

**COURT FILE NO.:** Court File No. CV-11-9062-00CL

**DATE:** February 10, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**RE:** 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

**BEFORE:** The Honourable Justice McEwen

**COUNSEL:** Monique Jilesen for KSV Restructuring Inc., the Receiver

Chris MacLeod for Juan Guillermo Gutierrez

Philip Cho for Arturo's Technical Services Ltd. And BDT Investments Inc.

Jeffrey Leon and Jason Woychesyn for Margarita Castillo

Aaron Kreaden for the Avicola Group and each of Juan Luis Bosch Gutierrez,  
Felipe Antonio Bosch Gutierrez, Dionisio Gutierrez Mayorga, and Juan Jose  
Gutierrez Moyorga

**ALSO PRESENT:** Bobby Kofman, KSV Restructuring Inc., the Receiver

Carl O'Shea and Alvaro Almengor, Hatstone, Panamanian Counsel to the  
Receiver

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY , 2021

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**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

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 Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved to hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line. The signature is cursive and includes a large, sweeping flourish at the end.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

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

**ONTARIO**

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

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