

**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 July 15, 2024)**

July 12, 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. ("**Medican**"), High Road Holding Corp., 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 (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 August 28, 2024;
and
 - (b) approving the Fourth Report of the Monitor dated July 12, 2024 (the "**Fourth Report**") 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, among other things, finalize and seek approval of the Stalking Horse Purchase Agreement (as defined below) and the transaction contemplated therein (the "**Transaction**").

PART II: FACTS

4. The facts underlying this motion are more fully set out in the affidavit of Matthew Milich sworn July 8, 2024 (the "**Milich Affidavit**").¹ The facts underlying the Applicants' financial circumstances and the reasons for commencing these CCAA proceedings (the "**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 meaning ascribed to them in the Milich Affidavit, the Initial Affidavit, and the affidavit of Matthew Milich sworn March 1, 2024, as applicable.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;

¹ Affidavit of Matthew Milich sworn on July 8, 2024 [Milich Affidavit], Applicants' Motion Record dated July 8, 2024 at Tab 2 [Motion Record]

² Affidavit of Matthew Milich sworn on February 28, 2024, 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".

⁴ *Milich Affidavit supra*, note 1 at para 7, Motion Record at Tab 2.

⁵ *Ibid*, Motion Record at Tab 2.

- (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) 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
- (e) 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 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

⁶ *Ibid* at para 9, Motion Record at Tab 2.

⁷ *Ibid* at para 10, Motion Record at Tab 2.

The SISP

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

- (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; and
- (b) approved a sale and investment solicitation process (the "**SISP**") in which the Stalking Horse Purchase Agreement served as the "**Stalking Horse Bid**".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.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

11. On May 17, 2024, the Court granted an Order which, among other things, extended the Stay Period to and including July 15, 2024 (the "**First Stay Extension**").¹¹

12. The DIP Lender and the Stalking Horse Purchaser have both consented to an extension until July 21, 2024 to close the Stalking Horse Bid (referred to as the "**Outside Date**" in the SISP).¹²

⁸ *Ibid* at para 12, Motion Record at Tab 2.

⁹ *Ibid* at para 14, Motion Record at Tab 2.

¹⁰ *Ibid*, Motion Record at Tab 2.

¹¹ *Ibid* at para 17, Motion Record at Tab 2.

¹² *Ibid* at para 5, Motion Record at Tab 2.

Litigation with Final Bell

13. Final Bell Holdings International Ltd. ("**Final Bell**") served a notice of motion on March 18, 2024, in support of its rescission claim – alleging that the Applicants had made numerous false misrepresentations which induced Final Bell into entering and closing the Share Exchange Agreement (as defined in the Second Report of the Monitor dated April 17, 2024).¹³

14. 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**").¹⁴ The Amended Claim is currently scheduled to be adjudicated on September 18 and 19, 2024.¹⁵

15. In response to the Amended Claim, Cortland delivered an aide memoire on June 3, 2024, in support of its position that a threshold motion, addressing the discrete legal issue of whether Final Bell's constructive trust claim can take priority to Cortland's DIP Lender's Charge, is required (the "**Threshold Motion**").¹⁶

16. On June 4, 2024, the Court heard motions for security for costs from both BZAM and Cortland (the "**Security for Costs Motions**").¹⁷ Pursuant to the endorsement of the Honourable Justice Osborne dated June 30, 2024 (the "**Endorsement**"), Final Bell was ordered to post security in the amounts of \$350,000 and \$147,000 in respect of the costs of BZAM and Cortland, respectively, within 15 days of the Endorsement date (the "**Security**").¹⁸ Final Bell was also

¹³ *Ibid* at para 19, Motion Record at Tab 2.

¹⁴ *Ibid* at para 20, Motion Record at Tab 2.

¹⁵ *Ibid*, Motion Record at Tab 2.

¹⁶ *Ibid* at paras 21-22, Motion Record at Tab 2.

¹⁷ *Ibid* at para 23, Motion Record at Tab 2.

¹⁸ *Ibid* at para 24, Motion Record at Tab 2.

ordered to pay costs to BZAM and Cortland in respect of the Security for Costs Motions in the amounts of \$20,000 and \$8,500 (the "**Costs Award**").¹⁹

17. As of the date of the Milich Affidavit, Final Bell had not yet posted the Security or paid the Costs Award.²⁰

The Disclaimer Motion

18. On June 25, 2024, Mr. France Boisvert and Mr. Daniel Fontaine (the "**Motion Parties**") served a Notice of Motion on the Applicants (the "**Disclaimer Motion**") objecting to a Notice by Debtor Company to Disclaim or Resiliate an Agreement sent by Medican on May 29, 2024.²¹

19. The Monitor and the Applicants are in ongoing discussions with the Motion Parties in an effort to reach a consensual resolution in respect of the Disclaimer Motion. No time has been set for a hearing in respect of the Disclaimer Motion should one be required.²²

B. The Applicants' Activities Since the Granting of the First Stay Extension

20. Since the granting of the First Stay Extension, the Applicants have acted in good faith and with due diligence to, among other things,

- (a) implement certain restructuring steps to maximize and preserve value for the Applicants' stakeholders, including disclaiming releases and reducing headcount;
- (b) prepare court materials for, and attend the hearing of, the Security for Costs Motions;

¹⁹ *Ibid*, Motion Record at Tab 2.

²⁰ *Ibid*, Motion Record at Tab 2.

²¹ *Ibid* at para 25, Motion Record at Tab 2.

²² *Ibid* at para 29, Motion Record at Tab 2.

- (c) resolve, with the assistance of the Monitor, the issues relating to the Disclaimer Motion; and
- (d) finalize certain aspects of the Stalking Horse Purchase Agreement.²³

C. The Stay of Proceedings

21. The Stay Period under the First Stay Extension is set to expire on July 15, 2024.²⁴ 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 August 28, 2024 (the "**Stay Extension**").²⁵

22. The Applicants, with the assistance of the Monitor, have prepared a revised cash flow forecast (the "**Second Revised Cash Flow Forecast**"), which demonstrates that the Applicants will have sufficient cash to support the Company's ordinary course operations and the costs of these CCAA Proceedings throughout the Stay Extension.²⁶ The Second Revised Cash Flow Forecast is attached as Appendix "A" to the Fourth Report.²⁷

D. The Monitor's Report and Activities

23. The proposed Stay Extension Order also seeks approval of the Fourth Report and the activities of the Monitor described therein.²⁸

PART III: ISSUES

24. The issues to be considered on this motion are whether this Court should:

²³ *Ibid* at para 33, Motion Record at Tab 2; Fourth Report of the Monitor dated July 12, 2024 at para 38 [Fourth Report].

²⁴ *Ibid* at para 30, Motion Record at Tab 2.

²⁵ *Ibid*, Motion Record at Tab 2.

²⁶ *Ibid* at para 34, Motion Record at Tab 2.

²⁷ *Fourth Report*, *supra* note 23, Exhibit "A".

²⁸ *Milich Affidavit*, *supra* note 1 at para 36, Motion Record at Tab 2.

- (a) extend the Stay Period to and including August 28, 2024; and
- (b) approve the Fourth Report and the activities of the Monitor described therein.

PART IV: LAW AND ANALYSIS

A. The Stay Period Should be Extended

25. The Stay Period is currently set to expire on July 15, 2024.²⁹ 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."³⁰ 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.³¹

26. The jurisdiction vested in Courts to stay proceedings under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA and in particular to enable continuance of the company seeking CCAA protection."³² These purposes include, among others, enabling the continuation of the applicants' business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring.³³ 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.³⁴

²⁹ *Ibid* at para 30, Motion Record at Tab 2.

³⁰ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 11.02(2) [CCAA]; *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

³¹ *CCAA*, *supra* note 30, s 11.02(2) and s 11.02(3); *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967 at para 23.

³² *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 24.

³³ *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.

³⁴ *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.

27. 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.³⁵

28. It is both necessary and in the best interests of the Applicants, the Non-Applicant Stay Parties and their stakeholders that the Stay Period be extended to allow the Applicants:

- (a) an opportunity to finalize and seek approval of the Stalking Horse Purchase Agreement and the Transaction;
- (b) to prepare for and attend the adjudication of the Amended Claim;
- (c) to work towards a resolution of the Disclaimer Motion; and
- (d) to continue the restructuring of the Applicants' business to maximize value for their stakeholders.³⁶

29. Despite their best efforts to seek approval of the Stalking Horse Purchase Agreement and the Transaction prior to the expiry of the First Stay Extension, the Applicants postponed seeking such approval due to uncertainty surrounding the determination of the Amended Claim and next steps in respect of the Security for Costs Motions.³⁷ Notably, as of the date of the Milich Affidavit and the Fourth Report, Final Bell had not posted the Security and/or paid the Costs Award, nor had the Threshold Motion been scheduled. As such, the Applicants and their major stakeholders have had limited clarity in respect of the Final Bell litigation, including its potential cost, the litigation timetable, and the overall effect the litigation may have on the CCAA Proceedings.

³⁵ *Milich Affidavit*, *supra* note 1 at para 33, Motion Record, Tab 2; *Fourth Report*, *supra* note 23 at para 38.

³⁶ *Ibid* at paras 31-32, Motion Record, Tab 2; *Fourth Report*, *supra* note 23 at para 38.

³⁷ *Ibid*; Motion Record, Tab 2.

30. The extension of the Stay Period is crucial to enable the Applicants to exit these CCAA Proceedings as a profitable and going concern business. If extended, the Stay Period will preserve the *status quo* and afford the Applicants the breathing space and stability required to continue operating their business in the ordinary course while the Applicants prepare to seek approval of the Stalking Horse Purchase Agreement and the Transaction. The Applicants intend to seek such approval without further delay once the Applicants and their major stakeholders obtain additional clarity and certainty surrounding the Final Bell litigation, including the Amended Claim, the Security and the Threshold Motion.³⁸

31. The Second Revised Cash Flow Forecast appended to the Fourth Report demonstrates that the Applicants are projected to have sufficient cash over the proposed Stay Extension period to enable the Applicants to meet their day-to-day obligations.³⁹ 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.⁴⁰ The Applicants are also not aware of any creditors who are or would be prejudiced in any meaningful way by the proposed Stay Extension.⁴¹

32. 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 Fourth Report and Activities

33. 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.⁴² This Court has recognized a number of policy

³⁸ *Ibid*; Motion Record, Tab 2.

³⁹ *Ibid* at para 34, Motion Record, Tab 2; *Fourth Report*, *supra* note 23 at para 35 and Exhibit "A".

⁴⁰ *Ibid* at para 35, Motion Record, Tab 2; *Fourth Report*, *supra* note 23 at para 38.

⁴¹ *Ibid*; *Ibid*.

⁴² [Target Canada Co. \(Re\), 2015 ONSC 7574](#) at paras 1-2; [Laurentian University of Sudbury, 2022 ONSC 2927](#) at paras 13-14.

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.⁴³ Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (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.⁴⁴

34. 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.⁴⁵

⁴³ *Ibid.*; *Ibid.*

⁴⁴ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.

⁴⁵ *Crystallex International Corp., Re*, 2012 ONSC 2125 at para 125.

35. 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.⁴⁶

36. Since its appointment, the Monitor has provided valuable assistance to the Applicants and the Court. 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. There has been no evidence put forward to the contrary.

37. Further, the approval sought pursuant to the proposed Stay Extension Order is limited to the Monitor's activities, as described in the Fourth Report, 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 reasonable in these circumstances.

38. For these reasons, the Applicants believe it is appropriate for this Court to approve the Fourth Report and the activities of the Monitor referred to therein.

PART V: RELIEF REQUESTED

39. For the foregoing reasons, the Applicants respectfully request 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 12TH DAY OF JULY, 2024

Bennett Jones LLP
Bennett Jones LLP

⁴⁶ [Target Canada Co. \(Re\), 2015 ONSC 7574](#) at para 21; [Nordstrom Canada Retail, Inc., 2023 ONSC 4199](#) at para 22.

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. [*Target Canada Co.*, 2015 ONSC 303](#)
10. [*Target Canada Co. \(Re\)*, 2015 ONSC 7574](#)
11. [*U.S. Steel Canada Inc. \(Re\)*, 2017 ONSC 1967](#)

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.

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