

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE MCEWEN ) FRIDAY, THE 28<sup>TH</sup>  
 DAY OF AUGUST, 2020

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property of Xela Enterprises Ltd. (the “**Company**”) was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario due to the COVID-19 crisis.

ON READING the material filed by the parties, including, but not limited to, the Motion Record of the Receiver and the Responding Motion Record of Cambridge LLP, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present and listed on the Counsel Slip.

## **SERVICE**

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.

## **THE COMPANY'S DOCUMENTS and DEVICES**

2. **THIS COURT ORDERS** that Juan Guillermo Gutierrez ("**Juan Guillermo**") shall provide the Receiver forthwith and no later than within 7 days of this Order, the municipal address, business name and all contact information related to any storage unit or other premises previously or currently used by the Company to store documents, electronic devices or data including but not limited to the location of the Company's current and former servers including any server hosting Juan Guillermo's xela.com email address (the "**Premises**").

3. **THIS COURT ORDERS THAT** Juan Guillermo and any current or former officers, directors, servants, agents, employees of the Company ("**Company Agents**") and any person appearing to be in charge of the Premises shall forthwith permit entry into the Premises to the Receiver, its counsel, the Receiver's agent, or anyone so authorized by the Receiver ("**Authorized Persons**") for the purposes of searching for, identifying, inspecting, preserving, reproducing, and removing into the custody of the Receiver any and all Company documents, items, devices, computers, servers, iPads, Tablets, magnetic tapes or disks, DVDs, CDs, USB devices, cell phones,

or any other electronic storage or media device, including cloud-based storage belonging to the Company and any component of any of the foregoing (“**Company Documents and Devices**”).

4. **THIS COURT ORDERS** that Arturo’s Technical Services its officers, directors, servants, agents, employees, and anyone else acting on its behalf (“**ATS**”) and any person(s) appearing to be in charge of the premises known municipally as 3-100 Leek Crescent, Richmond Hill, ON L4B3E6 (the “**Old Server Premises**”) shall, upon five days’ notice from any Authorized Person, permit entry or re-entry into the Old Server Premises to the Authorized Persons for the purposes of searching for, identifying, inspecting, preserving, reproducing, and removing into the custody of the Receiver the Company Documents and Devices.

5. **THIS COURT ORDERS** that forthwith upon service of the Order, Juan Guillermo, any Company Agents and any other person(s) upon whom the Order is served, shall forthwith disclose to the Receiver and grant access and deliver up to the Receiver or any Authorized Persons any and all Company Documents and Devices wherever situate including without limitation any on-line internet or cloud based e-mail or other accounts or remotely accessed computers where information related to the Company may be stored, provide all means of accessing these documents, accounts or devices and allow the Receiver or such Authorized Persons to change the access to these accounts to allow the Receiver an adequate opportunity to secure the information contained on these accounts or computers.

6. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized to obtain from anyone in possession or control of the Premises or Old Server Premises, with entry and exit records, dating back to July 5, 2019, with respect to the storage unit(s) rented and/or occupied by the Company, Juan Guillermo Gutierrez, Company Agents, or anyone acting on their behalf.

7. **THIS COURT ORDERS AND DECLARES** that Receiver is authorized to retain a forensic specialist, who shall be an Authorized Person under this order. The Forensic Specialist shall be entitled to take an image of the data on the Company Documents and Devices. The Forensic Specialist shall be permitted to conduct such forensic examinations of Company Documents and Devices as directed by the Receiver.

8. **THIS COURT ORDERS AND DECLARES** that Juan Guillermo, the Company Agents, ATS and anyone else acting on their behalf, and any person(s) appearing to be in charge of the Premises or Old Server Premises shall allow the Authorized Persons to remain on the Premises or Old Server Premises to exercise their rights and discharge their duties as set out in this Order.

#### **OBLIGATIONS OF PERSONS ON NOTICE OF ORDER**

9. **THIS COURT ORDERS AND DECLARES** that upon notice of this Order, unless otherwise ordered by this Court or directed by the Receiver, no person shall, directly or indirectly, by any means whatsoever:

- (a) Remove, destroy, erase, delete alter, deface, discard, conceal, or destroy, in any manner, any Company Documents or Devices; and
- (b) Touch, activate, or operate any of the Company Documents and Devices either locally or remotely from any location, or access or alter any text, graphics, electronic data, information, or other content of any web site or its databases or any electronic mail, newsgroup or Internet relay chat communications, or other information, instructions or data stored in any location remote from the Premises that may contain or constitute the Company's information.

10. **THIS COURT ORDERS AND DECLARES** that, in order to give effect to the Order, any person who is ordered not to do something shall not do it personally, through others acting on his/her behalf, or on his/her instructions, or with his/her encouragement or acquiescence, or in any other way.

11. **THIS COURT ORDERS** that Juan Guillermo, the Company Agents, ATS, and anyone else acting on their behalf shall forthwith render any necessary assistance to the Receiver and Authorized Persons to enable them to effectively carry out their responsibilities under this Order.

12. **THIS COURT ORDERS** that upon notice of this Order, Juan Guillermo, the Company Agents, ATS and anyone else acting on their behalf shall forthwith render any necessary assistance to the Receiver or Authorized Persons to locate, decode, access, and decrypt the Company Documents and Devices and any and all information or electronic data to which the Authorized Persons may not have ready and immediate access, including the provision of all usernames, accounts, access codes, keys, identification codes, passwords, passphrases, encryption solutions or any other such information or knowledge necessary to achieve access thereto and shall remove and deactivate any other security safeguards existing on Company Documents and Devices.

#### **PRIVILEGE**

13. **THIS COURT ORDERS** that Juan Guillermo, or any other person purportedly acting on behalf of the Company or (previously or currently) related to the Company, cannot assert privilege against the Receiver in respect of any of the Company Documents or Devices.

14. **THIS COURT ORDERS** that Juan Guillermo shall give notice of this order to any third parties who may claim privilege over any Company Documents or Devices.

15. **THIS COURT ORDERS** that any third party with notice of this order who asserts or may assert a privilege claim with respect to any Company Documents or Devices may seek to vary or amend this Order on not less than seven (7) days notice to the Receiver and the Service List.

16. **THIS COURT ORDERS** that if, in the process of carrying out its duties, the Receiver or any Authorized Person identifies a documents which may be subject to privilege of a third party, the Receiver shall segregate such document(s) and shall not conduct any further review of such document(s) without further direction of the Court.

17. **THIS COURT ORDERS** that nothing in this order is intended to affect the privilege of any third party.

18. **THIS COURT ORDERS** that Juan Guillermo, or any other person purportedly acting on behalf of the Company, cannot assert privilege against the Receiver in respect of any documentation that is in the possession of Cambridge LLP as a result of their representation of the Company.

19. **THIS COURT ORDERS** that within fourteen (14) days of this Order Cambridge LLP shall produce to the Receiver:

- (a) Any and all corporate documents of the Company and its subsidiaries or affiliates;
- (b) Any documentation and correspondence relevant and relating to its representation of the Company, its subsidiaries or affiliates including but not limited to:
  - (i) Its representation of the Company in these proceedings;
  - (ii) Correspondence with the Company's subsidiaries, its affiliates and any other third parties; and

- (iii) Any and all correspondence respecting the February 2020 transaction with LISA S.A.;
- (c) A list of documents and correspondence over which privilege is claimed; and
- (d) No documents obtained by the Receiver, pursuant to this Order, shall be used for any purpose other than:
  - (i) Discharging the Receiver's obligations under the Appointment Order, dated July 5, 2019, as it may be amended from time to time;
  - (ii) The interviewing of Persons, as defined in the Appointment Order; and
  - (iii) Reporting to this Court from time to time.



---

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

28 August 20

Order to go on the consent of the parties as per the draft filed and signed.  
This Order is effective from today's date and is enforceable without the  
need for entry and filing.

*MCE T.*

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers  
130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com  
Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com  
Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com  
Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver



