

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR
JUSTICE MCEWEN

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TUESDAY, THE 29th
DAY OF OCTOBER, 2019



BETWEEN

MARGARITA CASTILLO

Applicant

- and -

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

Respondents

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 (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the first report of the Receiver dated October 17, 2019 (the “**First Report**”) and the activities of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its legal counsel; (iii) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the sale, conveyance or transfer of the shares and/or assets of each Corporacion Arven, Limited

(“**Arven**”) and BTD Investments Inc. (“**BDT**”) to Juan Arturo Gutierrez (“**Juan Arturo**”), as purchaser or transferee, and Empresas Arturo International (“**EAI**”), as vendor or transferor, which were ultimately sold, conveyed or transferred by Juan Arturo to The ARTCARM Trust, in and around early 2016 (the “**EAI Transaction**”) deliver all such information and/or documentation to the Receiver; (iv) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the assignment by Lisa S.A. (“**Lisa**”) of the proceeds from the Avicola Litigation to BDT in January 2018 (the “**Assignment Transaction**”) deliver all such information and/or documentation to the Receiver; and (v) sealing the Confidential Appendices 1 and 2 of the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the First Report and the appendices thereto, the fee affidavit of Steven Graff sworn October 10, 2019 and the fee affidavit of Noah Goldstein sworn October 17, 2019, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by the affidavit of Kyle Plunkett sworn October 18, 2019, and the affidavit of Michael Anderson Beckles sworn October 25, 2019, filed.

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.

APPROVAL OF THE FIRST REPORT

2. **THIS COURT ORDERS** that First Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$36,763.75 (excluding HST) as set out in Appendix "F" to the First Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$43,520.07 plus HST of \$6,393.10, totalling \$49,177.68 as set out in Appendix "G" to the First Report, are hereby approved.

PRODUCTION OF RECORDS RE EAI TRANSACTION AND ASSIGNMENT TRANSACTION

5. **THIS COURT ORDERS** that (i) EAI and (ii) all of its current and former directors and officers, employees, agents, accountants and all other persons acting on their instructions or behalf, be and are hereby directed to produce forthwith to the Receiver any and all information and records, including its minute books and any board resolutions, in their possession or control of in relation to the EAI Transaction.

6. **THIS COURT ORDERS** that (i) The ARTCARM Trust and (ii) all of its current and former trustees, including Alexandria Trust Corporation, and employees, agents, accountants and beneficiaries, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

7. **THIS COURT ORDERS** that (i) Arven and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction.

8. **THIS COURT ORDERS** that (i) BDT and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

9. **THIS COURT ORDERS** that (i) Lisa and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the Assignment Transaction.

10. **THIS COURT ORDERS** that any party having notice of this Order be and is hereby directed to produce forthwith to the Receiver any and all information and records in their possession or control of in relation to the EAI Transaction and the Assignment Transaction.

SEALING OF CONFIDENTIAL INFORMATION

11. **THIS COURT ORDERS** that the Confidential Appendices 1 and 2 of the First Report be and are hereby sealed until further Order of this Court.

RECOGNITION BY FOREIGN JURISDICTIONS

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Republic of Panama, Republic of Guatemala, Barbados or Bolivarian Republic of Venezuela 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.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 29 2019

PER / PAR:




MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD. et al.

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

ORDER

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*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
Receiver of Xela Enterprises Ltd.*