

**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.**

Applicants

**FACTUM OF THE MOVING PARTY, BZAM LTD.  
(MOTION FOR SECURITY FOR COSTS)**

April 24, 2024

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TO: THE SERVICE LIST

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**PART I - INTRODUCTION**

1. Final Bell Holdings International Ltd. (“**Final Bell**”) alleges that BZAM Ltd. (“**BZAM**”) made fraudulent misrepresentations to it that induced it to enter into a Share Exchange Agreement with BZAM. Under the Share Exchange Agreement, Final Bell divested its wholly-owned subsidiary, Final Bell Canada Inc. (“**FBC**”), to BZAM in exchange for shares of BZAM and unsecured debt. Final Bell claims it is entitled to rescission of the Share Exchange Agreement.

2. To defend against Final Bell’s serious allegations of fraud amidst a complex CCAA proceeding, BZAM has expended hundreds of hours responding to Final Bell’s claim and preparing for what is, in effect, a trial of an issue.

3. Now that the hearing in this matter—meant to take place on April 22 and 23, 2024—has been adjourned at Final Bell’s insistence and over the objection of BZAM and other parties, and now that Final Bell has announced its intention to put BZAM to even further expense in defending

Final Bell's unfounded claims of fraud, it is just and appropriate that Final Bell post security for BZAM's costs of the litigation.

4. Final Bell is a corporation not ordinarily resident in Ontario, and there is good reason to believe it lacks sufficient assets in Ontario to satisfy BZAM's costs if awarded. For these and other reasons set out below, Final Bell should be required to post security for costs in this proceeding forthwith.

## **PART II - SUMMARY OF FACTS**

### **A. Procedural History**

5. On February 28, 2024, BZAM and the other Applicants entered proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("CCAA").<sup>1</sup>

6. On March 18, 2024, Final Bell brought a claim seeking to rescind the Share Exchange Agreement. This matter has proceeded, in effect, as a trial of an issue (viz., the interrelated issues of whether BZAM is liable for alleged fraudulent misrepresentation and whether Final Bell is entitled to rescission of the Share Exchange Agreement on that basis).<sup>2</sup>

7. In the last 4-5 weeks, BZAM has undertaken a substantial amount of work to respond to Final Bell's claim. Among other things, it has delivered a responding motion record, made extensive documentary productions in response to Final Bell's Redfern requests, defended a cross-examination as well as a Rule 39.03 examination, conducted cross-examinations of Final Bell's witnesses, answered undertakings, and taken all other steps necessary to prepare for the hearing.

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<sup>1</sup> Initial Order of the Honourable Justice Osborne dated February 28, 2024.

<sup>2</sup> Notice of Motion of Final Bell Holdings International Ltd., dated March 18, 2024.

That hearing was to be returnable on April 22 and 23, 2024, and BZAM and all other parties were ready to argue the hearing then.<sup>3</sup>

8. However, on April 19, 2024, at Final Bell's insistence, in an attempt to forestall the timely adjudication of the claim on the merits, the hearing was adjourned. This was done over the objection of BZAM and other parties, to allow Final Bell to explore a narrow issue of fact relating to BZAM Management Inc.'s B300 filings.<sup>4</sup>

9. Despite Final Bell previously having the opportunity to explore all issues through the agreed-upon process designed by the parties (including through Redfern requests and in-depth examinations of BZAM's witnesses), Final Bell now seeks to expand the scope of the process (albeit in an entirely one-sided manner) and put BZAM and the other parties to further expense.<sup>5</sup>

10. The trial is now expected to be heard some time between May and July 2024.

**B. Final Bell is not Ordinarily Resident in Ontario**

11. Final Bell is incorporated under the laws of British Columbia, with its registered mailing office located in Vancouver, British Columbia.<sup>6</sup>

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<sup>3</sup> Bill of costs of BZAM Ltd., "ACTUAL COSTS", Affidavit of Wenbo Sun sworn April 23, 2024 ("Sun Affidavit"), Exhibit O, Motion Record of BZAM Ltd. (Security for Costs) ("MR"), Tab 2O, p. 174.

<sup>4</sup> Endorsement of the Honourable Justice Osborne dated April 19, 2024, Sun Affidavit, Exhibit M, MR, Tab 2M, p. 166-168.

<sup>5</sup> Endorsement of the Honourable Justice Osborne dated April 12, 2024, Sun Affidavit, Exhibit L, MR, Tab 2L, p. 162-163; Endorsement of the Honourable Justice Osborne dated April 19, 2024, Sun Affidavit, Exhibit M, Tab 2M, p. 166-168; Letter of A. Winton to J. Blinick of April 22, 2024, Sun Affidavit, Exhibit N, MR, Tab 2N, p. 170-171.

<sup>6</sup> BC Company Summary for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit A, MR, Tab 2A, p. 17-19.

12. Final Bell operates in the United States, from the State of California.<sup>7</sup> As stipulated in Final Bell's financial statements, the company's "functional currency" is the US Dollar,<sup>8</sup> and amounts in Final Bell's financial statements are expressed in US currency (unless noted otherwise).<sup>9</sup>

13. In the technical sense, Final Bell is a British Columbia corporation. In any practical sense, Final Bell is a company based in the United States. In no sense is it a company ordinarily resident in Ontario.

14. Not only is Final Bell not ordinarily resident in Ontario, but all of its directors are located outside of Ontario too: Jason Deland's address is located in the United States; Robert Meyer's address is located in Singapore (Mr. Meyer is both a director and the CEO of Final Bell); Chunxia Wang's address is located in Australia; and Ron Segev and Kay Jessel's address is located in British Columbia.<sup>10</sup> Final Bell's Chief Financial Officer, Keith Adams, is also located outside of Ontario (in California).<sup>11</sup>

### **C. Final Bell's Balance Sheet Insolvency and Significant, Increasing Financial Losses**

15. Final Bell has at all material times been balance-sheet insolvent. Its condensed consolidated financial statements as of and for the three and nine months ended December 31, 2022 and 2021—its most recent publicly-disclosed financial statements—reveal that Final Bell's total assets were

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<sup>7</sup> Sun Affidavit, at para 2, MR, Tab 2, p. 13.

<sup>8</sup> Condensed Interim Consolidated Financial Statements For the three and nine months ended December 31, 2022 and 2021 (unaudited) for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit B, MR, Tab 2B, p. 37.

<sup>9</sup> See, for instance, Sun Affidavit, Exhibit B, MR, Tab 2B, p. 64: "As consideration for the acquisition, the Company paid cash of C\$3,350,000 (\$2,486,705)..." (emphases added).

<sup>10</sup> BC Company Summary for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit A, MR, Tab 2A, p. 17-19.

<sup>11</sup> BC Company Summary for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit A, MR, Tab 2A, p. 18-19.

USD \$72,575,890, and its total liabilities USD \$86,015,166. Its total liabilities therefore exceeded its total assets by USD \$13,439,276 as at December 31, 2022.<sup>12</sup>

16. Between December 31, 2022 and September 30, 2023 (*i.e.*, the period preceding the negotiation of the Share Exchange Agreement), Final Bell’s financial position further deteriorated.

17. As set out in the most recent annual financial statements Final Bell has prepared (but which remain unaudited and not publicly disclosed)—the condensed consolidated financial statements as of and for the years ended March 31, 2022 and March 31, 2023—Final Bell’s total assets decreased to USD \$71,413,507 while Final Bell’s total liabilities grew to USD \$100,443,891.<sup>13</sup> As at March 31, 2023, Final Bell’s total liabilities exceeded its total assets by USD \$29,030,384.

18. Further, Final Bell’s condensed consolidated statement of cash flows as at March 31, 2022 and March 31, 2023 show that it suffered losses from operations in the amount of USD \$13,137,736 and USD \$17,710,102, respectively, and that it suffered net losses of USD \$22,521,933 and USD \$52,201,853, respectively.<sup>14</sup>

19. The audit of Final Bell’s condensed consolidated financial statements as of and for the years ended March 31, 2022 and March 31, 2023 was never completed. Indeed, as Final Bell publicly disclosed on November 9, 2023,<sup>15</sup> Final Bell’s auditor resigned on November 3, 2023, citing its “professional standards” and “an ongoing matter of concern”—“specifically, [its] reason for disengaging is based on a disagreement with management regarding certain of the valuation

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<sup>12</sup> Condensed Interim Consolidated Financial Statements For the three and nine months ended December 31, 2022 and 2021 (unaudited) for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit B, MR, Tab 2B, p. 24.

<sup>13</sup> Consolidated Statements of Financial Position As of March 31, 2023 and 2022, Sun Affidavit, Exhibit C, MR, Tab 2C, p. 70.

<sup>14</sup> Consolidated Statements of Financial Position As of March 31, 2023 and 2022, Sun Affidavit, Exhibit C, MR, Tab 2C, p. 72.

<sup>15</sup> Notice of Change of Auditor dated November 9, 2023, Sun Affidavit, Exhibit G, MR, Tab 2G, p. 140.

assumptions used in the valuation model for the acquisition of [FBC]”<sup>16</sup> (an acquisition that Final Bell closed on November 30, 2023 – just a year prior to Final Bell then divesting FBC to BZAM).

20. As a result of Final Bell’s failure to file its financial statements, on August 14, 2023, Final Bell was placed under a Cease Trade Order (“CTO”) by the British Columbia Securities Commission (“BCSC”).<sup>17</sup> This order remains active.<sup>18</sup>

21. Representing to the BCSC that it was dependent on issuing increasing equity to make required interest payments to its noteholders – otherwise the debt would come due at once on September 30, 2023, which would “materially prejudice [its] financial condition” – Final Bell obtained a partial revocation order of the CTO from the BCSC on September 27, 2023.<sup>19</sup>

22. Later, on January 9, 2024, Final Bell applied for and obtained a second partial revocation order of the CTO. This time, Final Bell needed to complete an equity financing by January 31, 2024 or else the principal and interest owed to its noteholders would come due and payable—in cash. Final Bell represented to the BCSC that it was “unable to fund” such a repayment at that time.<sup>20</sup>

23. Final Bell’s consolidated statements of financial position for the three months ended September 30, 2023 (the most recent quarter preceding the signing of the Share Exchange Agreement) showed a loss from operations of USD \$6,616,829, with net losses of USD

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<sup>16</sup> Resignation Letter of MGO dated November 3, 2023, Sun Affidavit, Exhibit F, MR, Tab 2F, p. 138.

<sup>17</sup> Cease Trade Order dated August 14, 2023, Sun Affidavit, Exhibit D, MR, Tab 2D, p. 133-134.

<sup>18</sup> SEDAR Issuer Profile Page, Final Bell Holdings International Ltd., accessed April 23, 2024, Sun Affidavit, Exhibit K, MR, Tab 2K, p. 157-160.

<sup>19</sup> Partial Revocation Order dated September 27, 2023, Sun Affidavit, Exhibit H, MR, Tab 2H, p. 142-144.

<sup>20</sup> Partial Revocation Order dated January 9, 2024, Sun Affidavit, Exhibit J, MR, Tab 2J, p. 153-155.



\$7,964,973.<sup>21</sup> For the six months of operation ended September 30, 2023, Final Bell had a loss from operations of USD \$14,302,082, with net losses of \$18,110,023.<sup>22</sup>

24. Simply put, Final Bell is (and has at all material times been) balance sheet insolvent, with its liabilities significantly exceeding its assets at all material times, and it suffering losses in the millions of dollars in every quarter preceding the negotiation of the Share Exchange Agreement.

25. Final Bell has also recognized the terrible cash position of FBC in particular in its internal communications and documents. For instance, Keith Adams, CFO of Final Bell, noted on November 15, 2023 (two weeks before the signing of the Share Exchange Agreement) that Final Bell projected FBC to “show a terrible cash position (Negative cash)”.<sup>23</sup>

26. In short, there is good reason to believe that Final Bell lacks sufficient assets in Ontario (and elsewhere) to pay any costs that may be awarded.

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

27. The sole issue to be determined on this motion is whether Final Bell should be required to post security for costs in respect of its claim.

#### **A. The Applicable Test**

28. Rule 56.01 governs the awarding of security for costs.<sup>24</sup> The analysis that a court must undertake in determining whether to exercise its discretion to order security for costs proceeds in two stages:<sup>25</sup>

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<sup>21</sup> Consolidated Statements of Financial Position as at September 30, 2023, Sun Affidavit, Exhibit E, MR, Tab 2E, p. 136.

<sup>22</sup> *Ibid.*

<sup>23</sup> Email from K. Adams to R. Meyer, J. Nguyen, and C. Zhou, dated November 15, 2023, Sun Affidavit, Exhibit I, MR, Tab 2I, p. 146.

<sup>24</sup> *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194 \[Rules\]](#), [r. 56.01](#).

<sup>25</sup> *Brown v. Hudson's Bay Co.*, [2014 ONSC 1065 \[Div. Ct.\]](#), at [para 33-34](#).

- (a) First, BZAM must show that any one of the six factors set out in Rule 56.01(1) applies.
- (b) Second, if BZAM can demonstrate that one of the factors enumerated in Rule 56.01(1) applies, the onus shifts to Final Bell to establish that it would be unjust in all of the circumstances to order security for costs.

29. At the first stage of the analysis, BZAM’s burden of showing “good reason to believe” that at least one of the criteria enumerated in Rule 56.01(1) applies is a “light” one.<sup>26</sup> The reason for this is that “unfairness would result were the defendant required to prove something that is within the knowledge of the plaintiff.”<sup>27</sup> BZAM is required to do “little more than raise a concern, and if successful the burden shifts to the plaintiff.”<sup>28</sup>

30. At the second stage, an inquiry into other factors which may assist in determining the justice of the case is undertaken.<sup>29</sup> The Court of Appeal in *Yaiguaje v. Chevron Corporation* summarized the correct approach to the second stage of the analysis as follows:<sup>30</sup>

[E]ach case must be considered on its own facts. It is neither helpful nor just to compose a static list of factors to be used in all cases in determining the justness of a security for costs order. There is no utility in imposing rigid criteria on top of the criteria already provided for in the Rules. The correct approach is for the court to consider the justness of the order holistically, examining all the circumstances of the case and guided by the overriding interests of justice to determine whether it is just that the order be made.

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<sup>26</sup> *JoBro Film Finance Ltd. v. National Bank of Canada*, [2020 ONSC 975](#), at [para 6](#).

<sup>27</sup> *JoBro Film Finance*, above, note 24, at [para 6](#).

<sup>28</sup> *JoBro Film Finance*, above, note 24, at [para 6](#).

<sup>29</sup> *Brown*, above, note 23, at [para 34](#), quoting *Adrian Peel Architect Inc. v. Soorty*, 2013 ONSC 6183, at para 16.

<sup>30</sup> *Yaiguaje v. Chevron Corporation*, [2017 ONCA 827](#), at [para 25](#).

**B. Final Bell should be ordered to post Security for Costs**

31. There are at least two bases upon which Final Bell can and should be ordered to post security for costs. First, per Rule 56.01(1)(a), Final Bell is “ordinarily resident outside Ontario”. Second, per Rule 56.01(1)(d), Final Bell is a corporation and there is good reason to believe it has insufficient assets in Ontario to pay BZAM’s costs in this proceeding. These two factors are dealt with in turn below.

**1. Rule 56.01(1)(a) – Final Bell Ordinarily Resides Outside of Ontario**

32. There should be no dispute that Final Bell is (1) incorporated under the laws of British Columbia; and (2) operates from California, United States.<sup>31</sup>

33. Courts have identified the jurisdiction in which the corporate party “carries on business” as decisive in finding that Rule 56.01(1)(a) is satisfied.<sup>32</sup> Courts have also found that Rule 56.01(1)(a) was satisfied based solely on the fact that the respondent is incorporated outside Ontario, in the absence of any evidence from the corporation that it is resident in Ontario.<sup>33</sup>

34. However the term “ordinarily resident” is construed, there is no sense in which Final Bell is “ordinarily resident” in Ontario. Accordingly, Rule 56.01(1)(a) applies.

**2. 56.01(1)(d) – Final Bell Lacks Sufficient Assets in Ontario to Satisfy a Costs Award**

35. There is also good reason to believe that Final Bell has insufficient assets in Ontario to pay BZAM’s costs, such that Rule 56.01(1)(d) also applies.

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<sup>31</sup> Sun Affidavit, at para 2, MR, Tab 2, p. 13; and BC Company Summary for Final Bell Holdings International Ltd., Sun Affidavit, Exhibit A, MR, Tab 2A, p. 17-19.

<sup>32</sup> *Frutticola SNC v. Rite-Pak Produce Co. Limited*, 2009 CanLII 60089 (ON SC), at para 7.

<sup>33</sup> *SF Partnership LLP v. Carter*, 2006 CanLII 30582 (ON SC), at para 3.

36. As set out above, in each of its financial statements since at least December 31, 2021, Final Bell has recorded net losses from operations, and liabilities that significantly exceed its assets. Its losses, and the margin by which its liabilities exceed its assets, has only increased over time.<sup>34</sup>

37. Courts have repeatedly held that such a financial condition for a corporate plaintiff is sufficient to satisfy Rule 56.01(1)(d). As the Ontario Superior Court of Justice recently noted in *Capital Sports Management Inc. v. Trinity Development Group Inc. et al.*,<sup>35</sup> “[s]howing that a corporation’s liabilities surpass its assets has normally been enough to meet the first part of the test.” Indeed, the Court held that “it was an error to conclude that a corporation’s insolvency was insufficient to meet the defendant’s light onus of a ‘good reason to believe’ or a ‘genuine concern’ that a corporation does not have sufficient assets to meet a costs order.”<sup>36</sup>

38. In *Legendary Log Homes, Inc. v. Courtice Auto Wreckers Limited*,<sup>37</sup> the Court held that the “[d]efendants have established that they had good reason to believe that the Plaintiff has insufficient assets to answer for costs” on the sole basis that “[t]he most recent financial statements of [the plaintiff] reveal that the corporation has more in the way of liabilities than it does in the way of assets.”<sup>38</sup>

39. As the Court recently recognized in *JoBro Film Finance Ltd. v. National Bank of Canada*, “the sole fact that a company is operating in a deficit position with sizable accumulated liabilities constitutes evidence the court could rely on to find an insufficiency of assets.”<sup>39</sup>

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<sup>34</sup> See paras 14-17, above.

<sup>35</sup> *Capital Sports Management Inc. v. Trinity Development Group Inc. et al.*, [2020 ONSC 7309](#).

<sup>36</sup> *Capital Sports Management*, above, note 31, at [para 17](#); referring to *JoBro Film Finance*, above, footnote 24.

<sup>37</sup> *Legendary Log Homes, Inc. v. Courtice Auto Wreckers Ltd.*, [\[2008\] O.J. No. 4028 \[ONSC\]](#).

<sup>38</sup> *Legendary Log Homes*, above, footnote 33, at [para 2](#).

<sup>39</sup> *JoBro Film Finance*, above, footnote 24, at [para 25](#).

40. Further, as the Court held in *American Axle & Manufacturing Inc. v. Durable Release Coasters Ltd.*, where the plaintiff was “insolvent in a balance sheet sense” (that is, the plaintiff’s liabilities exceed its assets), there is good reason to believe that the plaintiff has insufficient assets in Ontario to satisfy the defendant’s costs.<sup>40</sup>

### **3. The Burden Shifts to Final Bell**

41. Proceeding to the second stage of the analysis, the burden shifts to Final Bell to demonstrate that it would be unjust to order it to post security for costs in the circumstances. As set out above, the focus of the second stage of the analysis is on the overall justice of the circumstances which, in this case, favours requiring Final Bell to post security for costs.

42. The purpose of security for costs is to ensure equality between litigants. Allowing Final Bell to proceed with its claim without posting security would be a “heads I win, tails you lose” proposition for Final Bell. It would be unjust to BZAM to permit Final Bell to continue to pursue its serious claims of fraud with impunity and drive up costs without the risk of paying any costs once the matter is determined on the merits.

43. The merits of the case will soon be heard and determined—though the matter would have been fully heard already were it not for Final Bell’s insisted-upon adjournment and proclaimed need for further litigation steps that have forestalled the timely adjudication of the matter. The Court should now make an order for security for costs, otherwise BZAM will be left without the ability to recover any amount of costs once the matter is determined on the merits. To permit any other result would allow Final Bell to abuse the resources of the parties and the Court, without any

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<sup>40</sup> *American Axle & Manufacturing Inc. v. Durable Release Coasters Ltd.*, [2006] O.J. No. 5283 [ONSC], at para 33.

risk of facing the costs consequences that should justly follow such actions if Final Bell is ultimately unsuccessful following a determination of the matter on the merits.

#### **4. The Quantum Sought is Appropriate**

44. Where the need for security for costs has been established, and the majority of litigation steps have been completed, “a plaintiff must generally pay security for those costs already incurred and for the anticipated costs” of upcoming steps in the litigation.<sup>41</sup> Further, “where the need for security for costs is made out, the court, absent exceptional circumstances, should order security in the amount of the actual anticipated costs and not become weak-kneed at that prospect.”<sup>42</sup>

45. While costs on an elevated scale (e.g., full or substantial indemnity costs) are reserved for exceptional circumstances, this is a case where posting security for such costs is justified given the nature of Final Bell’s claim and its explicit, unfounded, and shifting allegations of fraudulent misrepresentation;<sup>43</sup> along with its conduct that has delayed the timely adjudication of the matter. This is especially the case given the significant additional costs, beyond just litigation costs, that Final Bell’s claim has caused and is continuing to cause the Applicants to incur, including, without limitation, the significant burn-rate the Applicants are incurring while Final Bell’s claim remains extant and the Applicants are thereby precluded from undertaking certain restructuring steps designed to reduce and rationalize costs.

#### **PART IV - ORDER REQUESTED**

46. BZAM respectfully asks this court for:

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<sup>41</sup> *Shuter v. Toronto Dominion Bank*, [2007] O.J. 3435 [ONSC], at para 193; *Demessy Limited v. Cassels Brock & Blackwell LLP*, 2011 ONSC 4122, at para 33.

<sup>42</sup> *Morton v. Canada (Attorney General)*, [2005] O.J. No. 948 [ONSC], at para 42.

<sup>43</sup> *Westover Estate v. Jolicouer*, 2024 ONCA 81, at para 16, citing *Unisys Canada Inc. v. York Three Associates Inc.* [2001] O.J. No. 3777 [ONCA], at para 15.

- (a) an order that Final Bell immediately pay into court security for costs up to the completion of the hearing on the merits:
  - (i) in the full indemnity amount of \$636,000; or, in the alternative,
  - (ii) in the substantial indemnity amount of \$575,000; or, in the further alternative,
  - (iii) in such other amount or manner as the Court may direct;
- (b) the costs of this motion; and,
- (c) such further and other relief as to this Court may seem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of April, 2024.



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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *American Axle & Manufacturing Inc. v. Durable Release Coasters Ltd.*, [\[2006\] O.J. No. 5283 \[ONSC\]](#)
2. *Brown v. Hudson’s Bay Co.*, [2014 ONSC 1065 \[Div. Ct.\]](#)
3. *Capital Sports Management Inc. v. Trinity Development Group Inc. et al.*, [2020 ONSC 7309](#)
4. *Demessey Limited v. Cassels Brock & Blackwell LLP*, [2011 ONSC 4122](#)
5. *Frutticola SNC v. Rite-Pak Produce Co. Limited*, [2009 CanLII 60089 \(ON SC\)](#)
6. *Hamilton v. Open Window Bakery Ltd.*, [2004 SCC 9](#)
7. *JoBro Film Finance Ltd. v. National Bank of Canada*, [2020 ONSC 975](#)
8. *Legendary Log Homes, Inc. v. Courtice Auto Wreckers Ltd.*, [\[2008\] O.J. No. 4028 \[ONSC\]](#)
9. *Morton v. Canada (Attorney General)*, [\[2005\] O.J. No. 948 \[ONSC\]](#)
10. *NuVision Health Inc. v. Teva Canada Limited*, [2018 ONSC 7583](#)
11. *SF Partnership LLP v. Carter*, [2006 CanLII 30582 \(ON SC\)](#)
12. *Shuter v. Toronto Dominion Bank*, [\[2007\] O.J. 3435 \[ONSC\]](#)
13. *Unisys Canada Inc. v. York Three Associates Inc.* [\[2001\] O.J. No. 3777 \[ONCA\]](#)
14. *Westover Estate v. Jolicouer*, [2024 ONCA 81](#)
15. *Yaiguje v. Chevron Corporation*, [2017 ONCA 827](#)



## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### RULE 56 SECURITY FOR COSTS

##### Where Available

**56.01** (1) The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

- (a) the plaintiff or applicant is ordinarily resident outside Ontario;
- (b) the plaintiff or applicant has another proceeding for the same relief pending in Ontario or elsewhere;
- (c) the defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remain unpaid in whole or in part;
- (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent;
- (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent; or
- (f) a statute entitles the defendant or respondent to security for costs. R.R.O. 1990, Reg. 194, r. 56.01 (1).

**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.**

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

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

Proceedings Commenced in Toronto

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**FACTUM OF MOVING PARTY, BZAM LTD.**  
**(MOTION FOR SECURITY FOR COSTS)**

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