

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

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.

**AIDE MEMOIRE
(Chambers Appointment, returnable June 14, 2023)**

June 13, 2023

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TO: THE SERVICE LIST

1. KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), of Xela Enterprises Ltd. (“**Xela**”) requested this chambers appointment to:

(a) Update McEwen J. on the receivership; and

(b) Request the appointment of a new case management judge.

(i) *Motion to Recuse the Receiver and Motion for Security for Costs*

2. On November 24, 2022, McEwen J. heard the Receiver’s motion to require Juan Guillermo Gutierrez to pay security for costs (the “**Security for Costs Motion**”) associated with his motion to replace KSV as the Receiver of Xela (the “**Recusal Motion**”).

3. On December 1, 2022, McEwen J. ordered Mr. Gutierrez to post \$100,000 as security for costs for his Recusal Motion and to pay the Receiver its costs of the Security for Costs Motion in the amount of \$30,092.10. Mr. Gutierrez sought leave to appeal at the Divisional Court. On February 24, 2023, the Divisional Court dismissed the motion for leave and ordered Mr. Gutierrez to pay the Receiver \$5,000 in costs in respect of that motion.

4. To date, Mr. Gutierrez has not posted security for costs and has failed to pay the costs orders, which total \$35,092.10.

5. The Recusal Motion has not been scheduled.

(ii) *Contempt Appeal*

6. On June 29, 2022, Conway J. found Mr. Gutierrez to be in civil contempt of this Court for breaching the July 5, 2019 Order of McEwen J., which appointed the Receiver.

7. On October 17, 2022, Conway J. imposed a penalty on Mr. Gutierrez of 30 days' imprisonment with costs later ordered in the amount of \$563,485.

8. Mr. Gutierrez appealed the civil contempt finding and penalty and sought leave to appeal the costs award. The matter is scheduled to be heard at the Court of Appeal for Ontario on September 12, 2023.

(iii) Panamanian Issues

9. The contempt proceedings before Conway J. related to Mr. Gutierrez' involvement in a criminal complaint in respect of Gabinvest S.A. ("**Gabinvest**"), a wholly-owned subsidiary of Xela, which was filed against the Receiver's Panamanian counsel ("**Hatstone**").

10. On August 22, 2022, the Panamanian prosecutor dismissed the Gabinvest criminal complaint against Hatstone . On October 13, 2022, the Panamanian court dismissed an appeal of the prosecutor's decision.

11. On May 9, 2023, the Panamanian prosecutor closed a second investigation against Hatstone commenced by Mr. Hals related to Xela's indirect, wholly-owned subsidiary, LISA S.A.

(iv) Review of Xela's Documents and Court-Ordered Protocol

12. Justice McEwen made several production orders between July 5, 2019 and July 2022.

13. In August 2022, Mr. Gutierrez and Arturo's Technical Services Ltd. ("**ATS**") complied with those orders, providing the Receiver's IT agent (Epiq) with data and passwords to data.

14. Due to funding and other issues, the Receiver has neither initiated the protocol to deal with Mr. Gutierrez' claims of privilege nor undertaken a review of the data that is not subject to a privilege protocol.

(v) *Status*

15. The Receiver is engaged in without prejudice discussions with various stakeholders in an effort to determine whether a resolution of the issues in this receivership may be possible.

16. At some point, the Receiver will require the assistance of the Court with respect to the receivership, whether it be by way of resolution or continuation of litigation, including privilege protocol issues.

17. The Receiver requests the appointment of a new case management judge over this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of June, 2023.



Monique J. Jilesen

June 13, 2023

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

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PROCEEDING COMMENCED AT TORONTO

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