

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE MCEWEN)

TUESDAY, THE 10TH
DAY OF FEBRUARY, 2021

BETWEEN:



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

(Withdrawal of Affidavit and Criminal Complaint in Panama)

THIS MOTION for interim relief made 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, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

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 Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to H_Johannessen@granadavalley.com and harald.johannessen1951@gmail.com and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to H_Johannessen@granadavalley.com and harald.johannessen1951@gmail.com and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
 - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved to hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras 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.



(Signature of Judge)

ENTERED AT INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 16 2021

PER / PAR:



MARGARITA CASTILLO
Applicant

-and-

XELA ENTERPRISE LTD. et al.
Respondents

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

ONTARIO

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

(Withdrawal of Affidavit and Criminal Complaint)

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers

130 Adelaide Street West, Suite 2600
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

AIRD & BERLIS LLP

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver