

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 27<sup>th</sup>  
 )  
JUSTICE MCEWEN ) DAY OF OCTOBER, 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 CASE CONFERENCE, requested 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, 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, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present and listed on the Counsel Slip.

### **JUAN GUILLERMO'S DEVICES**

1. **THIS COURT ORDERS** that within seven (7) business days of the Order, Juan Guillermo Gutierrez (“**Juan Guillermo**”) will provide the Receiver’s Forensic Specialist, Duff & Phelps, with possession of all devices used by him, including, but not limited to, cellphones, iPads, and computers which do or may include Xela information or data (including its subsidiaries, affiliates, or former subsidiaries and affiliates) (the “**Devices**”).
2. **THIS COURT ORDERS** that Juan Guillermo will confirm under oath that the Devices are the only devices in his power, possession, or control which do or may include Xela information or data (including its subsidiaries, affiliates, or former subsidiaries and affiliates).
3. **THIS COURT ORDERS** that Duff & Phelps will be authorized to make a single forensic image of each of the Devices (the “**Images**”) in the presence of Juan Guillermo or his agent and an IT expert of Juan Guillermo’s choice within seven (7) business days of the Order.
4. **THIS COURT ORDERS** that Duff & Phelps shall be permitted to employ whatever methods it deems appropriate to image the Devices without interference by Juan Guillermo or his IT expert.
5. **THIS COURT ORDERS** that forthwith after imaging the Devices, Duff & Phelps shall return the Devices to Juan Guillermo.
6. **THIS COURT ORDERS** that Duff & Phelps will make no additional copies or images of the Devices or any of the data extracted therefrom except as necessary to comply with this Order.

7. **THIS COURT ORDERS** that, at the request of the Receiver, Duff & Phelps will be authorized to conduct forensic analyses of the Images to determine whether, when, and how many files have been deleted from the Devices. Upon completion of the analyses, Duff & Phelps shall be authorized to provide the result of such analyses (but no documents shall be released to the Receiver unless such documents are released pursuant to the protocol below) to the Receiver and Juan Guillermo.

8. **THIS COURT ORDERS** that, at the request of the Receiver, Duff & Phelps will be authorized to load the data onto the Relativity document review platform (the “**Platform**”).

9. **THIS COURT ORDERS** that once the data is loaded onto the Platform, Duff & Phelps shall grant Juan Guillermo and his authorized agents access to the Platform.

10. **THIS COURT ORDERS** that Juan Guillermo, but not the Receiver or its agents, shall have thirty-five (35) days after Duff & Phelps grants Juan Guillermo and his authorized agents access to the Platform to assert any objections to disclosure to the Receiver of any documents on the Platform based on privilege, personal information, or any other reasonable basis (the “**Objections**” or the “**Objections Date**”).

11. **THIS COURT ORDERS** that a motion for an extension of the Objections Date may be made by Juan Guillermo by motion served no less than five days before the Objections Date. Such motion for an extension must be returnable within 7 (seven) days of the Objections Date, subject only to the Court’s availability (collectively, the “**Extension Deadlines**”).

12. **THIS COURT ORDERS** that, after the Objections Date, or if a motion for extension of the Objections Date is made in accordance with the Extension Deadlines, then after the Court’s judgment thereon, the Receiver shall be given access to all the documents on the document review platform except for Objections documents. If the Receiver has not received Objections by the

Objection Date or Juan Guillermo fails to comply with any of the Extension Deadlines, the Receiver will be entitled to review all documents in the document review platform.

13. **THIS COURT ORDERS** that Juan Guillermo, in advance of the Objections date, shall prepare and provide to the Receiver, a list of documents objected to (the “Objections Documents”). The list of all Objections Documents shall include, subject to paragraph 14 below, at a minimum, the following fields: date, date sent, author, sender, all recipients, title and subject.

14. **THIS COURT ORDERS** that Juan Guillermo may assert privilege over portions of the title and/or subject descriptions by the Objections Date. Duff and Phelps shall redact the subject and/or title line in all cases where privilege has been asserted over the title and/or subject. For all claims of privilege over the title or subject, Juan Guillermo shall within 14 days of the Objections Date or extension, provide the Receiver with a basis for the assertion of privilege.

15. **THIS COURT ORDERS** that the Receiver shall be permitted to challenge any of the Objections and claims of privilege. The parties shall attempt to resolve any such challenges within three (3) business days, failing which the Receiver may address any such challenges before the Court. In the event of a challenge, the challenged document shall be provided to the Court for non-public, confidential review outside the presence of any person(s) other than counsel for the Receiver and counsel for Juan Guillermo.

16. **THIS COURT ORDERS** that the Receiver and Duff & Phelps shall not use any files from the Devices for any purpose other than the Receivership.

17. **THIS COURT ORDERS** that the Receiver shall preserve Xela and its subsidiaries privilege, except where the Receiver deems it necessary to fulfill its mandate.

18. **THIS COURT ORDERS** that the Receiver shall not disclose any files from the Devices to anyone other than its agents without approval of the Court, except as necessary to fulfill the Receiver's mandate. Agents include individuals or entities that represent and/or are retained by the Receiver to fulfill its mandate.

19. **THIS COURT ORDERS** that, upon the discharge of this receivership, Duff & Phelps shall delete the subject database in its entirety, and the Receiver shall destroy all documents and/or data retrieved from the Devices.

A handwritten signature in black ink, appearing to read "McE T.", positioned above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISE LTD. et al.  
Respondents

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

27 Oct 20

Order to go on consent as per the draft filed and signed.



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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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