ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-11-00009062-00CL **DATE: June 24, 2026**

NO. ON LIST: 7

TITLE OF PROCEEDING: CASTILLO v. XELA ENTERPRISES LTD et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Marina Luro	Margarita Castillo	mluro@stewartmckelvey.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Joan Kasozi, Chris MacLeod, Russell Bennett	Juan Guillermo Gutierrez	jkasozi@cambridgellp.com cmacleod@cambridgellp.com rbennett@cambridgellp.com
Hesam Wafaei	Avicola Group et al.	hwafaei@stikeman.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Derek Knoke, Monique J. Jilesen	Receiver, KSV Restructuring Inc.	jknoke@litigate.com mjilesen@litigate.com
Bobby Kofman	Receiver	bkofman@ksvadvisory.com

ENDORSEMENT OF JUSTICE KIMMEL:

[1] AlixPartners Restructuring, formerly KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "Receiver") of Xela Enterprises Ltd. ("Xela") brought a motion for an order:

(a) Approving a sale process to market and sell the issued and outstanding shares of Xela (the "Sale Process");

(b) Approving the reports of the Receiver and the actions described in them; and

(c) Approving the fees and disbursements of the Receiver and its legal counsel, Lenczner Slaght LLP and Aird & Berlis LLP, for the periods referenced in their respective fee affidavits.

[2] The Receiver seeks to cancel the existing issued and outstanding shares of Xela and to issue new shares (the "Shares") and then market and sell the Shares and to provide them to the successful purchaser through a reverse vesting order ("RVO") structure, although it does not seek RVO approval at this time. That would be sought if and when a transaction emerges from the Sale Process, if approved, in conjunction with a future request for the court to approve any such transaction. This proposed Sale Process structure is unique and largely a function of the litigation that Xela is involved in, although I appreciate that this is an oversimplification of the situation. The court will give it due consideration at the appropriate time, which is not today.

[3] This receivership application was commenced after a judgment was granted in the applicant's favour that held Xela and the applicant's brother, Juan Guillermo Gutierrez ("Juan Guillermo"), jointly and severally ordered to pay approximately $5 million, plus interest and costs.

[4] These proceedings have been acrimonious. The Receiver eventually brought contempt proceedings against Juan Guillermo, which resulted in the imposition of a 30-day term of incarceration and an order that Juan Guillermo pay the Receiver's costs of the contempt proceedings on a full indemnity basis in the amount of $563,485.12. When his appeal was dismissed, Juan Guillermo was ordered to pay a further $40,000 in costs of the appeal to the Receiver. These costs awards remain unpaid. Following a later failed attempt to replace the Receiver, Juan Guillermo was ordered to pay a further $30,092.10 in costs to the Receiver and to post security for costs of $100,000. None of those costs amounts have been paid or posted.

[5] The only stakeholder that raised any opposition to the Receiver's motion was Juan Guillermo. The Receiver asks the court to make an order prohibiting Juan Guillermo from making submissions in respect of the relief sought in this motion because of his failure to pay costs awards and his failure to post security for costs, in breach of the prior court orders. The Receiver's position on Juan Guillermo's standing is also based on his historic conduct in these proceedings, and prior findings of the court against him.

[6] Justice McEwan appointed me to case manage this receivership by an endorsement dated June 14, 2023. This motion is the first event that has been scheduled in the more than three years that has elapsed since then. I have no background or familiarity with the history of these proceedings. Counsel for the Receiver scheduled this as a one hour motion. Contested motions cannot be scheduled or heard in one hour. The parties should have appeared before me on a case conference to discuss timetabling and scheduling once it became apparent that Juan Guillermo was purporting to oppose the motion, and particularly given that his ability to do so was being challenged, which is itself a separate contested matter.

[7] The parties agree that Juan Guillermo’s standing to object and to be heard on this motion is a threshold question. The motion hearing today was converted into a case conference so that sequencing, timetabling and scheduling could be properly considered.

[8] The court observed that the primary ground upon which Juan Guillermo appears to be asking for the court to permit him to appear and for his objections to the Receiver’s motion to be heard (despite his non-payment of prior costs awards and failure to post the court-ordered security for costs) is that he does not have the financial means to do so. The factum filed on his behalf contends, for example, that the applicant “effectively bankrupted him” through her efforts to satisfy the judgment against him before the receivership proceedings. There is no evidence of Juan Guillermo’s financial means in the record. If he wants the court to rely upon his inability to pay the orders against him for costs and security for costs when deciding whether to allow him to appear and have his objections heard that would have to be directly in evidence before the court.

[9] Juan Guillermo’s counsel advised that they would need until the end of this week to seek and obtain instructions from their client about whether he wished to put that evidence in the record. If he does, his counsel indicated that they would need until July 6, 2026 to submit that evidence, after which it is anticipated that counsel for the Receiver may wish to cross-examine him and the motion would have to be adjourned to a date that allowed for that and allowed for updated submissions on the standing question, even if that issue was ultimately directed to be heard at the same time as the Receiver’s motion.

[10] Counsel for the Receiver also suggested an alternative approach for Juan Guillermo’s counsel to consider that would allow the Receiver’s motion for the approval of the Sale Process to proceed (on a date to be scheduled in the nearer term) and defer Juan Guillermo’s objections and the question of his standing to a subsequent approval motion, if a transaction emerges from the Sale Process.

[11] This case conference will resume on Monday June 29, 2026 at 9:30 once it has been determined whether Juan Guillermo intends to file further evidence to support his standing to oppose the Receiver’s motion and/or whether there is an alternative approach that would defer the need for that evidence for the time being. Counsel for Juan Guillermo shall advise the Receiver of his position on these matters by 12:00 p.m. on Friday June 26, 2026.

Kimmel J.

Date: Jun 24, 2026

Jessica Kimmel