

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Castillo Plaintiff(s)

AND

Xela Enterprises Ltd. et al Defendant(s)

Case Management  Yes  No by Judge: McBrent

Counsel	Telephone No:	Facsimile No:
<u>(see attached)</u>		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows): \_\_\_\_\_

This matter appeared before me today on an urgent basis given the apparent initiation of a criminal complaint by Juan Guillermo Gutierrez ("Juan Guillermo") and Harald Johannessen Hals ("Hals") against the Receiver's agents in Panama. The Receiver seeks an order amongst other things, directing Juan

10 Feb 21  
Date

McBrent  
Judge's Signature

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Guillermo and Hale to withdraw the Criminal Complaint and directing Juan Guillermo to withdraw his declaration supporting the Criminal Complaint.

I am granting the Order sought as per the draft filed and signed, as attached.

The Order appointing the Receiver grants the Receiver with significant and exclusive powers over the Company's Property, including Shareholders' rights. It also prohibits the commencement of proceedings against the Receiver, except with the consent of the Receiver or leave of this Court. Neither was obtained in this case.

Further, there is evidence in the Receiver's materials that false or misleading information ~~was provided~~ <sup>TM</sup>

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has been used in support of the Criminal complaint.

Also, the Criminal complaint appears directed at directors of the Company's subsidiary Gabinvest S.A, which directors were appointed in accordance with para. 3 of my aforementioned Order appointing the Receiver.

As I indicated at the hearing, I am making this Order on a without prejudice basis to Juan Guillermo's right to seek leave to bring a ~~procedural~~<sup>procedural</sup> motion in this regard.

At this time however I am of the view that the Criminal complaint and supporting declaration are, prima facie, a collateral attack on my previous order.

I am satisfied that I have

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jurisdiction to make the Order given Juan Guillermo's residency in Ontario and Hals' participation in this litigation.

It also bears noting that Juan Guillermo's lawyer, Mr. MacLeod <sup>PM</sup> advised that he was only made aware of the Criminal Complaint issue yesterday, even though it was initiated in late 2020.

I also note that Hals did not participate in today's hearing, but given the urgency (and potential dire consequences) and Hals' role as Treasurer of Gabinvest S.A. I am satisfied that an Order should be made against him.

Last, I have reviewed the proposed wording of the Receiver and Counsel for Juan Guillermo and I

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**Judges Endorsment Continued**

am satisfied that the wording proposed by the Receiver is satisfactory and thus have signed the order.

As I indicated today I will not be scheduling the motions proposed by BDT and Juan Guillermo until the next issue before the Court today is resolved to my satisfaction.

*[Handwritten Signature]*