

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE MCEWEN)

THURSDAY, THE 25TH
DAY OF MARCH, 2021

B E T W E E N:



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 MOTION, made by KSV Restructuring Inc. (formerly known as 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 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.

WHEREAS the Applicant made an Application for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. This statutory provision empowers a court to appoint a receiver, who is authorized to take possession of and control the assets, business, documents and records of a company with a view to dealing with and recovering them for the benefit of creditors and other stakeholders. The Applicant sought such an order, appointing KSV as Receiver and authorizing the Receiver to, among other things, take control of the assets, undertakings, business, records and company documents of the Company;

WHEREAS this Court heard the submissions of the Applicant and the Respondents and granted an Order Appointing KSV as Receiver of the Company, by way of Order of this Court dated July 5, 2019 (the “**Appointment Order**”),

WHEREAS KSV is duly appointed by this Court as Receiver of the Company and is empowered pursuant to the Appointment Order to act in respect of all the assets, undertakings and properties of the Company including, among other things, the right to exercise any shareholder rights of the Company.

WHEREAS the powers under the Appointment Order include the power to access the records and exercise control (to the exclusion of all others) over the Company’s direct and indirect subsidiaries, including Gabinvest S.A. (“**Gabinvest**”) and Lisa S.A. (“**Lisa**”).

WHEREAS the purpose of these powers is to permit the Receiver to ascertain the Company’s assets and liabilities (including those of its subsidiaries) and to satisfy all of the Company’s financial obligations, including its most significant claim, being the judgment debt owing to the Applicant by the Company.

WHEREAS the Court has issued an Order dated March 24, 2020 approving the Company’s exercise of its shareholder rights to replace the directors of Gabinvest and an Order dated March 25, 2021, granting the Receiver the right to investigate and review certain transactions undertaken by Empress Arturo International, BDT Investments Ltd., and Lisa (the “**Reviewable Transactions**”)and requiring the directors of Lisa and Gabinvest to provide information and documentation relating to those Reviewable Transactions.

WHEREAS the Receiver is seeking to satisfy the Company’s financial obligations and seeking to collect unpaid dividends, which include unpaid dividends owing from the Panamanian Company Villamorey, S.A. (“**Villamorey**”) to the Company’s subsidiary, Lisa, in the amount of approximately \$44 million USD.

WHEREAS this Court seeks the assistance of the Panamanian Courts to secure the Company’s interests, assets and properties to fulfill the Receiver’s duties,

REQUEST FOR THE ASSISTANCE OF THE PANAMANIAN COURTS

1. **THIS COURT REQUESTS** the assistance of the Panamanian Courts for the recognition in Panama of KSV as Receiver of the Company, authorizing the Receiver to directly request and/or collect all information from public or private sources, including current and/or previous directors, officers, resident agents and accountants of Gabinvest and Lisa (as direct and indirect wholly owned subsidiaries of the Company), regarding its good standing, stocks and shareholders’ composition, assets and/or liabilities.

2. **THIS COURT REQUESTS** the assistance of the Panamanian Courts for the recognition in Panama of the Appointment Order, the Order dated March 24, 2020 and the Order dated March 25, 2021, together with all the rights and powers granted to the Receiver thereunder.

3. **THIS COURT REQUESTS** the assistance of the Panamanian Courts to access information about and take control of the Company's interests, assets and properties, which includes, among other things: its wholly-owned Panamanian-company Gabinvest and Lisa, which is a wholly-owned subsidiary of Gabinvest, both registered to the mercantile section of the Public Registry of Panama.

4. **THIS COURT REQUESTS** the execution of discovery proceedings to obtain copies of corporate documents of Gabinvest and Lisa held by any former or present resident agent(s), including the Panamanian law firm Alfaro, Ferrer & Ramirez Abogados, and any other public or private database which contains information about these companies.

5. **THIS COURT REQUESTS** that, as part of the assistance, the Receiver be authorized to exercise every and all other possible rights, privileges and duties according to Panamanian Law so that it may fulfill its duties and responsibilities as Receiver, as court-appointed receiver of the shareholder of Gabinvest and, indirectly, Lisa.

6. **THIS COURT REQUESTS** the aid and recognition of the Panamanian Courts to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All Panamanian 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.



(Signature of Judge)

MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISE LTD. et al.
Respondents

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

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

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