (b) On July 2, the Court released its reasons for awarding security based on bills of costs that assumed Final Bell's claim would include the two-day hearing scheduled by this Court on May 6, 2024.
- (c) BZAM sought and obtained an extension of the stay of proceedings at an unopposed motion heard July 15;
- (d) On July 17, Final Bell complied with the Court's July 2 order by posting the necessary security and paying the costs awards; and
- (e) On July 24, Cortland delivered its request form for this conference. It indicated that the materials necessary for the matter to be considered were "to be determined".

4. At no point prior to the date of this aide memoire (August 6) did Cortland deliver a notice of motion or motion record for its proposed motion.

Cortland Seeking Partial Summary Judgment

5. Finally, at 1:39 PM today (August 6), Cortland delivered a 768-page motion record in support of its proposed motion. The record consists of a short (5-page) notice of motion, a 12-page affidavit sworn by Deepak Alappatt, Cortland's witness in the pending trial, supported by approximately 750 pages of evidence.

6. If Cortland needs to rely on this evidence to support its motion, then it is not seeking "directions". It is seeking to bring a motion with supporting evidence for summary judgment to determine part of Final Bell's claim. This motion walks, acts, and quacks like a (summary judgment) duck.

7. The Court of Appeal has repeatedly warned this Court against hearing partial summary judgment motions. For example, in *Service Mold + Aerospace Inc. v Khalaf*, Justice Paciocco wrote:

[14] The principles that guide whether partial summary judgment is appropriate are, however, more complex than those that apply to summary judgment motions generally. In *Hryniak* [citation omitted], at para. 60, Karakatsanis J. recognized that partial summary judgment may "run the risk of duplicative proceedings or inconsistent findings of fact" at trial. There is also the risk that partial summary judgment can frustrate the *Hryniak* objective of using summary judgment to achieve proportionate, timely and affordable justice. If used imprudently, partial summary judgment can cause delay, increase expense and increase the danger of inconsistent findings at trial made on a more complete record: *Butera v. Chown, Cairns LLP* [citation omitted] at paras. 29-33. These risks, which require careful consideration by motion judges, were known before *Hryniak* and *Butera*, as illustrated by this court's decision in *Corchis v. KPMG Peat Marwick Thorne*, [citation

omitted] at para. 3. For this reason, while partial summary judgment has its place, it "should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may [page140] be dealt with expeditiously and in a cost effective manner": Butera, at para. 34.¹

8. In this case, it is impossible to readily bifurcate the availability of an equitable remedy from Final Bell's fraud claim against BZAM. As this Court held in its reasons granting security for costs:

[67] In my view, and while recognizing that the merits of the underlying claim can be a factor taken into account, the merits of the Final Bell claim here are a neutral factor. As noted above, the allegations are serious, and the claim has serious consequences for all parties involved. The nature of the fraudulent misrepresentations alleged engage credibility issues of a number of individuals involved, including but not limited to the credibility of the CEO and former CFO of BZAM. That is in large part why the summary trial contemplates *viva voce* evidence, albeit from a limited number of witnesses and on a limited number of issues.²

9. This conclusion is as applicable to Cortland's motion as it is to the motion for security for costs. Without the ability to determine the fraud claim, including the nature and extent of BZAM's fraudulent conduct, it is impossible for this Court to decide on a paper record whether it will refuse Final Bell equitable relief, which will deprive Final Bell of a remedy for its loss.

10. This Court cannot decide at a case conference whether Cortland's motion is an appropriate case for partial summary judgment. That will remain an issue for the motion. But it can decide now that the matter is **not** appropriate for partial summary judgment when the trial is scheduled to conclude a couple weeks after this motion can be heard.

¹ *Service Mold + Aerospace Inc. v. Khalaf*, [2019 ONCA 369 at para 14](#).

² *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.*, [2024 ONSC 3902 at para 67](#).

Insufficient Time Before September 18 to Determine Cortland's Partial SJ Motion

11. Cortland delivered its aide memoire for this conference at 1:45 PM today. The aide states at paragraph 13:

The threshold motion requires only limited motion materials, facts and a short hearing date. Indeed, Cortland has already served its motion materials.

12. This first statement was arguably not accurate – a 768-page motion record is not “limited”, and the matter will require at minimum a half-day hearing.

13. The second statement was true, but barely. Despite suggesting since June 3 that this motion needed to be brought on an expedited basis, Cortland served its vast motion record **6 minutes** before it delivered its aide memoire. The motion record was delivered:

- (a) 67 days after Cortland first informed Final Bell of its intention to attempt to bring this motion (May 31);
- (b) 64 days after Cortland delivered an aide memoire in support of its effort to bring this motion (June 3);
- (c) 35 days after this Court granted Cortland's motion for security for costs (July 2);
- (d) 25 days after the Monitor referred in its Fourth Report to its support for the hearing of Cortland's motion on an expedited basis.

14. To the extent Cortland now claims that its motion needs to be expedited, its conduct does not match its position – at no point since May 31 has it moved expeditiously to deliver a motion record. Nor did it indicate prior to August 6 that it intended to rely on evidence in support of its motion and file a 768-page record.

15. Respectfully, as a matter of procedural fairness, Final Bell's counsel must be afforded sufficient time to review the motion record with its client and determine what evidence it should file in response. If the Court is contemplating hearing a partial summary judgment motion, it

cannot place all of the burden on Final Bell to respond to the motion in less time than Cortland took to prepare its materials.

16. By the shortest measure above (25 days), Final Bell is entitled to at least three weeks to deliver a responding record. After that, Cortland may wish to deliver a reply record. Even if it does not file a reply record, Final Bell will be cross-examining Mr. Alappatt on his affidavit. Time will then have to be allowed for a moving and responding factum.

17. Even if the Court unfairly ordered Final Bell to expedite its response when Cortland took weeks to prepare a lengthy motion record, there is realistically no way this motion can be heard before the first week of September, at which point the Court will be hearing a partial summary judgment motion two weeks before trial. With the greatest respect, that makes no sense.

Cortland Unfairly Casts Aspersions on Final Bell's Conduct

18. There is no evidence before this Court supporting the submission that Final Bell's claim is unduly holding up this CCAA proceeding. No witness has explained why the Stalking Horse Bid did not close before May 21, June 21, July 21, or any other date the parties set as the deadline to seek this Court's approval. No party has objected to the Stalking Horse Bid. It can and should close, thereby monetizing the BZAM assets and leaving Final Bell and Cortland with a pot of money to fight over.

19. Without repeating the facts summarized in its June 3 aide memoire, Final Bell objects to Cortland's characterization of its conduct. Final Bell made it clear since March 18 that it was seeking a remedy that would affect Cortland's recovery in this CCAA proceeding. It amended its notice of motion to abandon the claim for rescission and restrict its claim to equitable damages that rank ahead of Cortland's interest in the BZAM estate after it became clear that the rescission

claim could not be determined before the May 21 deadline for the Stalking Horse Bidder to seek approval of its bid. Had Final Bell known that BZAM and the Stalking Horse Bidder intended to delay the closing of the Stalking Horse Bid indefinitely, as they have done since May without any supporting evidence explaining why, it is possible Final Bell would not have abandoned the claim to rescission.

20. When this Court directed the live portion of Final Bell's claim to proceed on September 18-19, no one informed the Court then, or subsequently, that the timing of the trial would hold up the progress of the CCAA proceeding. Respectfully, it is possible the Court may have directed the trial to be heard sooner if it knew this was a party's position (which, to be clear, is not the evidence before this Court).

21. Final Bell has been pursuing its claim diligently and in good faith. It is no one's fault, and certainly not Final Bell's fault, that the live portion of the hybrid trial had to be adjourned from April 22-23 to September 18-19. The just, most expeditious and least expensive determination of Final Bell's claim will be through the trial that is now midway and scheduled to conclude on September 18-19, not through a motion for partial summary judgment two weeks prior to that date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of August, 2024.



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Lawyers for Final Bell Holdings International Ltd.

Tab 1

**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
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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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- (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.



Andrew Winton

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

**AIDE MEMOIRE OF FINAL BELL HOLDINGS
INTERNATIONAL LTD.
(CORTLAND REQUEST TO SCHEDULE PARTIAL SJ
MOTION)**

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