

**ONTARIO
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.

**BRIEF OF DOCUMENTS REGARDING
SECOND SUPPLEMENT TO THE FIFTH REPORT OF THE RECEIVER**

April 4, 2022

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MARGARITA CASTILLO

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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.

NOTICE OF MOTION
(Contempt)

KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Company**”), will make a motion to the Honourable Justice McEwen of the Commercial List as soon as it can be heard by judicial videoconference via Zoom or at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

1. **THE MOTION IS FOR** an order:

- (a) Abridging and validating (if necessary) the times for service and filing of this Notice of Motion, this Motion Record and any other materials, and validating service thereof;
- (b) directing Juan Guillermo Gutierrez (“**Juan Guillermo**”) to withdraw his declaration, sworn December 3, 2020 in Guatemala, in support of a criminal complaint against the Receiver in Panama (the “**Declaration**”) by no later than February 19, 2021;
- (c) directing Juan Guillermo and Harald Johannessen Hals (“**Hals**”) to withdraw the criminal complaint filed against the Receiver’s agents in Panama (the “**Criminal Complaint**”) by no later than February 19, 2021;
- (d) declaring Juan Guillermo in contempt of Court;
- (e) declaring that Juan Guillermo breached the Order of McEwen J. dated March 24, 2020 and the Order of McEwen J. dated July 5, 2019 (the “**Appointment Order**”);
- (f) that Juan Guillermo be imprisoned for such period and on such terms as this Honourable Court deems just;
- (g) seeking the aid and recognition of foreign courts, as may be necessary, to give effect to the Orders requested herein; and
- (h) such further and other relief as this Honourable Court may deem just.

2. THE GROUNDS FOR THE MOTION ARE:

Overview

- (a) The Criminal Complaint and Declaration must immediately be withdrawn in order to:
 - (i) maintain the integrity of this Court's processes;
 - (ii) protect the Receiver's representatives in Panama from suffering any criminal jeopardy and any limits on their personal freedom;
 - (iii) permit the Receiver's representatives to fulfill their mandate as Directors of the Company's subsidiary; and
 - (iv) permit the Receiver to fulfill its mandate as authorized and directed by this Honourable Court.

- (b) Juan Guillermo has breached the Orders of this Court and has acted in contempt of this Court, by:
 - (i) purporting to act on behalf of the Company in Panama with respect to the Company's shareholder rights, when he had no power to do so (contrary to paragraph 3 of the Appointment Order);
 - (ii) executing a document with respect to the Company's shareholder rights, when he had no power to do so (contrary to paragraph 3 of the Appointment Order);

- (iii) swearing a false declaration to initiate a criminal proceeding in Panama against the representatives of the Receiver (contrary to paragraph 3 of the Appointment Order and paragraph 3 of this Court's March 24, 2020 Order);
- (iv) telling the Receiver that he did not know where to find the Company's property (being its share certificates in its wholly-owned subsidiary) when he was in possession and/or control of those share certificates (contrary to paragraph 5 of the Appointment Order);
- (v) commencing or participating in the commencement of proceedings against the Receiver when he was prohibited from doing so (contrary to paragraph 9 of the Appointment Order); and
- (vi) seeking financial reparations or participating in proceedings seeking financial reparations from the Receiver when he was prohibited from doing so (contrary to paragraph 17 of the Appointment Order);

The Company

- (c) The Company is a private, family-owned holding company for assets throughout Central and South America;
- (d) The Company's President and shareholder is Juan Guillermo;
- (e) The Company wholly owns Gabinvest S.A. ("**Gabinvest**", a Panamanian company), which wholly owns Lisa S.A. ("**Lisa**", another Panamanian Company);

Scope of the Appointment Order

- (f) On July 5, 2019, the Receiver was appointed by the Appointment Order. The Appointment Order:
- (i) grants the Receiver exclusive powers with respect to the Company's Property, including exercising the Company's shareholder rights (paragraph 3);
 - (ii) prohibits others from executing documents in relation of the Company's Property (paragraph 3)
 - (iii) requires persons to deliver the Company's property to the Receiver, including the share certificates owned by the Company (paragraph 5);
 - (iv) prohibits the commencement of proceedings against the Receiver without leave of this Court (paragraph 9); and
 - (v) prohibits the imposition of liability against the Receiver as a result of its appointment or carrying out the provisions of the Appointment Order (paragraph 17);

Receiver Acts Based on Court Orders

- (g) The Receiver passed a resolution in January 2020 to replace the directors of Gabinvest with the Receiver's representatives at Hatstone Abogados ("**Hatstone**") in Panama (the new Hatstone directors being, the "**Directors**");
- (h) On March 24, 2020, McEwen J. ordered that the replacement of Gabinvest's directors by the Receiver "was a proper exercise of the Receiver's exclusive power and authority, under paragraph 3 of the Appointment Order, to exercise the [Company's] shareholder rights";

Criminal Complaint against the Receiver's Representatives

- (i) On January 20, 2021, two days after the Receiver gave notice of a motion to gain access to the Company's records and expand its investigative powers, Hals filed the Criminal Complaint against the Receiver's representatives in Panama;
- (j) As a result of the Criminal Complaint, the Receiver's representatives may face interim limitations on their ability to travel, prison sentences of up to eight years and financial reparations of USD\$2 million;
- (k) The Criminal Complaint alleges that the Receiver-appointed and Court-approved Directors were not authorized to hold a shareholder meeting and sign minutes on behalf of the Company;
- (l) The sole evidence filed on the Criminal Complaint is Juan Guillermo's Declaration;

- (m) Juan Guillermo:
 - (i) has no authority to swear a declaration on behalf of the Company without the consent of the Receiver;
 - (ii) was not authorized by the Receiver to swear a declaration on behalf of the Company; and
 - (iii) provided no notice to the Receiver that he intended to act on behalf of the Company;

- (n) Juan Guillermo declared, among other things that:
 - (i) he is making the Declaration in his capacity as Director – President of the Company;
 - (ii) he was acting as a representative of the sole shareholder of Gabinvest;
 - (iii) the Company was not notified of the January 2020 shareholder’s meeting of Gabinvest;
 - (iv) the Directors are not known to the Company nor do they have the authorization or mandate to represent Gabinvest; and
 - (v) the replacement of Gabinvest’s Board (and changes to Lisa’s Board) as well as any actions thereafter were the “product of falsehood.”

- (o) Each of these statements is false:
- (i) as a result of the Appointment Order, Juan Guillermo has no authority to act on behalf of the Company to exercise any rights of the Company granted to the Receiver, let alone the shareholder rights of the Company;
 - (ii) the Company, through the Receiver, was notified of the Gabinvest shareholders' meetings;
 - (iii) the Directors are known to the Company through the Receiver;
 - (iv) the Receiver has exclusive authority to exercise the rights of the Company as shareholder of Gabinvest pursuant to the Appointment Order; and
 - (v) the Directors were appointed pursuant to the Receiver's powers in the Appointment Order and were duly approved by this Honourable Court pursuant to the March 24th Order respecting the replacement of Gabinvest's Board.
- (p) Juan Guillermo further:
- (i) confirms that the Company is the sole shareholder of Gabinvest;
 - (ii) confirms that he has possession and/or control of Gabinvest's share certificates, contrary to his May 4, 2020 statement that he did not know their location (in response to the Receiver's request for these certificates); and
 - (iii) signs the Declaration as the authorized representative of the Company, contrary to paragraph 3 of the Appointment Order.

- (q) The Receiver's representatives in Panama will shortly be served with the Criminal Complaint and will be interviewed by the public prosecutor. It is imperative that the false declaration be withdrawn immediately;

Juan Guillermo Knowingly and Intentionally Breached the Orders

- (r) Juan Guillermo had knowledge of the Appointment Order and the March 24th Order. He:
- (i) he has actively participated in these proceedings;
 - (ii) has been represented by counsel throughout these proceedings;
 - (iii) is aware of the Receiver's attempts to obtain information about and exercise control over the Company's wholly-owned subsidiaries;
 - (iv) swore evidence (prior to the March 24th Order) that the replacement of Gabinvest's directors was not permitted;
 - (v) did not appeal the March 24th Order, despite being served with it; and
 - (vi) told the Receiver that he did not know where to find the Company's share certificates in Gabinvest notwithstanding the Declaration in support of the Criminal Complaint demonstrates he is clearly in control and/or possession of them;

Conclusion

- (s) The Receiver is unable to fulfill its mandate because of the complete disregard for the Court's Orders by those subject to this Court's jurisdiction;
- (t) The Receiver's representatives are at risk of criminal sanction, and their personal freedom is at risk, notwithstanding the fact that they are fulfilling their duties as authorized by this Court and acting pursuant to this Court's Orders;
- (u) The declarations sought on this motion must be granted in order for the Receiver to continue its mandate;
- (v) The Receiver and its representatives will suffer irreparable harm if the declarations are not granted;
- (w) The balance of convenience favours granting the declarations;
- (a) Juan Guillermo must be brought to account for lack of cooperation and contempt of these proceedings. His deliberate failure to obey this Court's Orders strikes at the very heart of the administration of justice;
- (a) The intentional violation of the Court's Orders is an aggravating factor that warrants a severe sanction;
- (b) Rule 40, 60.11 and 60.12 *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (c) Section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43; and
- (d) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Second Supplement to the Receiver's Fourth Report, dated February 8, 2021;
2. The pleadings and proceedings herein including:
 - (a) The Supplemental Brief to the Second Supplement of the Receiver's Fourth Report, dated February 8, 2021;
 - (b) The Receiver's Fourth Report, dated January 18, 2021;
 - (c) The Brief of Orders and Endorsement dated January 18, 2021;
 - (d) The Brief of Reports of the Receiver dated January 18, 2021;
 - (e) The Brief of Documents to the Receiver's Fourth Report, dated January 18, 2021;
and
3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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February 9, 2021

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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISE LTD. et al.
Respondents

6

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(Contempt)

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Lawyers for the Receiver, KSV Restructuring Inc.

Court File Number: CV-11-9062-0001

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

Additional Pages four

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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~~ TM ~~was provided~~ TM

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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~~^{procedural} 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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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 ^{PM} 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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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]

COURT FILE NO.: Court File No. CV-11-9062-00CL

DATE: February 10, 2021

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

RE: 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

BEFORE: The Honourable Justice McEwen

COUNSEL: Monique Jilesen for KSV Restructuring Inc., the Receiver

Chris MacLeod for Juan Guillermo Gutierrez

Philip Cho for Arturo's Technical Services Ltd. And BDT Investments Inc.

Jeffrey Leon and Jason Woychesyn for Margarita Castillo

Aaron Kreaden for the Avicola Group and each of Juan Luis Bosch Gutierrez, Felipe Antonio Bosch Gutierrez, Dionisio Gutierrez Mayorga, and Juan Jose Gutierrez Moyorga

ALSO PRESENT: Bobby Kofman, KSV Restructuring Inc., the Receiver

Carl O'Shea and Alvaro Almengor, Hatstone, Panamanian Counsel to the Receiver

**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

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mjilesen@litigate.com

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Tel: (416) 865-3018

AIRD & BERLIS LLP

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181 Bay Street, Suite 1800

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Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

Court File Number: CV-11-9062-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the matter of Xela Enterprises Ltd.
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McBwen

Counsel	Telephone No:	Facsimile No:
(see counsel slip)		

- 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):

The scheduled motion did not proceed. Instead a case conference was held.

The long anticipated Funds from Mr. Volgenant have still not arrived. This matter must move along for this reason and a number of other reasons set out in the Receiver's fifth report (see in

2 March 22
Date

McBwen
Judge's Signature

Additional Pages two

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

particular page 3 para 3; pp (13-14).
Undertaking, any outstanding, are
to be answered immediately. Productions
are to be made to the Receiver and
its counsel on an "eyes only"
basis and not distributed before
any issues concerning privilege are
agreed upon or determined by His
Court

The contempt hearing is now
scheduled to be heard May 30, 2022

McCourt

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Castillo
Plaintiff(s)

AND

Xela Enterprises et al
Defendant(s)

Case Management Yes No by Judge: McBEN

Counsel	Telephone No:	Facsimile No:
<u>see counsel slip</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):

I conducted another case conference today, on an urgent basis, at the request of the Receiver.

The previous endorsement of March 2/22 that I made has not been complied with.

For the purposes of clarity, the undertaking referred to in the March 2/22 endorsement (counsel

9 March 22
Date

McBEN
Judge's Signature

Additional Pages three

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

agree) stem from my previous orders dated Oct 27/20 and March 25/21.

A dispute has now arisen about solicitor / client disclosure as mentioned in my previous endorsement.

As I advised counsel today I expect all answers, except those arguably involving sol / client issues to be provided immediately.

Notwithstanding the provisions of my aforementioned earlier orders, given the contempt motion I am prepared to hear submissions from Mr. Gutierrez / AITS on the issue of sol / client privilege.

The C.L. Office will contact counsel with a date for the next case conference - within 2 weeks the case conference will be

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

conducted.

In the interim counsel for Gutierrez/ATS and the Receiver shall co-operate to ensure the smooth flow of documents occurs.

Given the long outstanding nature of the productions Gutierrez/ATS are to give the Receiver their full cooperation, keeping in mind the limitation concerning sol/client privilege.

McInt

From: [Joan Kasozi](#)
To: [Monique Jilesen](#); [Derek Knoke](#); [Philip Cho](#); [Michael Ly](#)
Cc: [Chris Macleod](#); [Brian Greenspan](#)
Subject: CASTILLO v. XELA ENTERPRISES LTD et al
Date: Wednesday, March 9, 2022 9:24:08 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[\(2022-03-09\) Letter to Receiver re Devices.pdf](#)

EXTERNAL MESSAGE

Good evening Counsel,

Please find attached a letter of today's date from Chris MacLeod.

Best regards,

N. Joan Kasozi

Associate

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor

Toronto, ON, M5V 1R5

Phone: [\(416\) 477 7007 Ext. 331](tel:(416)4777007)

Direct: [\(416\) 240 1765](tel:(416)2401765)

Email: jkasoz@cambridgellp.com

Website: www.cambridgellp.com



March 9, 2022

Christopher MacLeod,
647.346.6696 (Direct Line)
cmacleod@cambridgellp.com

SENT VIA EMAIL TO: MJILESEN@LITIGATE.COM

Ms. Monique Jilesen

Receiver
Lenczner Slaght Royce Smith Griffin LLP
2600 -130 Adelaide Street West
Toronto, Ontario
M5H 3P5

SENT VIA EMAIL TO: DKNOKE@LITIGATE.COM

Mr. Derek Knoke

Receiver
Lenczner Slaght Royce Smith Griffin LLP
2600 -130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Dear Counsel:

Re: Juan Guillermo Gutierrez et al. ats Margarita Castillo
Court File No.: 279/21
Our File No.: 2003513

Further to the case conference today and Justice McEwen's Endorsement, please provide us with a copy of the image files in the Receiver's control of Mr. Gutierrez' devices so that we can begin our review for privilege with the emails from ATS' server in a coordinated manner.

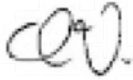
For your convenience, we attach the email correspondence from January 2021 where this request had been made but refused, as you indicated that you could not recall whether this had been requested before.

We look forward to your prompt response.

Yours very truly,

CAMBRIDGE LLP

Per:


A handwritten signature in black ink, appearing to read 'C.M.', is positioned below the 'Per:' label.

CHRISTOPHER MACLEOD

CRM/am

Enclosure: Email exchange between Monique Jilesen and Chris MacLeod dated January 7 and 8, 2022

Email from Chris MacLeod to Monique Jilesen dated January 10, 2021.



From: Monique Jilesen <mjilesen@litigate.com>

Date: Friday, January 8, 2021 at 2:10 PM

To: Chris Macleod <cmacleod@cambridgellp.com>, Derek Knoke <dknoke@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: RE: Followup and Affidavit

Chris,

Without prejudice to our position that this is not in compliance with the October 27, 2020 Order, Johan's contact information is: johan.dorado@kroll.com. Please have Dave connect with him directly to arrange for Dave to bring the iPad to Johan for imaging. Johan will determine whether the iPad can be imaged, and he will make best efforts to image it.

In accordance, with the Order Johan will not be providing Dave with a second copy of the devices that were imaged on January 5, 2021. The October 27, 2020 Order provides the protocol for how the images are to be reviewed, and as we have previously discussed and requested we ask for immediate compliance with the Order by providing Duff & Phelps with the password to the DataShield Fantom Drive.as

In any event, we understand that Juan Guillermo has the password to the DataShield Fantom Drive. Would you please confirm that you also have the password (as well as advise us of the names of all individuals who have the password) to the DataShield Fantom Drive?

Perhaps we can have a without prejudice call about this on Monday because, I do in fact have some expertise in this area and in my view, in addition to your proposals not being in accordance with the order, they are not practical. We must get to a practical result (in compliance with the Order).

Looking forward to hearing from you about the imaging of the iPad and a time for a call.

Thanks

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 7, 2021 10:39 AM

To: Derek Knoke <dknoke@litigate.com>; Monique Jilesen <mjilesen@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Followup and Affidavit

Derek and Monique-

In preparing Juan's affidavit, we note that Juan inadvertently left his broken Ipad at home and thus an attempt to mirror image it has not yet occurred.

This is the one that was seriously damaged and may or may not be able to be copied.

We suggest that our IT Consultant Dave and Johann coordinate to determine if the data can be retrieved from the damaged Ipad and if it can be retrieved that a mirror imaged copy be obtained.

We also will need to have a copy of the current mirror imaged devices so that we are reviewing for privilege from the same images that are secured at D&P.

We suggest Dave and Johann coordinate with each other to do this as soon as possible.

Could you provide Johann's contact details so we can connect the two IT consultants?

Regards,
Chris

--

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 10, 2021 1:49 PM

To: Monique Jilesen <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Follow-up

Monique-

Thank you for your message. We will ask Mr. Burton to coordinate with Mr. Dorado to set a date and time for Juan and Dave to return to Duff & Phelps to attempt to image the broken iPad.

We respectfully disagree that the Order of October 27, 2020 requires that the images be uploaded to Relativity in advance of our own review of the data. As we have stated before, the Order does not give any other person access to the data until after we have had our opportunity to review and object to disclosure, and it is our plan to conduct that review prior to upload. It is for that purpose that we are requesting duplicates of the images, so that we can identify objectionable documents using the same hash values contained on the hard drive held by D&P, and we see no legitimate reason to deny our client a copy of his own data. Indeed, refusal to allow us to take copies might interfere with our review process and constitute a basis for an extension of time.

The issue is further complicated by our discovery earlier this week that Duff & Phelps appears to have subcontracted its mandate to Kroll; Joel Bowers and Johan Dorado both use Kroll domain emails, and Mr. Dorado confirmed on Tuesday that he is employed by Kroll. While we continue to assess the issue, we believe it important to point out that Kroll had worked for, and may continue to be working for, the parties in Guatemala (the "Cousins") who are adverse to our client and his family. Among other things, we understand that Kroll conducted investigative surveillance in respect of Mr. Juan Gutierrez and his family, as private investigators for the Cousins, and has given sworn expert testimony on the record for the Cousins, in legal proceedings in the British Virgin Islands. The security concerns raised by our client regarding the copies of his devices and the conflict of interest arising out of the IT consultant retained by the Receiver is what underscores the significant concern on our client's part.

Can you speak to the Receiver and provide us with its position on this apparent conflict and whether it was aware of Kroll's prior mandate? If it was aware, then on what basis did it consider the issue to not constitute a conflict, nor one that should be brought to the parties' attention? If it was not aware, why not?

The Receiver's position on this issue will be helpful for our client to assess the impact of this issue and what, if any, steps it may want to take as a result.

Regards,
Chris

--

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: [Philip Cho](#)
To: [Derek Knoke](#); [Michael Ly](#); [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:ngoldstein@ksvadvisory.com); [Sarah Millar](#)
Subject: RE: Emails [DM-LSDOCS.FID727411]
Date: Wednesday, March 9, 2022 10:31:28 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Derek, my apologies for the late reply but I have been in back to back meetings and appointments since the end of the case conference. I'm not sure it's necessary or appropriate at this time to have a meeting about delivery of the emails. Given Justice McEwen's comments and endorsement today, ATS should be delivering the emails to Mr. MacLeod and Mr. Greenspan so that they may begin a privilege review of the emails, and probably in coordination with the privilege review of the personal devices as some of the emails will appear in both places. Once Mr. Gutierrez is able to review the emails and the personal device images with his counsel, then I think Mr. MacLeod can update you on timing of productions.

Please confirm that the Receiver does not object to ATS providing the emails to Mr. McLeod and Mr. Greenspan.

Thank you.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Derek Knoke <dknoke@litigate.com>
Sent: March 9, 2022 12:21 PM
To: Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Sarah Millar <smillar@litigate.com>
Subject: Emails [DM-LSDOCS.FID727411]

[External Message]

Philip,

Further to the March 25, 2021 Order (and today's case conference), can we please set up a meeting tomorrow or Friday? We would like to discuss the best way for you to send us an electronic copy of Mr. Gutierrez's emails on ATS' servers as soon as possible.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
dknoke@litigate.com

130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5
www.litigate.com

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

From: [Monique Jilesen](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bhg@15bedford.com; [Philip Cho](#); mly@weirfoulds.com
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com)
Subject: Xela [DM-LSDOCS.FID727411]
Date: Friday, March 11, 2022 11:59:37 AM
Attachments: [LTR to Cambridge and WeirFoulds re production compliance - Mar. 10 2022 \(104675360.1\).pdf](#)
[image001.png](#)

Counsel,

Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



Monique Jilesen*

pronouns: she/her

T 416-865-2926
M 416-407-5034
F 416-865-2851
mjilesen@litigate.com

130 Adelaide St W
Suite 2600
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Canada M5H 3P5
www.litigate.com

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenzner Slaght LLP.

March 11, 2022

Monique Jilesen
Direct line: 416-865-2926
Direct fax: 416-865-2851
Email: mjilesen@litigate.com

VIA EMAIL

Christopher MacLeod and Joan Kasozi
Cambridge LLP
333 Adelaide St. West, Suite 400
Toronto, ON M5V 1R5

Philip Cho and Michael Ly
Weirfoulds LLP
4100 - 66 Wellington St. W.
Toronto ON M5K 1B7

Dear Counsel:

RE: Xela – Production Compliance
Our File No.: 52463
Court File No.: CV-11-9062-00CL

I write in response to the letter from Cambridge LLP dated March 9, 2022 in which Mr. MacLeod requests a copy of the image taken of Juan Guillermo Gutierrez’s devices (the “**JG Images**”).

I also write in response to the email from WeirFoulds LLP dated March 9, 2022 in which Mr. Cho asserts his intention to provide Juan Guillermo’s emails on ATS’ servers to Juan Guillermo rather than the Receiver.

Finally, I write to address the assertion of privilege upon which Mr. MacLeod and Mr. Cho continue to rely to avoid compliance with court orders.

I address each in turn.

The Juan Guillermo Gutierrez Devices

On October 27, 2020, McEwen J. made an order directing Juan Guillermo to allow the Receiver to make a single image of Juan Guillermo’s devices (the “**Oct. 2020 JG Order**”). The JG Images were made on January 5, 2021 but, at Juan Guillermo’s insistence, were password protected.

On March 25, 2021 Justice McEwen held:

[3] Juan Guillermo, contrary to the terms of the above orders, has refused to permit the devices to be imaged, without being uploaded to a password protected drive. He primarily submits that he wishes to review the data, provide the Receiver with a mirror

image, and then advise what he is prepared to produce – subject to claims of privilege and relevancy.

[4] I am not prepared to alter the terms of my previous orders where a protocol has been agreed to by the Receiver and Juan Guillermo.

...

[6] I urge the Receiver and Juan Guillermo to work co-operatively on this issue and to proceed in an economic fashion, but **the terms of the above negotiated, consent orders stand and shall be adhered to. Thus, Juan Guillermo is to provide the password so that Epiq Global (who I agree will succeed Duff & Phelps) can load the data onto the Relativity platform. Thereafter, the protocol concerning Juan Guillermo's objections, can proceed, as per the Order.**

The March 25, 2021 Order provides:

[6] THIS COURT ORDERS that Juan Guillermo Gutierrez shall immediately provide the Receiver and Epiq Global with all encryption codes, keys, passwords or any other such information or knowledge necessary to unlock and access the data on the Juan Guillermo Images, including but not limited to the DataShield Fantom Drive.

It is now over a year since Mr. Gutierrez argued he should get a mirror image of the devices. That argument was rejected by this Court. The Court ordered that Mr. Gutierrez immediately provide the Receiver with the password to the devices.

Mr. Gutierrez has consistently and repeatedly refused to comply with the Court Orders of August 28, 2020, October 27, 2020 and March 25, 2021. Mr. Gutierrez has provided no explanation or excuse for the breach of the Orders.

A privilege protocol is in place with respect to Mr. Gutierrez' devices. Mr. Gutierrez must provide the password and the protocol will be applied.

The ATS Servers

On March 25, 2021, McEwen J. ordered ATS to provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo at any email address maintained on the ATS servers to the date of the Order, along with any encryption codes, keys, or passwords used to secure the emails.

Mr. Gutierrez sought leave to appeal the March 25, 2021 Order on the basis, among other things, that the Order requires ATS to produce the Mr. Gutierrez' emails. Leave to appeal was dismissed.

Nevertheless ATS has failed to comply with this Order.

On March 9, 2022 Justice McEwen endorsed:

As I advised counsel today I expect all answers, except those arguably sol/clict issues to be provided immediately.

In WeirFould's March 9, 2022 email, Mr. Cho asks the Receiver to confirm that it does "not object to ATS providing the emails to Mr. McLeod [*sic*] and Mr. Greenspan."

The Receiver takes no position on whether ATS chooses to provide Juan Guillermo's emails to Juan Guillermo's counsel. The obligation to produce Juan Guillermo's emails to the Receiver is ATS' obligation and should be complied with. As His Honour stated in his March 9, 2022 endorsement, the "smooth flow of documents" from ATS to the Receiver is to occur immediately.

As indicated in my colleague's email to Mr. Cho on March 9, 2022, we would be pleased to meet with you as soon as possible to discuss how best to arrange for the transfer of documents from ATS to the Receiver immediately. In any event, we look forward to receiving the document production immediately.

Contempt Proceeding

At the March 9, 2022 case conference, Mr. MacLeod again raised the issue of privilege with respect to Juan Guillermo's emails on ATS' servers. He submitted that it was inappropriate for the Receiver and its counsel to review Juan Guillermo's emails on ATS' servers, even on an "eyes only" basis, in light of the pending contempt motion, which is currently scheduled for May 30-31, 2022.

Mr. MacLeod's submission conflates the issues. The contempt motion arises from Juan Guillermo's December 3, 2020 sworn declaration in support of criminal proceedings against the Receiver's representatives in Panama.

The purpose of the review of the JG Images and Juan Guillermo's emails on ATS' servers is to assist the Receiver in its investigation into the Reviewable Transactions—The Receiver does not rely (and does not intend to rely) on any evidence contained on the JG Images or the emails that ATS must produce in support of the May 2022 contempt motion.

We look forward to receiving the password to the devices and the documents.

Yours truly,

A handwritten signature in black ink, appearing to read 'Monique Jilesen', with a long horizontal flourish extending to the right.

Monique Jilesen

MJ/

- c. Brian Greenspan
- Bobby Kofman and Noah Goldstein
- Derek Knoke

From: [Philip Cho](#)
To: [Monique Jilesen](#); [Chris Macleod](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Michael Ly](#)
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Friday, March 11, 2022 5:16:23 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Monique, as we have advised on a number of occasions, Mr. MacLeod's client has asserted a privilege claim over the emails in ATS' possession. This privilege issue is separate and apart from Xela's claim of privilege which you have referred to.

My understanding from the last case conference is that Justice McEwen expressly acknowledged that none of the orders to date are intended to require any person from producing privileged communications. While there may be a dispute over whether particular productions are privileged or not, those disputes will be dealt with in due course once the privileged documents are identified.

To date, the Receiver has consistently refused to engage in any discussion about a privilege review of the emails in ATS' possession, and no direction was provided to facilitate a privilege review. Instead, the Receiver has simply demanded that all emails be delivered. This position is contrary to the recent endorsement of Justice McEwen and as I advised in my last email, any delivery of emails in ATS' possession will follow a review for privilege by Mr. Gutierrez with his counsel.

As such, we will provide the emails to Mr. MacLeod so that he can arrange to review the emails in tandem with the review of the data on the personal devices to ensure that duplicates are properly catalogued and identified. We believe this is consistent with Justice McEwen's last endorsement. Again, I am not certain as to the utility of a meeting at this time.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Monique Jilesen <mjilesen@litigate.com>
Sent: March 11, 2022 12:00 PM
To: [Chris Macleod](mailto:cmacleod@cambridgellp.com) <cmacleod@cambridgellp.com>; [Joan Kasozi](mailto:jkasozi@cambridgellp.com) <jkasozi@cambridgellp.com>; bhg@15bedford.com; [Philip Cho](mailto:pcho@weirfoulds.com) <pcho@weirfoulds.com>; [Michael Ly](mailto:mly@weirfoulds.com) <mly@weirfoulds.com>
Cc: [Derek Knoke](mailto:dknoke@litigate.com) <dknoke@litigate.com>; [Noah Goldstein](mailto:ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>
Subject: Xela [DM-LSDOCS.FID727411]

[External Message]

Counsel,

Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



Monique Jilesen*

pronouns: she/her

T 416-865-2926
M 416-407-5034
F 416-865-2851
mjilesen@litigate.com

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From: [Monique Jilesen](#)
To: [Philip Cho](#); [Chris Macleod](#); [Joan Kasozi](#); bhg@15bedford.com; [Michael Ly](#)
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Sunday, March 13, 2022 11:47:55 AM
Attachments: [image001.png](#)

Phillip –

Justice McEwen has directed that documents over which privilege is not claimed get produced in accordance with the Order immediately. The Receiver has made no demand inconsistent with the recent endorsement. Instead, we simply look forward to receiving the documents in accordance with the Order and the endorsement. How ATS goes about ensuring there is a smooth flow of documents to the Receiver is up to ATS. We remain happy to discuss.

Monique

From: Philip Cho <pcho@weirfoulds.com>
Sent: Friday, March 11, 2022 5:16 PM
To: Monique Jilesen <mjilesen@litigate.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Michael Ly <mly@weirfoulds.com>
Cc: Derek Knoke <dknoke@litigate.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>
Subject: RE: Xela [DM-LSDOCS.FID727411]

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WeirFoulds LLP

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Sent: March 11, 2022 12:00 PM

To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>

Cc: Derek Knoke <dknoke@litigate.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>

Subject: Xela [DM-LSDOCS.FID727411]

[External Message]

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From: [Chris Macleod](#)
To: [Monique Jilesen](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Philip Cho](#); [mly@weirfoulds.com](#)
Cc: [Derek Knoke](#)
Subject: Xela [DM-LSDOCS.FID727411]
Date: Monday, March 14, 2022 7:54:29 AM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Monique-

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Cc: Derek Knoke <dknoke@litigate.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>, "bkofman@ksvadvisory.com" <bkofman@ksvadvisory.com>
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From: [Monique Jilesen](#)
To: [Chris Macleod](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Philip Cho](#); [mly@weirfoulds.com](#)
Cc: [Derek Knoke](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Monday, March 14, 2022 8:58:54 AM
Attachments: [image001.png](#)

Hi Chris –

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Sent: Monday, March 14, 2022 7:54 AM
To: Monique Jilesen <mjilesen@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; mly@weirfoulds.com
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To: [Monique Jilesen](#); [Joan Kasozi](#); bhg@15bedford.com; [Philip Cho](mailto:Philip.Cho@weirfoulds.com); mly@weirfoulds.com
Cc: [Derek Knoke](#)
Subject: Re: Xela [DM-LSDOCS.FID727411]
Date: Wednesday, March 16, 2022 9:39:35 AM
Attachments: [image001.png](#)

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Date: Monday, March 14, 2022 at 8:58 AM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, Brian Greenspan <bhg@15bedford.com>, Philip Cho <pcho@weirfoulds.com>, "mly@weirfoulds.com" <mly@weirfoulds.com>
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Cc: [Derek Knoke](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Wednesday, March 16, 2022 9:45:13 AM
Attachments: [image001.png](#)

Hi Chris –

I think its best for us to address this at the case conference. We do not understand why the privilege protocol in the order is not appropriate?

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Sent: Wednesday, March 16, 2022 9:39 AM
To: Monique Jilesen <mjilesen@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; mly@weirfoulds.com
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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Castillo

Plaintiff(s)

AND

Xela Enterprises et al

Defendant(s)

Case Management Yes No by Judge: McEwen

Counsel	Telephone No:	Facsimile No:
<u>See counsel slip</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):

I held another case conference today with respect to the issue of compliance with my previous orders of Aug 28/20, Oct 27/20 (2 orders) and March 25/21.

The first three orders were granted on consent. The last order resulted from a contested motion and leave to appeal was denied.

17 March 22

Date

McEwen

Judge's Signature

Additional Pages three

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

since the granting of the order various disputes concerning compliance have arisen.

I do not propose to describe them, but suffice it to say that the ordered production and ancillary relief have not occurred.

After hearing submissions I have ordered that the following occur :-

- ① Farthworth, Gutierrez will provide the passwords to his devices to Epig so the images can be fully accessed (see para 3 of Oct 27/20 order re: Devices)
- ② AIS emails contained on their servers will also be provided to Epig Farthworth
- ③ Subsequently, the protocol contained in my Oct 27/20 order will be followed and specifically para 10

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

with respect to Mr Gutierrez accessing
the Platform, and not the Receiver or
its agents.

As I advised counsel, nothing in
this endorsement alters or amends
my previous order. I am merely
resolving the long-existing deadlock
over how the data, emails etc.
shall be dealt with.

Costs of this dispute are
reserved to a later date



From: [Derek Knoke](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadisory.com\)](mailto:bkofman@ksvadisory.com); [Noah Goldstein \(ngoldstein@ksvadisory.com\)](mailto:ngoldstein@ksvadisory.com); [Grygier, David](#); [Burt-Gerrans, Harold](#)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 18, 2022 3:30:52 PM
Attachments: [image001.png](#)

Hi Chris,

Please contact David Grygier at Epiq. I have cc'd him and his colleague, Harald Burt-Gerrans, here. They are ready to speak with you as soon as possible.

Derek

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Friday, March 18, 2022 9:39 AM
To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadisory.com) <bkofman@ksvadisory.com>; Noah Goldstein (ngoldstein@ksvadisory.com) <ngoldstein@ksvadisory.com>
Subject: Re: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Derek-

Please send us the Epiq contact information and we will coordinate directly.

Regards,
Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Thursday, March 17, 2022 at 5:38 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadisory.com" <bkofman@ksvadisory.com>, "ngoldstein@ksvadisory.com" <ngoldstein@ksvadisory.com>
Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
dknoke@litigate.com

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Toronto, ON
Canada M5H 3P5
www.litigate.com

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From: [Philip Cho](#)
To: [Derek Knoke](#); [Michael Ly](#)
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:Bobby.Kofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:Noah.Goldstein@ksvadvisory.com); [Sarah Millar](#)
Subject: RE: Emails [DM-LSDOCS.FID727411]
Date: March 18, 2022 1:37:12 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Hi Derek, I am just waiting for confirmation of availability from ATS' IT person, Julio Fabrini, who I would like to be at the meeting so that we have the proper tech person available. Right now, it is looking like Tuesday will be the earliest date that works on our end. Would Tuesday work and, if so, are there any times on Tuesday that are not good for your side?

Thanks.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Derek Knoke <dknoke@litigate.com>
Sent: March 17, 2022 5:41 PM
To: Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Sarah Millar <smillar@litigate.com>
Subject: Emails [DM-LSDOCS.FID727411]

[External Message]

Philip,

We would like to set up a meeting with you, Epiq, and ourselves to discuss the best way for you to send Epiq an electronic copy of Mr. Gutierrez's emails on ATS' servers as soon as possible.

Please give us your availability for a call tomorrow or Monday.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
dknoke@litigate.com

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Suite 2600

Toronto, ON
Canada M5H 3P5
www.litigate.com

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From: [Grygier, David](#)
To: bob.elder@teeltechcanada.com
Cc: [DL-LNZ0005](#); [Burt-Gerrans, Harold](#); [Joan Kasozi](#); [Chris Macleod](#); [Derek Knoke](#)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 21, 2022 8:34:33 AM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Hi Bob,

It's nice to meet you. Please send us the password to the padlock Phantom Hard Drive, assuming the forensic images are also encrypted. If you would prefer to give us the passwords over the phone, please give us a time today to speak and I'll send out a Teams invite.

My availability is below for your reference.

- 9:00am – 10:30am EST
- 11:00am – 3:00pm

Thank you,

David Grygier, CEDS • RCU
Project Manager, Client Services
Epiq | eDiscovery

Cell : 416-705-6071
David.grygier@epiqglobal.com

People. Partnership. Performance.
www.epiqglobal.com

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: March 21, 2022 7:28 AM
To: Derek Knoke <dknoke@litigate.com>; bob.elder@teeltechcanada.com
Cc: Grygier, David <David.Grygier@epiqglobal.ca>; Burt-Gerrans, Harold <Harold.Burt-Gerrans@epiqglobal.ca>; Joan Kasozi <jkasozi@cambridgellp.com>
Subject: Re: Passwords [DM-LSDOCS.FID727411]

Bob- David and Harold are the contacts at Epiq. I will leave it to you and your team to contact David and Harold directly.

Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Friday, March 18, 2022 at 3:30 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com"

<bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com"
<ngoldstein@ksvadvisory.com>, "Grygier, David" <David.Grygier@epiqglobal.ca>, "Burt-Gerrans, Harold" <Harold.Burt-Gerrans@epiqglobal.ca>
Subject: RE: Passwords [DM-LSDOCS.FID727411]

Hi Chris,

Please contact David Grygier at Epiq. I have cc'd him and his colleague, Harald Burt-Gerrans, here. They are ready to speak with you as soon as possible.

Derek

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Friday, March 18, 2022 9:39 AM
To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>
Subject: Re: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

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Regards,
Chris

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Date: Thursday, March 17, 2022 at 5:38 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com" <bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>
Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



Derek Knoke*

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To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:Bobby.Kofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:Noah.Goldstein@ksvadvisory.com); [Monique Jilesen](#); [Sarah Millar](#); [Grygier, David](#); [Burt-Gerrans, Harold](#)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 21, 2022 3:34:40 PM
Attachments: [image001.png](#)
[Re Margarita Castillo v. Xela Enterprises Ltd. et al - file # 31421 LS-LSDOCS.FID635496.msg](#)

Chris and Brian,

Please see the attached email where you confirmed that Mr. Greenspan has the passwords. Please provide David (at Epiq) with the passwords.

Furthermore, we note that Bob Elder (your IT person) called David (at Epiq) to suggest that your client (Mr. Gutierrez) and Dave Burton (another one of your IT people) attend at Epiq's office. You do not need physical access to the Phantom Hard-Drive to provide Epiq with the passwords. David (at Epiq) is willing to setup a Teams' videoconference call for Mr. Greenspan or Mr. Gutierrez to provide the passwords, but no parties are to attend at Epiq's office.

If Epiq does not have the passwords by 9 am tomorrow, we will contact the court to request an urgent appearance.

Derek

From: bob.elder@teeltechcanada.com <bob.elder@teeltechcanada.com>
Sent: Monday, March 21, 2022 1:54 PM
To: 'Chris Macleod' <cmacleod@cambridgellp.com>; Derek Knoke <dknoke@litigate.com>; 'Joan Kasozi' <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; 'Bobby Kofman' <bkofman@ksvadvisory.com>; 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; 'Grygier, David' <David.Grygier@epiqglobal.ca>; 'Burt-Gerrans, Harold' <Harold.Burt-Gerrans@epiqglobal.ca>; Dave Burton <dave.burton@teeltechcanada.com>; Frank Corkery <frank.corkery@teeltechcanada.com>
Subject: RE: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Hi All, sorry for the delay in getting back to everyone, combination of West Coast time zone and a busy Monday start after the weekend.

I made contact with Dave Burton who was out boots on the ground during the imaging and securing of the hard drive in question, and in looking back at our instructions for this process, no one from Teel Tech Canada has the password to this locked drive, the only person that has the password for this drive is Juan himself, he is the one that input the password to secure it and Dave was not privy to the password.

Let me now if you have any questions on this, I am around for the rest of the day/week to assist further.

Sincerely,

Bob

Bob Elder

CEO

Teel Technologies Canada

bob.elder@teeltechcanada.com

www.teeltechcanada.com

<https://groups.google.com/group/physical-mobile-forensics>

Partner

Sanderson Forensics

<https://sqliteforensictoolkit.com/>

bob.elder@sandersonforensics.ca

<https://groups.google.com/d/forum/sanderson-forensics>

Office: 250-893-6125

Special Constable (WSE) - Saanich Police Department/Central Saanich Police/Victoria Police Department

Detective Constable (Retired) - Victoria Police Department

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: Monday, March 21, 2022 4:28 AM

To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasoz@cambridgellp.com>; bgreenspan@15bedford.com

Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Grygier, David <David.Grygier@epiqglobal.ca>; Burt-Gerrans, Harold <Harold.Burt-Gerrans@epiqglobal.ca>; bob.elder@teeltechcanada.com

Subject: Re: Passwords [DM-LSDOCS.FID727411]

Thank you. I will introduce Bob Elder at Teel Tech Canada under separate cover to David and Harald to coordinate. I will include Derek by cc.

Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Friday, March 18, 2022 at 3:30 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com" <bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>, "Grygier, David" <David.Grygier@epiqglobal.ca>, "Burt-Gerrans, Harold" <Harold.Burt-Gerrans@epiqglobal.ca>
Subject: RE: Passwords [DM-LSDOCS.FID727411]

Hi Chris,

Please contact David Grygier at Epiq. I have cc'd him and his colleague, Harald Burt-Gerrans, here. They are ready to speak with you as soon as possible.

Derek

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Friday, March 18, 2022 9:39 AM
To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>
Subject: Re: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Derek-

Please send us the Epiq contact information and we will coordinate directly.

Regards,
Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Thursday, March 17, 2022 at 5:38 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com"

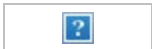
<bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>

Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
dknoke@litigate.com

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From: [Chris Macleod](#)
To: [Derek Knoke](#); [Philip Cho](#); [Monique Jilesen](#)
Cc: [Joan Kasozi](#); [Michael Ly](#); [Brian Greenspan](#)
Subject: Re: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21 [LS-LSDOCS.FID635496]
Date: April 30, 2021 7:43:11 PM

Derek-

I confirm that Mr. Greenspan has possession of the Passwords associated with the Fantom Drive the possession of Duff & Phelps.

Regards,
Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Wednesday, April 28, 2021 at 3:44 PM
To: Philip Cho <pcho@weirfoulds.com>, Monique Jilesen <mjilesen@litigate.com>
Cc: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, Michael Ly <mly@weirfoulds.com>
Subject: RE: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21 [LS-LSDOCS.FID635496]

Hi Philip and Chris,

We agree to provide you with seven days' notice before taking any steps under the Order.

Could you please confirm that counsel is in possession of all passwords necessary to unlock and access the data on the DataShield Fantom Drive?

Derek

From: Philip Cho <pcho@weirfoulds.com>
Sent: Monday, April 26, 2021 10:56 PM
To: Derek Knoke <dknoke@litigate.com>; Monique Jilesen <mjilesen@litigate.com>
Cc: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; Michael Ly <mly@weirfoulds.com>
Subject: RE: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21 [LS-LSDOCS.FID635496]

Derek,

Chris and I have discussed and are agreeable to the below timetable as revised. We will advise the Divisional Court and copy the service list.

In terms of the stay pending appeal, can the Receiver be more clear on its position with respect to its

intentions given the leave to appeal motion? I understand that it will not consent to a stay, and as you have said, has not taken any steps in furtherance of the order to date. However, will the Receiver agree that it will not take any steps in furtherance of the order pending the leave to appeal motion?

As you know from our notices of motion that our respective clients have requested a stay pending appeal if leave is granted. We ask that the Receiver confirm that until then, it will not take any steps in furtherance of the order without providing the moving parties with reasonable notice so that we can seek instructions and take steps to schedule an emergency stay motion.

Thank you.

PHILIP CHO | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Derek Knoke <dknoke@litigate.com>

Sent: April 23, 2021 2:34 PM

To: Philip Cho <pcho@weirfoulds.com>; Monique Jilesen <mjilesen@litigate.com>

Cc: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; Michael Ly <mly@weirfoulds.com>

Subject: RE: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21 [LS-LSDOCS.FID635496]

[External Message]

Hi Philip,

We are fine with you and Cambridge serving your materials on May 20, 2021.

However, we expect that all of us will deliver our material in accordance with the Rules thereafter:

- Motion Record and Factum of Moving Parties – served by May 20, 2021;
- Responding Factum (and Responding Party Motion Record, if any) – served by June 14, 2021;
- Reply – June 24, 2021; and
- Motion to be read – as soon as it can be read.

Finally, we do not consent to a stay pending leave to appeal. However, we have taken no steps in furtherance of the orders to date.

Derek

From: Philip Cho <pcho@weirfoulds.com>

Sent: Thursday, April 22, 2021 2:15 PM

To: Monique Jilesen <mjilesen@litigate.com>

Cc: Derek Knoke <dknoke@litigate.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; Michael Ly <mly@weirfoulds.com>

Subject: FW: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21

Monique, further to the direction of the Divisional Court below, I have discussed with Chris and we are suggesting the following timetable for delivery of the motion materials:

- Motion Record and Factum of Moving Parties - served by May 20, 2021
- Responding Factum (and Responding Party Motion Record, if any)– Served by June 21, 2021
- Reply Factum served by – July 15, 2021.
- Motion to be read – Week of July 26, 2021

Please let us know if you are agreeable to this timetable, or if you have suggested modifications.

Please also confirm that the Receiver will agree to a stay of enforcement pending the leave to appeal motion. In the circumstances, given the Court's recent announcement that it will not be hearing any non-urgent matters, and the relative lack of prejudice to the Receiver as it has the image files (held by Epiq), it seems appropriate for the Receiver to agree to stay enforcement (in respect of the relief involving both Chris' client and our client) without the need for an urgent motion. Your confirmation of this would be appreciated.

Thank you.

PHILIP CHO | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Baweja, Saurabh S. (JUD) <Saurabh.Baweja@ontario.ca>

Sent: April 15, 2021 3:13 PM

To: Michael Ly <mly@weirfoulds.com>

Cc: Philip Cho <pcho@weirfoulds.com>; 'Chris Macleod' <cmacleod@cambridgellp.com>; 'jkasozi@cambridgellp.com' <jkasozi@cambridgellp.com>; 'bhg@15bedford.com' <bhg@15bedford.com>; 'dknoke@litigate.com' <dknoke@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; kplunkett@airdberlis.com; 'sbabe@airdberlis.com' <sbabe@airdberlis.com>; zweigs@bennettjones.com; 'LeonJ@bennettjones.com' <LeonJ@bennettjones.com>; 'jwoy cheshyn@stewartmckelvey.com' <jwoy cheshyn@stewartmckelvey.com>; 'kkay@stikeman.com' <kkay@stikeman.com>; 'akreaden@stikeman.com' <akreaden@stikeman.com>; 'kevin.boyce@clarkes.com.bb' <kevin.boyce@clarkes.com.bb>; 'shena-ann.ince@clarkes.com.bb' <shena-ann.ince@clarkes.com.bb>; 'alvaro.almengor@hatstone.com' <alvaro.almengor@hatstone.com>; 'carl.oshea@hatstone.com' <carl.oshea@hatstone.com>; 'DianeWinters@Justice.gc.ca'

<DianeWinters@Justice.gc.ca>; Candace Buckmire <cbuckmire@weirfoulds.com>

Subject: RE: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21

[External Message]

Good Day,

My Apologies for the typo, the below email should be read with correction to the file number in the last line as follows:

“The court directs that the motion for leave to appeal in 279/21 and in **314/21** be heard by the same panel of the Divisional Court.” Baweja

Regards
Saurabh Baweja

From: Baweja, Saurabh S. (JUD)

Sent: April 15, 2021 3:07 PM

To: 'Michael Ly' <mly@weirfoulds.com>

Cc: Philip Cho <pcho@weirfoulds.com>; Chris Macleod <cmacleod@cambridgellp.com>; jkasozi@cambridgellp.com; bhg@15bedford.com; dknokel@litigate.com; Monique Jilesen <mjilesen@litigate.com>; kplunkett@airdberlis.com; sbabe@airdberlis.com; zweigs@bennettjones.com; LeonJ@bennettjones.com; jwoycheshyn@stewartmckelvey.com; kkay@stikeman.com; akreaden@stikeman.com; kevin.boyce@clarkes.com.bb; shena-ann.ince@clarkes.com.bb; alvaro.almengor@hatstone.com; carl.oshea@hatstone.com; DianeWinters@Justice.gc.ca; Candace Buckmire <cbuckmire@weirfoulds.com>

Subject: RE: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21

Good Afternoon,

Honourable Justice Corbett directs me to advise you as follows:

The parties shall confer to agree upon a schedule for exchange of materials for the motion for leave to appeal and shall provide their agreed schedule to the court by April 30, 2021. If a schedule cannot be agreed then the parties shall arrange a case management teleconference with the court.

The court directs that the motion for leave to appeal in 279/21 and in 214/21 be heard by the same panel of the Divisional Court.

Sincerely,
Saurabh Baweja

From: Michael Ly <mly@weirfoulds.com>

Sent: April 15, 2021 2:05 PM

To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmal@ontario.ca>

Cc: Philip Cho <pcho@weirfoulds.com>; Chris Macleod <cmacleod@cambridgellp.com>; jkasoz@cambridgellp.com; bhg@15bedford.com; dknoke@litigate.com; Monique Jilesen <mjilesen@litigate.com>; kplunkett@airdberlis.com; sbabe@airdberlis.com; zweigs@bennettjones.com; LeonJ@bennettjones.com; jwoycheshyn@stewartmckelvey.com; kkay@stikeman.com; akreaden@stikeman.com; kevin.boyce@clarkes.com.bb; shena-ann.ince@clarkes.com.bb; alvaro.almengor@hatstone.com; carl.oshea@hatstone.com; DianeWinters@Justice.gc.ca; Candace Buckmire <cbuckmire@weirfoulds.com>

Subject: Margarita Castillo v. Xela Enterprises Ltd. et al

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Dear Sir/Madam,

In accordance with the Notice to Profession – Divisional Court, please see attached for filing:

1. Notice of Motion of Arturo’s Technical Services Inc.
2. Affidavit of Service of Philip Cho sworn April 9, 2021

Also attached is the filing request form and Endorsement of Justice McEwen dated March 25, 2021. Our office will be mailing a cheque for the filing fee.

Regards,
Michael

MICHAEL C. LY | Associate | T. 416-947-5087 | C. 647-207-7614 | mly@weirfoulds.com

WeirFoulds LLP

66 Wellington Street West, Suite 4100, P.O. Box 35, TD Bank Tower, Toronto, Ontario, Canada. M5K 1B7 | T. 416-365-1110 | F. 416-365-1876 | www.weirfoulds.com

WeirFoulds is proud to have received the Ontario Law Firm of the year Award at the 2020 Canadian Law Awards, presented by Lexpert and supported by Canadian Lawyer and InHouse.

We are committed to promoting equality, diversity and inclusion within WeirFoulds and beyond. [Please click here to read our official statement on this commitment.](#)

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From: [Chris Macleod](#)
To: [Derek Knoke](#); [Monique Jilesen](#); [Brian Greenspan](#); [Philip Cho](#); [Joan Kasozi](#)
Subject: Letter
Date: March 22, 2022 8:21:24 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[TTC Secured Drives.pdf](#)

EXTERNAL MESSAGE

Monique and Derek-

Please see attached letter from our IT expert on how best to upload to relativity and begin the protocol set out in the October 27, 2020 Order. We will have Bob Elder and Dave Burton at Teel Tech Canada communicate this as they are already in touch with Epiq.

Regards,
Chris

Chris Macleod

Partner, Cross-Border Litigation & Business Litigation Groups



333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5
Phone: [\(416\) 477 7007 Ext. 303](tel:(416)4777007)
Direct: [\(647\) 346 6696](tel:(647)3466696)
Email: cmacleod@cambridgellp.com
Website: www.cambridgellp.com





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Victoria, BC V8Z 7E7
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250.213.1637
www.teeltechcanada.com
bob.eder@teeltechcanada.com

To Whom it may concern:

March 21, 2022

RE: Recommendations for uploading secure data to Relativity:

The goal of this event is to be able to upload the data contained on a secured Phantom hard drive where the password is only known to one person, Juan Gutierrez. The security of the data on this Phantom hard drive must be maintained before and after the event to ensure that it cannot be misplaced, lost, unknowingly provided to another party, accessed in any way by any person and/or used for any other purpose.

The request is to have the data on this secured drive uploaded to the Relativity tool in order to be processed and once the data is uploaded to this source, no password is required at any time to review the data. This secured Phantom Hard drive is currently located at the Epiq office in Toronto.

In order to ensure that the data remaining on the Phantom hard drive is secured, we strongly recommend that either it is returned to Juan Gutierrez after upload to Relativity, or if it is to remain in the possession of Epiq, that it is password protected again by Juan Gutierrez as it was in the first place. To ensure that this is done in a manner that provides Juan Gutierrez confidence that his data will not be shared in any way, we at Teel Technologies Canada are requesting the following process take place:

- Juan Gutierrez is to attend the Epiq location with Dave Burton of Teel Technologies Canada who will provide oversight and answer any questions Juan Gutierrez may have during the process.
- That Juan Gutierrez will privately unlock the secured Phantom drive allowing access to the data for the Epiq representative to upload the data from the Devices to the Relativity tool.

- Once the data is all uploaded, Juan Gutierrez and Dave Burton will ensure that the Phantom hard drive is either returned to Juan Gutierrez, or if remaining in the possession of Epiq, re-secured with the existing password or a new one.
- The data that was uploaded to the Relativity platform will not be password protected allowing full access to the team at Epiq to administer and maintain this data on the Relativity Platform, provided that such access is only for the purposes of administration and maintenance but not for review by any person, except in accordance with the Order.
- This process is consistent with the previous process used to forensically image and store the data from Juan Gutierrez's devices.

We feel that this process would be in the best interest of both parties as it will ensure that the data stored on the secured Phantom will remain secured and not accessible to anyone but Juan Gutierrez but at the same time, the data will be on the Relativity platform to be dealt with in accordance with the Order.

Please do not hesitate to contact us if you have any questions or concerns,

Sincerely Yours,

A handwritten signature in blue ink, appearing to read 'Bob Elder', with a horizontal line underneath.

Bob Elder – CEO

Teel Technologies Canada

From: [Philip Cho](#)
To: [Derek Knoke](#)
Cc: [Michael Ly](#); [Monique Jilesen](#)
Subject: ATS Server Emails
Date: March 23, 2022 5:00:06 PM

EXTERNAL MESSAGE

Derek, further to our meeting this morning, I can confirm that Julio Fabrini has received the FTP login information from Epiq. However, I just got off the phone with Chris MacLeod and learned that he had not seen my emails notifying them of this FTP protocol as he was in a funeral all day today. He has not had an opportunity to discuss this with his client or Mr. Greenspan.

ATS is just waiting to make sure that Juan Gutierrez has had an opportunity to get the legal advice he needs on this before we start transferring the PST files.

I will update you as soon as I have new information.

PHILIP CHO | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

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Grace Tsakas

From: Derek Knoke <dknoke@litigate.com>
Sent: March 23, 2022 5:22 PM
To: McEwen, Mr. Justice Thomas John (SCJ)
Cc: Monique Jilesen; Bobby Kofman (bkofman@ksvadvisory.com); Noah Goldstein (ngoldstein@ksvadvisory.com); Sarah Millar; Philip Cho; Michael Ly; Chris Macleod; Joan Kasozi; bgreenspan@15bedford.com; Jeffrey S. Leon - Bennett Jones LLP (leonj@bennettjones.com); Jason W.J. Woycheshyn (jwoycheshyn@stewartmckelvey.com); Aaron Kreaden; Ruiz, Jessica (JUD); Carl O'Shea; Alvaro Almengor
Subject: Update re CV-11-9062-00CL - In the Matter of the Receivership of Xela Enterprises Ltd. [DM-LSDOCS.FID727411]
Attachments: 2022.03.17 - Endorsement re compliance (104691091.2).pdf; Re: Margarita Castillo v. Xela Enterprises Ltd. et al - file # 314/21 [LS-LSDOCS.FID635496]

Dear Justice McEwen,

At our last case conference on March 17, 2022, you asked that we update Your Honour. This is that update.

For ease of reference, we have attached Your Honour's latest endorsement.

- **Passwords**
 - **Status:** At present, Epiq (the IT expert retained by the Receiver) still does not have the passwords to the hard drive containing an image of Juan Guillermo Gutierrez's iPad and iPhone. Epiq cannot access the images on the hard drive.
 - In accordance with your prior orders, the Receiver requested that Mr. Gutierrez or his counsel provide the passwords to Epiq (which Mr. MacLeod advised in an email dated April 30, 2021 are also in the possession of Mr. Greenspan; please see attached email).
 - Epiq even offered to speak with Mr. Gutierrez and his IT expert by Teams to allow them to give the passwords to Epiq by videoconference rather than sending the passwords by email.
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 - The Receiver consulted the experts at Epiq, who expressed the concerns noted below.
 - **Epiq's Concerns:**
 - First, Epiq advises that, by permitting anyone to have access to the hard drive, there is a risk that the data could become permanently inaccessible by wiping the contents (for example, too many incorrect password attempts) or by physically damaging the hard drive. Epiq advises that, by permitting Mr. Gutierrez to "privately unlock" the hard drive, they will have no visibility into the number of incorrect entries that may be attempted. One too many incorrect entries could wipe the hard drive's contents.
 - Second, Epiq advises that, if Mr. Gutierrez insists on privately unlocking the hard drive, there could be the potential for data manipulation or deletion after the hard drive is unlocked. Given the way iPhones and iPads overwrite data, if the data on the hard drive were lost (whether due to wiping the contents, physical damage, or manipulation/deletion of data), it is highly unlikely that all of the data from the time of the 1st collection will still exist anymore on Mr. Gutierrez's iPhone and iPad.
 - Third, Epiq advises that their offices are not fully re-opened due to the Covid-19 pandemic, so they are reluctant to meet Mr. Gutierrez in person at this time.

- Fourth, any concerns Mr. Gutierrez may have with Epiq’s access to the hard drive may be mitigated through videoconferencing. Epiq previously offered to do a videoconference with Mr. Gutierrez (with the Receiver and its counsel absent). However, counsel for Mr. Gutierrez refused. They continue to insist on Mr. Gutierrez’s physical attendance at Epiq’s office.
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 - The Receiver also notes that the procedure desired by Mr. Gutierrez and his advisors imposes additional obligations beyond the direction contained in Your Honour’s attached endorsement dated March 17, 2022, which simply says, “Forthwith, [Mr.] Gutierrez will provide the passwords to his devices to Epiq so the images can be fully accessed”.
- **Mr. Gutierrez’s emails on ATS’ servers**
 - **Status:** At present, none of Mr. Gutierrez’s emails on ATS’ servers have been provided to Epiq.
 - A call was convened with ATS’ counsel, ATS’ Chief Information Officer (Julio Fabrini), Andres and Thomas Gutierrez (Mr. Gutierrez’s sons and the directors/officers of ATS), Epiq, and the Receiver to discuss how best to obtain Mr. Gutierrez’s emails on ATS’ servers.
 - ATS’ counsel noted that:
 - Mr. Gutierrez has three email accounts hosted on ATS’ servers;
 - ATS’ CIO already extracted all Mr. Gutierrez’s emails for one of the email accounts, and those are ready to be sent to Epiq;
 - ATS’ CIO could begin extracting all Mr. Gutierrez’s emails for the other two email accounts; and
 - It was possible to transfer Mr. Gutierrez’s three email accounts by secure file transfer.
 - Epiq confirmed that a secure file transfer was the best and most efficient way to receive Juan Guillermo’s emails. Epiq further advised that they have a secure file transfer protocol (“FTP”), whereby they can send ATS a secure link to which ATS can upload Mr. Gutierrez’s emails.
 - ATS’ counsel advised that he wanted to first confer with his clients, Mr. Gutierrez, and Mr. Gutierrez’s counsel before agreeing to transfer the emails by secure FTP. ATS’ counsel wanted to ensure that Mr. Gutierrez was comfortable with this process.
 - The Receiver advised ATS’ counsel that the Court Order requires ATS to produce the emails. The Receiver advised that there was no basis for ATS to refuse to comply with Your Honour’s Orders based on Mr. Gutierrez’s personal preferences.
 - The Receiver advised ATS’ counsel that it intended to update Your Honour on the status of compliance by 5 pm today. The Receiver asked that ATS provide its position prior to that time to permit the Receiver to advise Your Honour, given that no documents have yet been produced despite Your Honour’s March 17, 2022 direction that documents flow to Epiq “forthwith”.
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 - After Epiq receives the emails, the data will be subject to the privilege protocol in Your Honour’s October 27, 2020 Order, as directed by Your Honour’s March 17, 2020 endorsement. The Receiver will not have access to the data.



Derek Knoke*

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Grace Tsakas

From: McEwen, Mr. Justice Thomas John (SCJ) [REDACTED]
Sent: March 23, 2022 5:37 PM
To: Derek Knoke
Cc: Monique Jilesen; Bobby Kofman (bkofman@ksvadisory.com); Noah Goldstein (ngoldstein@ksvadisory.com); Sarah Millar; Philip Cho; Michael Ly; Chris Macleod; Joan Kasozi; bgreenspan@15bedford.com; Jeffrey S. Leon - Bennett Jones LLP (leonj@bennettjones.com); Jason W.J. Woycheshyn (jwoycheshyn@stewartmckelvey.com); Aaron Kreaden; Ruiz, Jessica (JUD); Carl O'Shea; Alvaro Almengor
Subject: Re: Update re CV-11-9062-00CL - In the Matter of the Receivership of Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Counsel,
The parties/ Receiver will attend before me tomorrow at 1:30pm.
Justice McEwen

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Sent: Wednesday, March 23, 2022 5:21:51 PM
To: McEwen, Mr. Justice Thomas John (SCJ) [REDACTED]
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadisory.com) <bkofman@ksvadisory.com>; Noah Goldstein (ngoldstein@ksvadisory.com) <ngoldstein@ksvadisory.com>; Sarah Millar <smillar@litigate.com>; Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasoz@cambridgellp.com>; bgreenspan@15bedford.com <bgreenspan@15bedford.com>; Jeffrey S. Leon - Bennett Jones LLP (leonj@bennettjones.com) <leonj@bennettjones.com>; Jason W.J. Woycheshyn (jwoycheshyn@stewartmckelvey.com) <jwoycheshyn@stewartmckelvey.com>; Aaron Kreaden <AKreaden@stikeman.com>; Ruiz, Jessica (JUD) <Jessica.Ruiz@ontario.ca>; Carl O'Shea <carl.oshea@hatstone.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>
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Derek



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Sent: March 24, 2022 9:22 AM
To: McEwen, Mr. Justice Thomas John (SCJ); Derek Knoke
Cc: Monique Jilesen; Bobby Kofman (bkofman@ksvadvisory.com); Noah Goldstein (ngoldstein@ksvadvisory.com); Sarah Millar; Philip Cho; Michael Ly; Joan Kasozi; bgreenspan@15bedford.com; Jeffrey S. Leon - Bennett Jones LLP (leonj@bennettjones.com); Jason W.J. Woycheshyn (jwoycheshyn@stewartmckelvey.com); Aaron Kreaden; Ruiz, Jessica (JUD); Carl O'Shea; Alvaro Almengor
Subject: Re: Update re CV-11-9062-00CL - In the Matter of the Receivership of Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Your Honour-

My apologies, but neither Mr. Greenspan nor I are available today. I am waiting to hear from Mr. Greenspan on his availability for tomorrow.

Regards,
Chris MacLeod

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Date: Wednesday, March 23, 2022 at 5:37 PM
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 - First, Epiq advises that, by permitting anyone to have access to the hard drive, there is a risk that the data could become permanently inaccessible by wiping the contents (for example, too many incorrect password attempts) or by physically damaging the hard drive. Epiq advises that, by permitting Mr. Gutierrez to "privately unlock" the hard drive, they will have no visibility into the number of incorrect entries that may be attempted. One too many incorrect entries could wipe the hard drive's contents.
 - Second, Epiq advises that, if Mr. Gutierrez insists on privately unlocking the hard drive, there could be the potential for data manipulation or deletion after the hard drive is unlocked. Given the way iPhones and iPads overwrite data, if the data on the hard drive were lost (whether due to wiping the contents, physical damage, or manipulation/deletion of data), it is highly unlikely that all of the data from the time of the 1st collection will still exist anymore on Mr. Gutierrez's iPhone and iPad.
 - Third, Epiq advises that their offices are not fully re-opened due to the Covid-19 pandemic, so they are reluctant to meet Mr. Gutierrez in person at this time.
 - Fourth, any concerns Mr. Gutierrez may have with Epiq's access to the hard drive may be mitigated through videoconferencing. Epiq previously offered to do a videoconference with Mr. Gutierrez (with the Receiver and its counsel absent). However, counsel for Mr. Gutierrez refused. They continue to insist on Mr. Gutierrez's physical attendance at Epiq's office.
- **Receiver's Recommendation:** Given Epiq's concerns about the risk of losing the data, the Receiver suggests that Mr. Gutierrez attend at a videoconference call with Epiq (with the Receiver and its counsel absent) for Mr. Gutierrez to provide the passwords to Epiq. After which, Epiq will re-lock the hard drive to assuage Mr. Gutierrez's concerns.

- The Receiver also notes that the procedure desired by Mr. Gutierrez and his advisors imposes additional obligations beyond the direction contained in Your Honour’s attached endorsement dated March 17, 2022, which simply says, “Forthwith, [Mr.] Gutierrez will provide the passwords to his devices to Epiq so the images can be fully accessed”.
- **Mr. Gutierrez’s emails on ATS’ servers**
 - **Status:** At present, none of Mr. Gutierrez’s emails on ATS’ servers have been provided to Epiq.
 - A call was convened with ATS’ counsel, ATS’ Chief Information Officer (Julio Fabrini), Andres and Thomas Gutierrez (Mr. Gutierrez’s sons and the directors/officers of ATS), Epiq, and the Receiver to discuss how best to obtain Mr. Gutierrez’s emails on ATS’ servers.
 - ATS’ counsel noted that:
 - Mr. Gutierrez has three email accounts hosted on ATS’ servers;
 - ATS’ CIO already extracted all Mr. Gutierrez’s emails for one of the email accounts, and those are ready to be sent to Epiq;
 - ATS’ CIO could begin extracting all Mr. Gutierrez’s emails for the other two email accounts; and
 - It was possible to transfer Mr. Gutierrez’s three email accounts by secure file transfer.
 - Epiq confirmed that a secure file transfer was the best and most efficient way to receive Juan Guillermo’s emails. Epiq further advised that they have a secure file transfer protocol (“FTP”), whereby they can send ATS a secure link to which ATS can upload Mr. Gutierrez’s emails.
 - ATS’ counsel advised that he wanted to first confer with his clients, Mr. Gutierrez, and Mr. Gutierrez’s counsel before agreeing to transfer the emails by secure FTP. ATS’ counsel wanted to ensure that Mr. Gutierrez was comfortable with this process.
 - The Receiver advised ATS’ counsel that the Court Order requires ATS to produce the emails. The Receiver advised that there was no basis for ATS to refuse to comply with Your Honour’s Orders based on Mr. Gutierrez’s personal preferences.
 - The Receiver advised ATS’ counsel that it intended to update Your Honour on the status of compliance by 5 pm today. The Receiver asked that ATS provide its position prior to that time to permit the Receiver to advise Your Honour, given that no documents have yet been produced despite Your Honour’s March 17, 2022 direction that documents flow to Epiq “forthwith”.
 - At 5 pm today, ATS’ counsel advised us that they are still waiting for approval from Mr. Gutierrez and his counsel to start transferring Mr. Gutierrez’s emails.
 - **Receiver’s Recommendation:** At present, ATS’ counsel have not advised whether they will transfer Mr. Gutierrez’s emails to Epiq using Epiq’s secure FTP.
 - The Receiver requests that Your Honour direct ATS to provide Mr. Gutierrez’s emails to Epiq using Epiq’s secure FTP “forthwith”, as directed in Your Honour’s March 17, 2022 endorsement. In any event, the Receiver requests that the emails that ATS’ CIO has already extracted be transferred by 5 pm tomorrow using Epiq’s secure FTP.
 - After Epiq receives the emails, the data will be subject to the privilege protocol in Your Honour’s October 27, 2020 Order, as directed by Your Honour’s March 17, 2020 endorsement. The Receiver will not have access to the data.

Derek



Derek Knoke*

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Suite 2600
Toronto, ON

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Court File Number: CU-11-9062-001

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Castillo

Plaintiff(s)

AND

Xela Enterprises et al

Defendant(s)

Case Management Yes No by Judge: McGowan

Counsel	Telephone No:	Facsimile No:
<u>see counsel slip</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):

A Further case conference was convened today at my request to deal with the ongoing and protracted dispute concerning compliance with my earlier orders of Aug 28/20, Oct 27/20 (two orders) and March 25/21.

As I have previously noted the first three orders were

25 March 22
Date

McGowan
Judge's Signature

Additional Pages twelve

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

granted on consent. The last order, March 25/21, resulted from a contested motion and leave to appeal was denied.

Since then Mr. Gutierrez has raised several objections concerning the methods that should be used with respect to the provision of his passwords to Epic. As a result AIS has also not provided the emails that I have ordered be produced.

I convened the case conference today to rule on the protocol given Mr. Gutierrez's most recent objections.

At today's case conference counsel for Mr. Gutierrez advised that they wished me to debate the issues concerning access and production as they wished to

Superior Court of Justice
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Judges Endorsment Continued

bring a motion for injunctive relief staying the enforcement of my abovementioned order, based on a draft Notice of Motion provided shortly before the case conference began.

The draft Notice of Motion generally speaking, repeats historical complaints Mr Gutierrez has raised against the Receiver, and the "appearance" that the Receiver is being "funded" by "the Nephews" with whom Mr Gutierrez has been locked in litigation outside Canada for several years.

Further, once again, Mr Gutierrez submits that he has secured funding to satisfy the Castillo judgment, which has now been held up given recent actions

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Judges Endorsment Continued

of the Receiver - generally involving information published on its website.

Mr Gutierrez also raises other issues in the draft Notice of Motion concerning the Receiver's recent conduct concerning the access/production issues. He alleges they have failed to cooperate with him.

Overall amongst other things, Mr Gutierrez submits there is reason to believe that if access to passwords and documents is ordered as per the protocol suggested by Epig, it could fall into "The Nephews" hands, thus causing him great prejudice. This is particularly so says Mr. Gutierrez given recent developments concerning "The Nephews" in Panama.

**Superior Court of Justice
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Judges Endorsment Continued

where Mr Gutierrez alleges they face criminal charges that are escalating in significance.

As I advised the parties at the case conference I am not prepared to defer the access/productions any further, and I ordered at the case that the passwords and emails referenced in my earlier orders and endorsements (and specifically my endorsement of March 17/22) be provided to ~~the~~^{Mr} Epic no later than Monday March 28/22 @ 5 p.m.

I made the above order for a number of reasons.

First the Receiver is an officer of the Court and Epic operates under the Receiver's mandate thus making it accountable to

Superior Court of Justice
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Judges Endorsment Continued

this Court.

Epig has proposed a sensible and secure manner to secure the passwords and ATS's documents.

Second, there is no reasonable basis to suggest that the Receiver has in some way colluded with "the Nephews" or that "the Nephews" can somehow engage in "Corporate espionage" to secure the data that Epig will secure. Mr Gutierrez, in some fashion or another, for some time has made these allegations without proof. In this regard it bears noting that the Receiver has consistently denied these long standing allegations.

Third, it bears noting that Mr Gutierrez has for several months contested production of

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Judges Endorsment Continued

The passwords. Notwithstanding the three Consent orders of Aug/20 and Oct 27/20 (2) Mr Gutierrez did not make any production or provide passwords. This lead to the March ~~15/21~~^{15/21} order where I again ordered the disclosure of Mr. Gutierrez' passwords (amongst other things). Again, there has not been compliance.

Fourth, it bears noting that the Oct 27/20 order has a built-in protocol that allows only Mr. Gutierrez access to the Platform to allow him the opportunity to review the documents and assert any objections to disclosure.

Until that occurs, no one else, (not Epic, the Receiver, or the Applicant, or any other person) can

Superior Court of Justice
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Judges Endorsment Continued

have access. The protocol was well thought out, negotiated and addressed Mr. & Gutierrez's concerns at the time.

Fifth, Compliance with my aforementioned orders took a backseat in the fall of 2021st when Mr Gutierrez claimed to have financing to pay the Castillo judgment. I passed the access/production issues to determine if the funding could lead to resolution.

Many months have passed with Mr Gutierrez offering various excuses as to why payment has not been made and financing not secured. The latest blames the actions of the Receiver in Feb /22, but several months passed before that date

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Judges Endorsment Continued

without the promised funding arriving - which was first promised in Sept /21.

It also bears noting that Mr. Gutierrez also proposed in March/21, when the motion was^m argued, that the motion concerning access/production should not be pursued as the Receiver had received a settlement offer. I rejected that submission as the offer in my view for the reasons given, was no offer at all. ✓

It may be that the currently promised financing may arrive, but that cannot form the basis of a stay given the above.

Sixth, I have made no finding of any misconduct against the Receiver. I have however been critical of Mr Gutierrez

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Judges Endorsment Continued

particularly with respect to the initiation of a criminal complaint in Panama against the Receiver's agents which I ordered be withdrawn. Mr Gutierrez's involvement in the Panama matter was initiated without his Canadian solicitor's knowledge and I was of the view that the criminal complaint was a prima facie attack on my previous order in which specific rights were granted to the Receiver concerning the Panamanian company Gabinvest S.A.

Seventh, it was only today that Mr Gutierrez raised the issue of an injunction, after previous attempts to restrict Epic's access failed. None of the issues raised in the draft Notice of Motion

**Superior Court of Justice
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Judges Endorsment Continued

were mentioned in the earlier ⁱⁿ ~~only~~ ⁱⁿ ~~the~~ conferences. Of all the issues ~~of~~ the elevated criminal charges against "the Nephews" has surfaced in the past few days.

In my view, given all of the above, I believe that the latest proposed motion is an attempt ~~to~~ further delay the compliance with my earlier orders concerning access/production.

The protocol suggested by Epig, as set out in Mr Knoles' email of March 23/22 @ 5:22 pm is fair and reasonable and shall be followed by Mr Gutierrez and ATS - and completed as noted, by March 28/22 @ 5 p.m.

Therefore, in accordance with Mr. Knoles' email the following shall

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Judges Endorsment Continued

occur:

① Mr Gutierrez and/or his solicitors shall attend a videconference with Epig (with the Receiver and counsel absent) and provide the passwords to Epig. After which Epig will re-lock the hard drive.

② ATS will provide Epig with Mr Gutierrez's email using Epig's secure-FTP. Thereafter the data will be subject to the abovementioned privilege protocol (as will the data in ① above) set out in my Oct 27/20 order. Last, I am releasing this endorsement today via a handwritten endorsement given the timeline imposed and Mr Gutierrez's counsel's comments about considering an appeal.

Me

COUNSEL SLIP

COURT FILE

NO.: CV-11-00009062-00CL

DATE: March 25, 2022

NO. ON LIST 6

TITLE OF
PROCEEDING

CASTILLO v. XELA ENTERPRISES LTD et al

COUNSEL FOR:

- PLAINTIFF(S)
 APPLICANT(S)
 PETITIONER(S)

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FAX N/A
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jwoycheshyn@stewartmckelvey.com

COUNSEL FOR:

- DEFENDANT(S)
 RESPONDENT(S)

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Sarah Millar, Carl O'Shea &
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OTHER:

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Philip Cho & Michael Ly
Counsel for Arturo's Technical Services Ltd.
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Aaron Kreaden
Counsel for Acicola
E: akreaden@stikeman.com

JUDICIAL NOTES:

From: [Monique Jilesen](#)
To: [Chris Macleod](#); [Derek Knoke](#); [Brian Greenspan](#); [Joan Kasozi](#); [Philip Cho](#)
Cc: [Bobby Kofman \(bkofman@ksvadvisory.com\)](#); [Noah Goldstein](#)
Subject: RE: Follow up and Motion for Stay Pending leave to Appeal
Date: March 28, 2022 8:19:28 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi Chris –

In all of the circumstances, we do not consent to a stay of the order pending appeal. Please copy us with any further correspondence to the Divisional Court with respect to scheduling. Your filing request form indicates that your motion record would be served by March 28, 2022. We have not received the affidavit of Mr. Gutierrez in support of the motion. We look forward to receiving it promptly.

Monique Jilesen

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Monday, March 28, 2022 4:57 PM
To: Derek Knoke <dknoke@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Brian Greenspan <bhg@15bedford.com>; Joan Kasozi <jkasozi@cambridgellp.com>; Philip Cho <pcho@weirfoulds.com>
Subject: Follow up and Motion for Stay Pending leave to Appeal

EXTERNAL MESSAGE

Monique-

We have urgently requested the Divisional Court to provide a date to hear our motion for a stay of Justice McEwan's Order pending a decision of the Divisional Court on leave to appeal and have served all parties with the notice of motion.

We will not be proceeding with Epiq until this is decided and would ask for your consent to the stay pending a decision on leave to appeal.

Our motion includes a stay on the data on the ATS servers being uploaded to Epiq.

Regards,

Chris

Chris Macleod
Partner, Cross-Border Litigation & Business Litigation Groups



333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5
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From: [Baweja, Saurabh S. \(JUD\)](#)
To: "Nanda Singh"
Cc: "leonj@bennettjones.com"; "zweigs@bennettjones.com"; "bortolinw@bennettjones.com"; "jwoycheshyn@stewartmckelvey.com"; Peter Griffin; Monique Jilesen; Derek Knoke; "pcho@weirfoulds.com"; "mly@weirfoulds.com"; "kplunkett@airdberlis.com"; "sbabe@airdberlis.com"; "kevin.boyce@clarkes.com.bb"; "shena-ann.ince@clarkes.com.bb"; "carl.oshea@hatstone.com"; "bhg@15bedford.com"; "Diane.Winters@justice.gc.ca"; "alvaro.almengor@hatstone.com"; "KKay@stikeman.com"; "AKreaden@stikeman.com"; "Chris Macleod"; "Joan Kasozi"; "Darren Frank"
Subject: Xela Enterprises Ltd., et al ats. Castillo; - File # 189/22
Date: March 29, 2022 11:00:26 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

EXTERNAL MESSAGE

Good Morning,

Honourable Justice Corbett directs me to advise you as follows:

The impugned order(s) are not stayed pending decision on the stay motion or pending a motion for leave to appeal.

The moving party shall serve his motion materials for a stay and his motion materials for the motion for leave to appeal and shall advise this court when he has done so, after which this court shall provide further directions for both the stay motion and the motion for leave to appeal.

Sincerely,
Saurabh Baweja

From: Nanda Singh <nsingh@cambridgellp.com>
Sent: March 28, 2022 5:20 PM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Cc: 'leonj@bennettjones.com' <leonj@bennettjones.com>; 'zweigs@bennettjones.com' <zweigs@bennettjones.com>; 'bortolinw@bennettjones.com' <bortolinw@bennettjones.com>; 'jwoycheshyn@stewartmckelvey.com' <jwoycheshyn@stewartmckelvey.com>; 'pgriffin@litigate.com' <pgriffin@litigate.com>; 'mjilesen@litigate.com' <mjilesen@litigate.com>; 'dknoke@litigate.com' <dknoke@litigate.com>; 'pcho@weirfoulds.com' <pcho@weirfoulds.com>; 'mly@weirfoulds.com' <mly@weirfoulds.com>; 'kplunkett@airdberlis.com' <kplunkett@airdberlis.com>; 'sbabe@airdberlis.com' <sbabe@airdberlis.com>; 'kevin.boyce@clarkes.com.bb' <kevin.boyce@clarkes.com.bb>; 'shena-ann.ince@clarkes.com.bb' <shena-ann.ince@clarkes.com.bb>; 'carl.oshea@hatstone.com' <carl.oshea@hatstone.com>; 'bhg@15bedford.com' <bhg@15bedford.com>; 'Diane.Winters@justice.gc.ca' <Diane.Winters@justice.gc.ca>; 'alvaro.almengor@hatstone.com' <alvaro.almengor@hatstone.com>; 'KKay@stikeman.com' <KKay@stikeman.com>; 'AKreaden@stikeman.com' <AKreaden@stikeman.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasoz@cambridgellp.com>; Darren Frank

<dfrank@cambridgellp.com>

Subject: Xela Enterprises Ltd., et al ats. Castillo; Court File No. CV-11-9062-00CL

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Registrar
Ontario Superior Court of Justice – Divisional Court
Toronto

Dear Sir/Madam:

I attach the following documents for filing with the Court:

1. Filing Request form;
2. Affidavit of Service; and
3. Notice of Motion.

A copy of the Endorsement of the Hon. Justice McEwen dated March 25, 2022 is attached for your reference.

Yours very truly

Nanda Singh

Law Clerk

333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5

Phone: [\(416\) 477 7007 ext. 203](tel:(416)4777007)

Email: nsingh@cambridgellp.com

Website: www.cambridgellp.com



From: [Derek Knoke](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:Bobby.Kofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:Noah.Goldstein@ksvadvisory.com)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 17, 2022 7:59:03 PM
Attachments: [image001.png](#)

Chris,

Would you also please update us on the status of Mr. Volgemut's transfer of funds? Today, you indicated that it was being held by an intermediary bank due to Russian sanctions. What is the expected process and timeframe, and do you have any documents to evidence that?

Derek

From: Derek Knoke
Sent: Thursday, March 17, 2022 5:39 PM
To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>
Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek

	<u>Derek Knoke</u>* T 416-865-3018 M 647-272-0714 F 416-865-2876 dknoke@litigate.com 130 Adelaide St W Suite 2600 Toronto, ON Canada M5H 3P5 www.litigate.com
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This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

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

**BRIEF OF DOCUMENTS RE SECOND SUPPLEMENT
TO FIFTH REPORT OF THE RECEIVER**

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Lawyers for the Receiver, KSV Restructuring Inc.