

**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.

**CASE CONFERENCE BRIEF OF THE RECEIVER
(May 20, 2022 Case Conference)**

May 19, 2022

LENCZNER SLAGHT LLP

Barristers

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

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Email: pgriffin@litigate.com

Monique J. Jilesen (43092W)

Tel: (416) 865-2926

Email: mjilesen@litigate.com

Derek Knoke (75555E)

Tel: (416) 865-3018

Email: dknoke@litigate.com

AIRD & BERLIS LLP

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

TO: THE SERVICE LIST

INDEX

Tab	Description
1.	Case Conference Memorandum of the Receiver dated May 19, 2022
2.	Order of McEwen J. dated March 25, 2021
3.	Endorsement McEwen J. dated March 25, 2022
4.	Email from WeirFoulds LLP to Lenczner Slaght LLP dated April 12, 2022
5.	Email from Cambridge LLP to Lenczner Slaght LLP dated April 13, 2022
6.	Email from Cambridge LLP to Lenczner Slaght LLP dated April 28, 2022
7.	Email from Lenczner Slaght LLP to Cambridge LLP, with attachments, dated May 2, 2022
8.	Second Supplement to the Fifth Report of the Receiver, April 4, 2022
9.	Email at Tab 28 of the 2022.04.04 Brief of Documents re Second Supplemental Report to the Fifth Report of the Receiver

**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.

CASE CONFERENCE MEMORANDUM OF THE RECEIVER
(Case Conference returnable May 20, 2022)

May 19, 2022

LENCZNER SLAGHT LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Email: pgriffin@litigate.com

Monique J. Jilesen (43092W)

Tel: (416) 865-2926

Email: mjilesen@litigate.com

Derek Knoke (75555E)

Tel: (416) 865-3018

Email: dknoke@litigate.com

AIRD & BERLIS LLP

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

TO: **THE SERVICE LIST**

A. INTRODUCTION

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

- (a) settle the form of Order related to the endorsement of McEwen J. dated March 25, 2022, which required Juan Guillermo Gutierrez (“**Juan Guillermo**”) to produce password(s) and Arturo’s Technical Services Ltd. (“**ATS**”) to produce emails by a specific time;
- (b) confirm the Receiver’s authority to review documents in accordance with the terms of the March 25, 2021 Order;
- (c) advise the Court of the most recent accusations made against the Receiver by Juan Guillermo and his counsel; and
- (d) update the Court on the funding (to discharge the Receiver) that was promised by Juan Guillermo over eight months ago.

B. FAILURE TO COMPLY WITH THE MARCH 25, 2022 ENDORSEMENT

2. On March 25, 2021 this Court ordered Juan Guillermo to immediately provide the Receiver with all passwords or necessary information to unlock a hard-drive containing images of Juan Guillermo’s devices (the “**JG Hard Drive**”), and this Court ordered ATS to provide the Receiver

with Juan Guillermo's emails at any email address maintained on ATS's servers (the "**ATS Emails**").¹

3. For many months, compliance with the March 25, 2021 Order was placed on hold because Juan Guillermo said that he had secured imminent funding in an amount sufficient to discharge the Receiver. By March 2022, the funding had still not arrived (and it has still not arrived).

4. On March 25, 2022, the Receiver and the parties attended a case conference before McEwen J. After hearing submissions, this Court issued an endorsement requiring Juan Guillermo to provide the Receiver's IT agent ("**Epiq**") with the passwords to the JG Hard Drive by March 28, 2022 at 5 pm, and requiring ATS to provide Epiq with the ATS Emails by March 28, 2022 at 5 pm.²

5. On March 28, 2022, Juan Guillermo delivered a motion record for a stay of the March 25, 2022 endorsement, pending a motion for leave to appeal to the Divisional Court and later brought a motion for leave to appeal. The leave to appeal motion was scheduled to be heard the week of May 2, 2022. On April 28, 2022, counsel for Juan Guillermo advised the parties and the Divisional Court that Juan Guillermo was abandoning his leave to appeal motion. On May 6, 2022, the Divisional Court dismissed the appeal and awarded \$5,000 in costs, which have yet to be paid.

6. As of the date of this case conference memo, neither Juan Guillermo nor ATS has complied with the March 25, 2022 endorsement or responded to the request to comply. Furthermore, neither has provided comments on the draft form of order with respect to the March 25, 2022 endorsement,

¹ Order of McEwen J. dated March 25, 2021, Case Conference Brief of the Receiver (the "**Brief**"), Tab 2

² March 25, 2022 Endorsement of McEwen J., Brief, Tab 3

which was circulated on April 27, 2022. The Receiver asks the Court to settle the form of Order, a draft of which is attached as Schedule “A” to this case conference memo.

C. THE RECEIVER’S ABILITY TO REVIEW THE DOCUMENTS ON THE BLUE NETWORK SERVERS

7. The Receiver seeks confirmation of this Court that it is permitted to have unrestricted access to the records on the “Blue Servers”, as set out in the March 25, 2021 Order. The Receiver seeks this confirmation because counsel for Juan Guillermo has suggested that review of the documents would “suggest intentional misconduct” on the part of the Receiver.

8. By way of background, on October 27, 2020 this Court authorized Duff & Phelps (later replaced by Epiq) to make an image of servers under ATS’s control. Unrestricted access to the “Blue Servers” (which were Xela’s servers as of 2017) was the subject of argument on the motion which resulted in the March 25, 2021 Order. The March 25, 2021 endorsement provides:

[12] It has now been ascertained that Xela servers were transferred to ATS. These Xela servers have been called the “blue network” by ATS and certain data related to Xela’s business. This includes the Xela.com server, financial records and information concerning former clients of Xela.

[13] The Receiver seeks unrestricted access to the blue servers in accordance with the terms of the August 28, 2020 order and the 2nd October 27, 2020 order (the October order was not opposed and was obtained after negotiations between counsel for the Receiver and ATS).

[14] An impasse has arisen between the Receiver and ATS.

[15] ATS has suggested a protocol, taking the position that the blue servers also contain information of third parties and thus is not captured by the Appointment Order.

[16] I do not agree with ATS.

9. The March 25, 2021 Order provides for the unfettered access to the Blue Network Servers:

7. THIS COURT ORDERS that, within five days of this Order, ATS shall identify the location of the images of the “Blue Network Servers” (as identified by Julio Fabrini in his interview dated November 26, 2020) on the ATS Images by identifying the file names, paths, and any other information necessary to identify the Blue Network Server images.

8. THIS COURT ORDERS that Epiq Global and the Receiver shall, without any limitation whatsoever, be authorized and permitted to copy, analyze, access and review the Blue Network Servers on the ATS Images including any content of the images.

10. In accordance with the March 25, 2021 Order, ATS advised that it had provided the Receiver with the necessary information to identify the Blue Network Servers. As a result of several factors (which are irrelevant to this case conference), a review was not pursued at that time. On April 8, 2022, the Receiver wrote to ATS’s counsel to confirm that it had properly interpreted and correctly identified the Blue Network Servers from the other data imaged pursuant to the March 25, 2021 Order.

11. On April 12, 2022, ATS’s counsel raised “serious concerns with the Receiver or anyone else accessing any of the data” on the Blue Network Servers. ATS claimed that the Blue Network Servers are “subject to advance review by Mr. Gutierrez’s legal team”.³

12. On April 13, 2022, Juan Guillermo’s counsel advised the Receiver that if the Receiver accessed the data on the Blue Network Servers, it would “suggest intentional misconduct” on the part of the Receiver.⁴

13. It appears that ATS and Juan Guillermo are relying on the March 25, 2022 endorsement to allege misconduct. The March 25, 2022 endorsement does not deal with the Blue Network Servers.

³ Email from WeirFoulds LLP to Lenczner Slaght dated April 12, 2022, Brief, Tab 4

⁴ Email from Cambridge LLP to Lenczner Slaght dated April 13, 2022, Brief, Tab 5

The final word on the Blue Network servers is the March 25, 2021 Order which provides for unfettered access by the Receiver to analyze and review the data. The qualifications this Court made in the March 25, 2022 endorsement relates to Juan Guillermo's email address and personal devices. The Blue Network Server to be accessed by the Receiver does not include the email server. The email server will remain subject to the protocol set out in the March 25, 2022 endorsement (if the parties ever comply with the Order).

14. The Receiver has not reviewed the documents on the Blue Network Servers but wishes to move forward with its mandate without allegations of misconduct. The Receiver requests an endorsement expressly authorizing the Receiver to immediately begin reviewing the documents on the Blue Network Servers as set out in the Receiver's April 8, 2022 letter to ATS's counsel.

15. The Receiver notes that the failure of Juan Guillermo and ATS to comply with this Court's Orders, including most recently the March 25, 2022 endorsement, has prevented the Receiver from exercising its mandate under the Appointment Order and pursuant to the March 25, 2021 Order.

(i) Allegations Against the Receiver

16. On April 28, 2022, the same day the leave motion was abandoned, counsel for Juan Guillermo leveled new allegations against the Receiver.

17. Cambridge claimed that a Panamanian Court had issued a judicial ruling for which "KSV is in criminal jeopardy in its own right" as a result of instructing Hatstone to modify the board of

directors. Cambridge alleged that the Receiver is in a “conflict of interest” and “not able to continue in the role of Receiver either ethically and/or competently.”⁵

18. Cambridge said, “unless KSV voluntarily withdraws on or before Monday May 2nd, it is our intention to seek an urgent case conference ... for purposes of discussing a motion to recuse KSV as Receiver.” Cambridge and Juan Guillermo intend to seek a suspension of “all receivership proceedings.”⁶

19. As described in the Receiver’s May 2, 2022 email response to Cambridge, there is no judicial ruling against Hatstone or the Receiver. There is an ongoing investigation, which has expanded in scope because (despite this Court’s February 10, 2021 Order) Hals has filed new and further criminal complaints against Hatstone related to the Receiver’s efforts to exercise Xela’s shareholder rights and change the Board of directors of Xela’s wholly-owned, direct and indirect, Panamanian subsidiaries (Gabinvest S.A. and LISA S.A.).⁷

20. The Receiver denies any allegations of impropriety, but as an officer of the Court, brings the allegations to the attention of this Court.

(ii) Promised Funding

21. From September 2021 until March 2022, Juan Guillermo repeatedly promised that funding from Taras Volgemut was imminent.

22. On March 17, 2022, the Receiver emailed Cambridge to request an update on the status of Mr. Volgemut’s transfer of funds. The Receiver noted that Cambridge, during the case conference

⁵ Email from Cambridge to Lenczner Slaght dated April 28, 2022, Brief, Tab 6

⁶ Email from Cambridge to Lenczner Slaght dated April 28, 2022, Brief, Tab 6

⁷ Email from Lenczner Slaght to Cambridge dated May 2, 2022, Brief, Tab 7

that day, had indicated that the funds were being held by an intermediary bank. The Receiver asked for an explanation of the process, as well as any documents to evidence the assertion that funds were being held by an intermediary bank.⁸

23. Cambridge did not respond to the Receiver's March 17, 2022 email. Instead, on March 28, 2022, Juan Guillermo swore an affidavit (in support of the Stay Motion) in which he said that the transfer of funds from Mr. Volgemut "has been significantly delayed [due] to additional compliance and due diligence measures being undertaken by the intermediary bank in the U.S." However, despite previously filing two affidavits, Mr. Volgemut has tendered no affidavit since December 1, 2021. Moreover, no evidence was tendered by Juan Guillermo (as an exhibit or otherwise) to corroborate the alleged due diligence efforts by the intermediary bank.⁹

24. As of the date of this case conference memo, the Receiver has no information about what happened to Mr. Volgemut's promised funding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May 2022.



Monique J. Jilesen

⁸ See s. 5.0(1) to the Second Supplement to the Fifth Report, Brief, Tab 8; see also Brief of Documents to the Second Supplement to the Fifth Report, Tab 28, Brief, Tab 9

⁹ See s. 5.0(3) to the Second Supplement to the Fifth Report, Brief, Tab 8

LENCZNER SLAGHT LLP

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

Peter H. Griffin (19527Q)

Tel: (416) 865-2921
Fax: (416) 865-3558
Email: pgriffin@litigate.com

Monique J. Jilesen (43092W)

Tel: (416) 865-2926
Fax: (416) 865-2851
Email: mjilesen@litigate.com

Derek Knoke (75555E)

Tel: (416) 865-3018
Fax: (416) 865-2876
Email: dknoke@litigate.com

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

Schedule "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

FRIDAY, THE 25TH

JUSTICE McEWEN

)

DAY OF MARCH, 2022

)

B E T W E E N:

(Court Seal)

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,
FRESH QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO
GUTIERREZ and CARMEN S. GUTIERREZ, Executor of the Estate of
Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.

ORDER

THIS CASE CONFERENCE, called by McEwen J. following an email report dated March 23, 2022 (the "**Email Report**") 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, undertakings, and property of Xela Enterprises Ltd. (the "**Company**") was heard virtually

on March 25, 2022 via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario.

WHEREAS on August 28, 2020, this Court made an Order with respect to the Company's documents and devices.

WHEREAS on October 27, 2020, this Court made an Order (the "**ATS Order**") authorizing Duff & Phelps to make a single disk image of certain servers under the control of Arturo's Technical Services Ltd. ("**ATS**").

WHEREAS on October 27, 2020, this Court made an Order (the "**Juan Guillermo Imaging Order**") authorizing Duff & Phelps to make a single forensic image of the devices of Juan Guillermo Gutierrez ("**Juan Guillermo**").

WHEREAS on March 25, 2021, this Court made an order that Juan Guillermo immediately provide the Receiver and Epiq Global ("**Epiq**") with all encryption codes, keys, passwords, or any other such information or knowledge necessary to unlock and access the data on the images of Juan Guillermo's devices, including but not limited to the DataShield Fantom Drive (the "**Hard Drive**").

AND WHEREAS the March 25, 2021 Order also provided, among other things, that within 14 days of the Order, ATS provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded and regardless of whether the email was sent directly to him or it was one on which he was copied) at any email address maintained on ATS servers to the date of the Order, along with any encryption codes, keys, or passwords used to secure the emails.

ON READING the Email Report and the material filed by Juan Guillermo, the August 28, 2020 Order, the October 27, 2020 ATS Order, the October 27, 2020 Juan Guillermo Imaging Order, and the March 25, 2021 Order, and on hearing the submissions of the Receiver, counsel for Juan Guillermo, and counsel for ATS,

1. **THIS COURT ORDERS** that, by March 28, 2022 at 5 pm EST, Juan Guillermo and his solicitors shall attend a videoconference with Epiq Global (with the Receiver and counsel absent) and provide Epiq with all encryption codes, keys, passwords, or any other information necessary to unlock and access the data on the images of Juan Guillermo's devices, including but not limited to the Hard Drive (collectively the "**Hard Drive Data**").
2. **THIS COURT ORDERS** that following Epiq accessing and downloading the Hard Drive Data, Epiq shall re-lock the Hard Drive.
3. **THIS COURT ORDERS** that, by March 28, 2022 at 5 pm EST using Epiq's secure file transfer protocol, ATS shall provide Epiq with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded, if the email was sent directly to him or if the email was one on which he was copied) at any email address maintained on any ATS server for the period up to March 25, 2021 (the "**ATS Juan Guillermo Emails**"), along with any encryption codes, keys, or passwords used to secure the emails.

4. **THIS COURT ORDERS** that the Hard Drive Data and the ATS Juan Guillermo Emails in Epiq's possession as a result of this Order shall be subject to the privilege protocol set out in the October 27, 2020 Juan Guillermo Imaging Order.

(Signature of judge, officer or registrar)

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

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600

Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

AIRD & BERLIS LLP

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

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

**CASE CONFERENCE MEMORANDUM OF THE
RECEIVER
(Case Conference returnable May 20, 2022)**

LENCZNER SLAGHT LLP

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

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Email: pgriffin@litigate.com

Monique J. Jilesen (43092W)

Tel: (416) 865-2926

Email: mjilesen@litigate.com

Derek Knoke (75555E)

Tel: (416) 865-3018

Email: dknoke@litigate.com

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY , THE 25TH
)
JUSTICE MCEWEN) DAY OF MARCH , 2021

B E T W E E N:

(Court Seal)

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES
LTD.

ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property of Xela Enterprises Ltd. (the “**Company**”) was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario due to the COVID-19 crisis.

WHEREAS, on October 27, 2020, this Court made an Order authorizing Duff & Phelps to make a single disk image of certain servers under the control of Arturo’s Technical Services Ltd. (“**ATS**”) (the “**ATS Order**”),

WHEREAS, on October 27, 2020, this Court made an Order authorizing Duff & Phelps to make a single forensic image of Juan Guillermo Gutierrez’s (“**Juan Guillermo**”) devices (the “**Juan Guillermo Imaging Order**”),

ON READING the material filed by the parties, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present and listed on the Counsel Slip.

SERVICE

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.

INVESTIGATIVE POWERS

2. **THIS COURT ORDERS** that the Receiver is granted expanded investigative powers, including the authority to:

(a) investigate, identify, quantify and take all steps necessary, in the opinion of the Receiver, to review:

(i) the sale, conveyance or transfer in 2016 by Empress Arturo International (“**EAI**”) of the shares of BDT Investments Ltd. (“**BDT**”) and Corporacion Arven, Limited (“**Arven**”) to Juan Arturo Gutierrez, and then from Juan Arturo Gutierrez to the ARTCARM Trust, a Barbados domiciled trust;

- (ii) the assignment in January 2018 by Lisa, S.A. (“**Lisa**”) of the proceeds from the litigation arising from shareholder disputes involving the Avicola Group (the “**Avicola Litigation**”) to BDT (“**Assignment Transaction**”);
- (iii) the sale, conveyance, transfer or assignment of Lisa’s interest in the Avicola Group to BDT in early 2020 (the “**Lisa Transfer**”);
- (iv) the assignment of the right to control the Avicola Litigation (“**Litigation Assignment**”);

(collectively, the “**Reviewable Transactions**”), and to conduct such review and investigation of the Reviewable Transactions that the Receiver deems necessary;

- (b) conduct such additional review and investigation of the business and affairs of the Company and its current and former direct and indirect subsidiaries, affiliates, customers, directors, officers and employees as it deems necessary (collectively the “**Investigation**”); and
- (c) take any steps reasonably incidental to the exercise of these powers.

IMAGING ORDERS

3. **THIS COURT ORDERS** that Duff & Phelps shall forthwith deliver to Epiq Global, the Images made and the Schedule B Servers held pursuant to the ATS Order (the “**ATS Images and Servers**”) and the hard-drives held and images made pursuant to the Juan Guillermo Imaging Order (the “**Juan Guillermo Images**”), together with a copy of any chain of custody information.

4. **THIS COURT ORDERS** that following the transfer of the ATS Images and the Juan Guillermo Images (collectively, the “**Images**”) to Epic Global, Duff & Phelps shall have no further

responsibility for or access to the Images pursuant to the ATS Order or the Juan Guillermo Imaging Order.

5. **THIS COURT ORDERS** that Epiq Global shall replace Duff & Phelps for the purposes of carrying out the ATS Order and the Juan Guillermo Imaging Order and shall have all the powers, rights and obligations of Duff & Phelps as set out in those Orders.

JUAN GUILLERMO DEVICES

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.

COMPANY RECORDS

7. **THIS COURT ORDERS** that, within five days of this Order, ATS shall identify the location of the images of the “Blue Network Servers” (as identified by Julio Fabrini in his interview dated November 26, 2020) on the ATS Images by identifying the file names, paths, and any other information necessary to identify the Blue Network Server images.

8. **THIS COURT ORDERS** that Epiq Global and the Receiver shall, without any limitation whatsoever, be authorized and permitted to copy, analyze, access and review the Blue Network Servers on the ATS Images including any content of the images.

9. **THIS COURT ORDERS** that Epiq Global shall otherwise maintain and preserve the ATS Images until further order of this Court or written consent of the Receiver and ATS.

10. **THIS COURT ORDERS AND DECLARES** that, within 14 days of this Order, ATS shall provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded and regardless of whether the email was sent directly to him or it was one on which he was copied) at any email address maintained on the ATS servers to the date of this Order, along with any encryption codes, keys or passwords used to secure the emails.

11. **THIS COURT ORDERS AND DECLARES** that, within 30 days of this Order, Harald Johannessen Hals, Calvin Shields and Lester C. Hess Jr. shall provide the Receiver with all available information or documents in their control relating to:

(a) shares, share registers, accounting, correspondence and related information of Lisa;
and

(b) the Reviewable Transactions.

12. **THIS COURT ORDERS AND DECLARES** that, within 30 days of this Order, Harald Johannessen Hals, Jose Eduardo San Juan and David Harry shall provide the Receiver with all available information or documents in their control relating to:

(a) shares, share registers, accounting, correspondence and related information of Gabinvest, S.A. ("**Gabinvest**"); and

(b) the Reviewable Transactions.

13. **THIS COURT ORDERS AND DECLARES** that the Receiver and its agents in Panama, Hatstone Abogados ("**Hatstone**"), are authorized to take any steps reasonably required in relation to Alfaro, Ferrer & Ramirez Abogados ("**AFRA**"), as former resident agent of Gabinvest and Lisa in Panama, to arrange for AFRA to deliver to the Receiver their entire file, including but not limited

to, all information related to the constitution, shares issued, KYC (know your client), correspondence, instructions given to AFRA and all information related to Gabinvest and Lisa.

14. **THIS COURT ORDERS AND DECLARES** that the Receiver and its agents in Panama, Hatstone, are authorized to take any steps reasonably incidental to the recognition and enforcement of this Order and any other Orders issued by this Court in this matter in Panama.

APPROVAL OF FEES AND DISBURSEMENTS

15. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$282,961.50 (excluding HST) as set out in the Affidavit of Noah Goldstein, sworn January 18, 2021, are hereby approved.

16. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$192,792.36 (excluding HST) as set out in the Affidavit of Sam Babe, sworn January 18, 2021, are hereby approved.

17. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver's legal counsel, Lenczner Slaght Royce Smith LLP, being fees and disbursements totalling \$235,218.33, plus HST of \$30,528.35, totalling \$265,746.68 as set out in the Affidavit of Monique J. Jilesen, sworn January 18, 2021, are hereby approved.

RECOGNITION BY FOREIGN JURISDICTIONS

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Republic of Panama, Republic of Guatemala, Barbados, Republic of Colombia or Bolivarian Republic of Venezuela 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.

A handwritten signature in black ink, appearing to read 'McE T.', positioned above a horizontal line.

(Signature of Judge)

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

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

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

Peter H. Griffin (19527Q)
pgriffin@litigate.com
Tel: (416) 865-2921

Monique J. Jilesen (43092W)
mjilesen@litigate.com
Tel: (416) 865-2926

Derek Knoke (75555E)
dknoke@litigate.com
Tel: (416) 865-3018

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett
Email: kplunkett@airdberlis.com

Sam Babe
Email: sbabe@airdberlis.com
Tel: (416) 863-1500
Fax: (416) 863-1515

Lawyers for the Receiver

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

Superior Court of Justice
Commercial List

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
Commercial List

FILE/DIRECTION/ORDER

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

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

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
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

where Mr Gutierrez alleges the 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/production 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
Commercial List

FILE/DIRECTION/ORDER

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

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

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 objection to disclosure.

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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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
Commercial List**

FILE/DIRECTION/ORDER

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

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

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)

NAME Jeffrey Leon & Jason Woycheshyn
FAX N/A
EMAIL leonj@bennettjones.com
jwoycheshyn@stewartmckelvey.com

COUNSEL FOR:

- DEFENDANT(S)
 RESPONDENT(S)

NAME Monique Jilesen, Derek Knoke,
Sarah Millar, Carl O'Shea &
Alvaro Almengor
FAX N/A
EMAIL mjilesen@litigate.com
dknoke@litigate.com
smillar@litigate.com
carl.oshea@hatstone.com
alvaro.almengor@hatstone.com

OTHER:

Chris MacLeod, Joan Kasozi & Brian Greenspan
Counsel for Juan Guillermo Gutierrez
E: cmacleod@cambridgellp.com ,
jkasozi@cambridgellp.com & BGH@15bedford.com

Philip Cho & Michael Ly
Counsel for Arturo's Technical Services Ltd.
E: pcho@weirfoulds.com & mly@weirfoulds.com

Aaron Kreaden
Counsel for Acicola
E: akreaden@stikeman.com

JUDICIAL NOTES:

From: Philip Cho <pcho@weirfoulds.com>
Sent: April 12, 2022 2:37 PM
To: Monique Jilesen
Cc: Bobby Kofman (bkofman@ksvadvisory.com); Noah Goldstein; Michael Ly; Derek Knoke; Sarah Millar; Esther Saint Clair
Subject: RE: Xela Enterprises Ltd., et al ats. Castillo - Court Orders Respecting Access to Blue Networks [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique,

In response to your letter of April 8, 2022, we have serious concerns with the Receiver or anyone else accessing any of the data on the Exchange server on the Xela Blue Network. The data in the Exchange server overlap the data in the Personal Devices and the ATS Server Emails, access to which is currently under review as part of Mr. Gutierrez's Motion for Leave to Appeal.

Moreover, and in any event, the data in the Exchange Server are subject to advance review by Mr. Gutierrez's legal team in accordance with the same Protocol applicable to the Personal Devices and ATS Server Emails. As you will recall, Justice McEwen stated that his orders were never intended to permit the review of privileged emails and as we understand, there would be emails subject to Mr. Gutierrez's personal privilege (not Xela's) arising out of the litigation giving rise to the judgment which the Receiver is appointed to enforce. In our view, this would be highly problematic and the Receiver should exercise extreme caution so as not to access privileged information without a clear and express authorization to do so.

We have brought the Receiver's letter and stated intention to Mr. Gutierrez's counsel so that they may have notice of the potential access to privileged information. We strongly suggest that the Receiver not take any steps without first hearing from Mr. Gutierrez's counsel.

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

WeirFoulds LLP

From: Esther Saint Clair <clair@litigate.com>
Sent: April 8, 2022 11:08 AM
To: Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>
Cc: Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Derek Knoke <dknoke@litigate.com>; Sarah Millar <smillar@litigate.com>; Monique Jilesen <mjilesen@litigate.com>
Subject: RE: Xela Enterprises Ltd., et al ats. Castillo - Court Orders Respecting Access to Blue Networks [DM-LSDOCS.FID727411]

[External Message]

Good morning all. Please see the attached correspondence from Monique Jilesen.



Esther Saint Clair

Assistant to William McDowell, Monique Jilesen & Alessa Dassios
T 416-865-9500 Ext. 502
F 416-865-9010
eclair@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. Lenzner Slaght LLP.

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: April 13, 2022 5:43 PM
To: Monique Jilesen; Derek Knoke
Cc: Joan Kasozi; Brian Greenspan
Subject: Xela Exchange Server

EXTERNAL MESSAGE

Monique:

We understand from counsel for ATS that the Receiver and/or its agent(s) intend to access data on the Xela Exchange Server, to which we object in the strongest possible terms. The Xela Exchange Server will contain Mr. Gutierrez's emails that are personal, privileged or otherwise not properly discoverable by the Receiver, and that are at least in part duplicative of data on the Personal Devices and the ATS Server Emails, and for which privilege has not been waived and to which the Objections Protocol should apply. The data on the Xela Exchange Server must be given the same level of safety consideration applicable to the Personal Devices and the ATS Server Emails. Moreover, as you know, the issue of access to the Personal Devices and the ATS Server Emails is presently under review, further to our Motion for Leave to Appeal. There is nothing to suggest that the Receiver would take appropriate steps to preserve Mr. Gutierrez's privacy and confidentiality, and the Receiver must not have unfettered access to the Xela Exchange Server while these issues are unresolved. Any decision to access the data under these circumstances would, in our view, suggest intentional misconduct.

Regards,

Chris Macleod

Partner, Cross-Border Litigation & Business Litigation Groups

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor

Toronto, ON, M5V 1R5

Phone: (416) 477 7007 Ext. 303

Direct: (647) 346 6696

Email: cmacleod@cambridgellp.com

Website: www.cambridgellp.com



From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: April 28, 2022 4:57 PM
To: Monique Jilesen; Derek Knoke
Cc: Brian Greenspan; Joan Kasozi; Philip Cho
Subject: Replacement of KSV and Abandonment of Motion for Leave
Attachments: Rejection of Almengor filing (002)-SP-EN.pdf

EXTERNAL MESSAGE

Monique:

We now have an official translation of the document dated April 1, 2022 attached to recent correspondence from Mr. Johannessen Hals to the service list. A copy of the translation is attached for your reference. Based on this document, it appears that a Panamanian Court has now reviewed and rejected Public Writing No. 4958, which Mr. Almengor filed in the Public Registry in Panama at the Receiver's instructions, asserting that Mr. Almengor was duly authorized to modify LISA's board of directors.

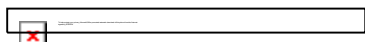
It is our understanding that this judicial ruling in Panama moves the criminal prosecution forward against Mr. Almengor, and that KSV is in criminal jeopardy in its own right as a consequence of instructing Mr. Almengor in circumstances that constitute a crime against public justice in Panama. It seems clear, therefore, that a conflict of interest exists for KSV such that it is not able to continue in the role of Receiver either ethically and/or competently. For those reasons, unless KSV voluntarily withdraws on or before Monday May 2nd, it is our intention to seek an urgent case conference with Justice McEwen early next week for purposes of discussing a motion to recuse KSV as Receiver. Our motion will seek a suspension of all receivership proceedings pending final determination of the outcome.

In the meantime, we will be abandoning our motion for leave to appeal regarding interim injunctive relief.

Regards,

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

Direct: (647) 346 6696

Email: cmacleod@cambridgellp.com

Website: www.cambridgellp.com



From: Monique Jilesen
Sent: May 2, 2022 8:01 AM
To: Chris Macleod; Brian Greenspan; Philip Cho; Joan Kasozi
Cc: Bobby Kofman (bkofman@ksvadvisory.com); Noah Goldstein; Derek Knoke
Subject: RE: Replacement of KSV and Abandonment of Motion for Leave
Attachments: Rejection of Almengor filing (002)-SP-EN.pdf; January 24, 2022 Criminal Notice Translation (104852954.1).pdf; 2022.03.25 DRAFT Xela McEwen J. Order (104828344.5).docx

Chris,

KSV will not be withdrawing as Receiver. The Receiver is not in a conflict of interest. No judicial ruling has been made in any criminal process in Panama. Instead, the conduct of Mr. Hals in launching criminal complaints in respect of the duly authorized activity of the Receiver is an abuse of process and contemptuous of the Ontario Court's proceedings of which he has notice (and has participated in by filing an affidavit on behalf of your client in these proceedings). The use of Mr. Hals inappropriate criminal complaint by Mr. Gutierrez to attempt to remove the Receiver from these proceedings is in itself an abuse of process, particularly in circumstances where Mr. Gutierrez is in repeated breach of this Court's orders.

With respect to Panamanian proceedings, the records demonstrate that Mr. Hals has this time made a criminal complaint with respect to registration of the Shareholders Meeting Minutes of LISA. A copy of the criminal notice and complaint with translation are attached for your reference. Our understanding of the April 25, 2022 document you have provided is that the court has issued a letter to the Public Registry stating that the Public Deed dealing with the addition of the three Hatstone directors and Hatstone as resident agent be suspended. The letter is not a determination of any criminal activity. It provides that an investigation needs to be commenced and until that process has been concluded the Public Deed should be suspended. Our understanding is that the investigation process can take some time.

It is also of note that that Hatstone was not notified of the hearing in question, there has been no correspondence from the court or prosecutor's office and no submissions have been made. A criminal determination cannot be made without the defendant having been given an opportunity to be heard.

In any event, the Receiver consents to an early case conference on a mutually agreeable date to advise the Court of this issue, and the fact of the abandonment of your leave to appeal motion and the continued failure of either Mr. Gutierrez or ATS to comply with the Court's Orders.

Given the abandonment of your appeal of the March 25, 2022 endorsement, can you advise whether your client will be complying with the Order forthwith? In any event, I note that you provided no comments to the attached draft form of Order March 25, 2022. Please advise if you consent to the form and content, or if we will need to have the terms of the Order fixed before Justice McEwen.

Monique Jilesen

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Thursday, April 28, 2022 4:57 PM
To: Monique Jilesen <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Cc: Brian Greenspan <bhg@15bedford.com>; Joan Kasozi <jkasoz@cambridgellp.com>; Philip Cho <pcho@weirfoulds.com>
Subject: Replacement of KSV and Abandonment of Motion for Leave

EXTERNAL MESSAGE

Monique:

We now have an official translation of the document dated April 1, 2022 attached to recent correspondence from Mr. Johannessen Hals to the service list. A copy of the translation is attached for your reference. Based on this document, it appears that a Panamanian Court has now reviewed and rejected Public Writing No. 4958, which Mr. Almengor filed in the Public Registry in Panama at the Receiver's instructions, asserting that Mr. Almengor was duly authorized to modify LISA's board of directors.

It is our understanding that this judicial ruling in Panama moves the criminal prosecution forward against Mr. Almengor, and that KSV is in criminal jeopardy in its own right as a consequence of instructing Mr. Almengor in circumstances that constitute a crime against public justice in Panama. It seems clear, therefore, that a conflict of interest exists for KSV such that it is not able to continue in the role of Receiver either ethically and/or competently. For those reasons, unless KSV voluntarily withdraws on or before Monday May 2nd, it is our intention to seek an urgent case conference with Justice McEwen early next week for purposes of discussing a motion to recuse KSV as Receiver. Our motion will seek a suspension of all receivership proceedings pending final determination of the outcome.

In the meantime, we will be abandoning our motion for leave to appeal regarding interim injunctive relief.

Regards,

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

Direct: (647) 346 6696

Email: cmacleod@cambridgellp.com

Website: www.cambridgellp.com





PROTRANSLATION CORP.

PROFESSIONAL LANGUAGE SOLUTIONS | NOTARIZATION SERVICES

☎ : 613-227-3333 | 1-800-419-5062 | ✉ : info@protranslation.ca

TRANSLATION
File No. TR22421SP011

JUDICIAL BODY
SYSTEM OF CRIMINAL JUSTICE
SUPERVISORY COURT OF THE FIRST JUDICIAL CIRCUIT OF PANAMA
FIRST JUDICIAL OFFICE

E-mail: primeraoficinajudicial.panama@organojudicial.gob.pa

Phone: 212-7500 extension 5500, Phone / Fax: 229-8835 / Plaza Ágora, Via Transistmica,
Pueblo Nuevo City

Panamá, April 1st 2022
Legal document No. 6119/POJP/2022

Mr. Erasmo Elias Muñoz Marin

General Director of the Public Registry of Panama
E. S. D.

Dear Director,

In a hearing held today, April 1st, 2022, for **Case No. 202100046467**, in an investigation initiated for the possible crime of **IDEOLOGICAL FALSEHOOD** prescribed in Article 366 of the Criminal Code, to the detriment of Sociedad LISA, S.A., whose legal representative is Mr. Harald Johannssen Hals with Nicaraguan passport No. PV242086470, the undersigned, at the request of the district attorney's office conducting this investigation, ordered as an unnamed protective measure under Article 270 of the Code of Criminal Procedure, the following:

Suspend the effects of Public Deed No. 4958 dated April 29th, 2020, related to the aforementioned company.

This with the purpose that no type of action can be carried out in the Public Deed mentioned during the process that is being investigated.

Yours Sincerely,

Oris J. Medina O.


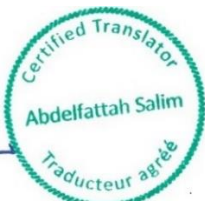
Supervisory Judge of the First Judicial Circuit of Panama

OM/Violeta

Case No.202100046467

I, Abdelfattah Salim, Certified Translator, member in good standing of the Association of Translators and Interpreters of Ontario (ATIO), hereby certify that this translation is true to the original document written in Spanish.

Done on April 25, 2022.

Abdelfattah Salim, Cert. Tr.

Certified Translator, Member of the ATIO—Canada
Membership number: 3124



AFFIDAVIT OF TRANSLATION

I, JONATHAN WHITESIDE, of the city of Toronto, Province of Ontario, Dominion of Canada, MAKE OATH AND SAY AS FOLLOWS:

I am a professional translator and fluent in both the English and Spanish languages. I hereby state that the translation of the following is a complete and accurate translation from Spanish to English.

- **Criminal Notice No. 202100046467, filed at Metropolitan Superior Public Prosecutor's Office, dated 24 January, 2022.**
- **Criminal Complaint filed by HARALD JOHANESSEN HALS at the Metropolitan First Sub-regional Primary Attention Section of the Public Prosecutor's Office of Panama, dated 5 July, 2021.**

I make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under Oath.

Jonathan Whiteside, Translator
MCIS Certified Interpreter and Translator # R005992
Approved by the Ontario Ministry of Citizenship and Immigration
1377 Weston Rd., Unit 1
Toronto, ON. M6M 4S1
416-244-4831

SWORN before me at
The City of Toronto
In the Province of Ontario
This April 25th, 2022.



HEATHER MICHELLE SANCHEZ, NOTARY
Notary Public for the Province of Ontario
1377 Weston Rd., unit 1A, Toronto, ON, M6M 4S1



PUBLIC PROSECUTOR'S. DEPARTMENT OF CRIMES AGAINST PUBLIC TRUST, SUPERIOR METROPOLITAN PUBLIC PROSECUTOR'S OFFICE. PROVINCE OF PANAMA, January twenty-four (24), two thousand and twenty-two (2022).

CRIMINAL NOTICE No. 202100046467

This Agency of the Ministry is undertaking a criminal investigation identified under **Criminal Notice No. 202100046467**, due to the commission of a crime **AGAINST THE PUBLIC TRUST**, according to a complaint filed by **HARALD JOHANESSEN HALS**, in his capacity as legal representative of the limited company **LISA, S.A.**

BACKGROUND

Criminal complaint filed on July 16, 2021, by Atty. **JAVIER ALCIDES DE LEON ALMENGOR**, on behalf of **HARALD JOHANESSEN HALS**, Legal Representative of the Public Limited Company **LISA, S.A.**, formalizing a criminal complaint against **ALVARO ALMENGOR** and **JAVIER CARRASQUILLA**, for alleged crimes committed against him.

ABOUT THE REQUEST

In his written statement, the attorney emphasizes that the act addressed in the criminal complaint is considered a crime **AGAINST THE PUBLIC TRUST**, in the modality of **FALSIFICATION OF DOCUMENTS IN GENERAL**, specifically as **IDEOLOGICAL FALSENESS**.

In summary, he based his complaint on the following points:

FIRST: That LISA, S.A., is a limited company registered and protected under the Laws of the Republic of Panama and legally constituted in our country since 1983.

SECOND: That, on April 29, 2020, ALVARO ALMENGOR, on behalf of the Law Firm HATSTONE ASSOCIATES, registered in the Public Registry of Panama the Public Deed No. 4958, dated April 29, 2020, of the Eighth Notary Office of Panama, whereby a Shareholders' Meeting Minutes was signed, with the participation of ALL THE SHAREHOLDERS, in order to AMEND the Articles of Incorporation of the aforementioned company, with ALVARO ALMENGOR, as director; MANUEL CARRASQUILLA, as director; and CARL O'SHEA, as director.

THIRD: HARALD JOHANESSEN HALS, in his capacity as president and legal representative, did not attend the meeting, nor did the SHAREHOLDER of the company participate. [Signature]



FOURTH: In the Articles of Incorporation of the aforementioned limited company, none of its clauses establishes the holding of meetings by telephone, or any other electronic means, as it is intended to be amended in the same Public Deed, in the Twelfth clause, a situation that is contradicted by the holding of that meeting, so that the punishable act is fully configured.

FIFTH: HARALD JOHANESSEN HALS, through a notarized statement issued in Guatemala, stated, "... I DECLARE that, at no time or form, did I notify or summon a Shareholders' Meeting or Meetings, either ordinary or extraordinary, of the entity LISA, S.A. on January 22, 2020, and/or April 29, 2020, nor was I notified by any shareholder or member of the Board of Directors of a convocation for those dates... I DECLARE that my client has NOT held a Shareholders' Meeting or been informed of any meeting of this nature with Mr. ALVARO ALMENGOR, Mr. MANUEL CARRASQUILLA and Mrs. LIDIA RAMOS, nor has it appointed the law firm HATSTONE ABOGADOS to notarize any minutes..."

CONSIDERATIONS OF THE PUBLIC PROSECUTOR'S OFFICE

After analyzing the request submitted and under the principles, guarantees and rules of procedure, we concluded the following:

Among the elements contained in the file, we observe that there is a Certificate of Legal Entity, issued on July 13, 2021, in which HARALD JOHANESSEN HALS appears as the legal representative according to his position as director/president of the limited company LISA, S.A.

Article 79. The victim. The following shall be considered victims of the crime:

1. **The person directly offended by the crime.**
2. The spouse, the common-law partner, relatives up to the fourth degree of consanguinity or second degree of affinity and the heirs of the offended person.
3. The partners, in relation to crimes affecting a partnership, committed by those who run, administer, manage or supervise it.
4. Associations recognized by the State, in crimes that affect collective or diffuse interests involve serious patrimonial damages to the State or affect public services, as long as the object of the association is directly related to those interests.
5. Public institutions and entities are affected in cases of crimes against the Public Administration and against the Financial Patrimony, or when their assets are affected due to any circumstance.
6. In general, any person who individually or collectively has suffered damage and/or physical, mental, or emotional harm, including financial loss or substantial impairment of their rights, as a result of actions that violate the criminal law in force, regardless of whether the offender is identified, apprehended, prosecuted or convicted and regardless of the family relationship existing between them. ***The emphasis is ours**

This being the case, without going into further substantive aspects, we observe that the condition of the victim regarding a crime is broad pursuant to our criminal procedure provisions. It is inferred that HARALD JOHANESSEN HALS is the victim of an alleged criminal act as legal representative of the limited company LISA, S.A. therefore, the condition of the victim is legitimized in this case.

[Signature]



The legal representative has complied with the provisions of Article 88 of the Code of Criminal Procedure because he has stated and clarified the facts and degree of participation, as well as the crimes committed by the defendant, indicating the provisional amount of the damage caused. He has also provided a series of documents to support his disagreement.

Therefore, the Circuit Public Prosecutor of the Department of Crimes Against the Public Trust, of the Superior Metropolitan Prosecutor's Office **ORDERS:**

FIRST: TO ACCEPT the CRIMINAL COMPLAINT, filed by Attorney JAVIER ALCIDES DE LEON ALMENGOR.

SECOND: TO CONSIDER Attorney JAVIER ALCIDES DE LEON ALMENGOR as attorney of the complaint, on behalf of HARALD JOHANNESSEN HALS, legal representative of the limited company LISA, S.A.

THIRD: TO CONSIDER ALVARO ALMENGOR and MANUEL CARRASQUILLA as defendants.

FOURTH: the evidence has been SUBMITTED, and the incorporation of the authenticated copy of the documentation that is filed in the Public Registry has been ACCEPTED. Therefore, it is ORDERED to send the corresponding copies. Likewise, the corresponding measures will be implemented to incorporate the documentation filed in the Eighth Circuit Notary Office of the First Judicial Circuit of Panama.

FIFTH: NOTIFY the parties.

LEGAL BASIS: Law 31 of May 28, 1998. Articles 79, 80, 84, 88, 89, 91, and other applicable provisions of the Code of Criminal Procedure.

NOTIFY AND EXECUTE,

The Prosecutor,

[SIGNATURE]

ATTY. ISaura A. MEJIA R.

Circuit Public Prosecutor of the Department of Crimes Against Public Trust
Superior Metropolitan Prosecutor's Office

IAMR / sm / 202100046467



ATTORNEY GENERAL'S OFFICE
METROPOLITAN PROSECUTOR'S OFFICE
DEPARTMENT OF CRIMES AGAINST THE PUBLIC
TRUST

In Panama, at 11:40 a.m. on January 24, 2022,
notify Javier A. De Leon of the foregoing and for
the record.

[SIGNATURE]

Signature

ATTORNEY GENERAL'S OFFICE
METROPOLITAN PROSECUTOR'S OFFICE
DEPARTMENT OF CRIMES AGAINST THE PUBLIC TRUST
In Panama, at 9:45 a.m. on April 18, 2020, notify
Alvaro Almengor of the foregoing and for the record.

[SIGNATURE]

Signature



MINISTERIO PÚBLICO. SECCIÓN DE DELITOS CONTRA LA FE PÚBLICA, FISCALÍA SUPERIOR METROPOLITANA. PROVINCIA DE PANAMÁ, veinticuatro (24) de enero de dos mil veintidós (2022).

NOTICIA CRIMINAL No. 202100046467

Esta Agencia del Ministerio, adelanta investigación penal identificada bajo la Noticia Criminal N° 202100046467, por la comisión de delito CONTRA LA FE PÚBLICA, según querrela presentada por HARALD JOHANESSEN HALS, en su condición de Representante Legal de la Sociedad Anónima LISA, S.A.

ANTECEDENTES

Se tiene querrela penal presentada para el 16 de julio de 2021, por el Licenciado JAVIER ALCIDES DE LEÓN ALMENGOR, en nombre y representación de HARALD JOHANESSEN HALS, Representante Legal de la Sociedad Anónima LISA, S.A., mediante la cual formaliza querrela penal en contra de ALVARO ALMENGOR y JAVIER CARRASQUILLA, por supuestos hechos ejecutados en su contra.


DE LA SOLICITUD

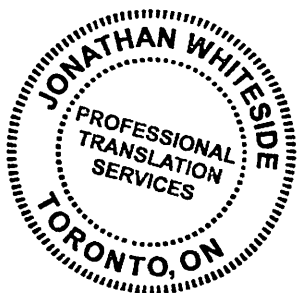
El letrado en su escrito destaca que el hecho querrellado se enmarca en delito CONTRA LA FE PÚBLICA, en la modalidad de FALSIFICACIÓN DE DOCUMENTO EN GENERAL, específicamente como FALSEDAD IDEOLÓGICA.

En síntesis, fundamentó su querrela en los siguientes puntos:

PRIMERO: Que, LISA, S.A., es una Sociedad Anónima registrada y amparada bajo las Leyes de la República de Panamá, y legalmente constituida en nuestro país desde 1983.

SEGUNDO: Que, para el 29 de abril de 2020, ALVARO ALMENGOR, en representación de la Firma de Abogados HATSTONE ASOCIADOS, inscribió en el Registro Público de Panamá, la Escritura Pública N° 4958 del 29 de abril de 2020, de la Notaría Octava de Panamá, mediante la cual se suscribió un Acta de reunión de Accionistas, con la participación de TODOS LOS ACCIONISTAS, con la finalidad de MODIFICAR el Pacto Social de la referida sociedad, quedando ALVARO ALMENGOR, como Director; MANUEL CARRASQUILLA, como Director; y CARL O'SHEA, como Director.

TERCERO: Que, HARALD JOHANESSEN HALS, en su condición de Presidente y Representante Legal, no convocó a la reunión, así como tampoco hubo participación del ACCIONISTA de la sociedad. 



CUARTO: Que, en el Pacto Social de la aludida sociedad anónima, en ninguna de sus cláusulas se establece la celebración de reuniones a través de teléfono, ni ningún otro medio electrónico, como pretende modificar en la misma Escritura Pública, en la cláusula Duodécima, situación que se contradice con la celebración de esa misma reunión, por lo que el hecho punible se configura totalmente.

QUINTO: Que, HARALD JOHANESSEN HALS, mediante declaración notariada, desde Guatemala, indicó "... MANIFIESTO que en ningún tiempo o forma, notifiqué o convoqué a Asamblea o Reuniones, tanto ordinarias como extraordinarias de Accionistas de la entidad LISA, S.A. en fecha veintidós de enero de dos mil veinte, y/o veintinueve de abril de dos mil veinte, ni me fue notificada por ningún accionista o miembro de la JUNTA DIRECTIVA, convocatoria para dichas fechas... DECLARO, que mi representada, NO ha celebrado Asamblea de Accionistas o ha estado informado de ninguna sesión de esta naturaleza con los señores ALVARO ALMENGOR, MANUEL CARRASQUILLA y LIDIA RAMOS, ni ha designado a la firma forense HATSTONE ABOGADOS para protocolizar ninguna acta..."

CONSIDERACIONES DEL MINISTERIO PÚBLICO

Luego de realizar un análisis de la solicitud presentada, y en virtud de los principios, garantías y reglas de procedimiento, arribamos a lo siguiente:

Dentro de los elementos que reposan en la carpeta, observamos que consta Certificado de Persona Jurídica, expedido el 13 de julio de 2021, en la que figura HARALD JOHANESSEN HALS, como Representante Legal, según su cargo de Director /Presidente, de la Sociedad Anónima LISA, S.A.

Artículo 79. La víctima. Se considera víctima del delito:

1. La persona ofendida directamente por el delito.
2. El cónyuge, el conviviente en unión de hecho, los parientes hasta el cuarto grado de consanguinidad o segundo de afinidad y los herederos de la persona ofendida.
3. Los socios, en relación con los delitos que afecten a una sociedad, cometidos por quienes la dirigen, administran, gerencian o controlan.
4. Las asociaciones reconocidas por el Estado, en los delitos que afecten intereses colectivos o difusos, conlleven graves perjuicios patrimoniales para el Estado o afecten servicios públicos, siempre que el objeto de la asociación se relacione directamente con esos intereses.
5. Las instituciones y entes públicos afectados en los casos de delitos contra la Administración Pública y contra el Patrimonio Económico, o cuando por cualquier circunstancia se encuentren afectados sus bienes.
6. En general, toda persona que individual o colectivamente haya sufrido daños y/o lesiones físicas, mentales o emocionales, incluyendo la pérdida financiera o el menoscabo sustancial de sus derechos, como consecuencia de acciones que violen la legislación penal vigente, con independencia de que se identifique, aprehenda, enjuicie o condene al infractor y de la relación familiar existente entre ellos. *El resaltado es nuestro

Siendo ello así, sin entrar en mayores aspectos de fondo, observamos que la condición de víctima dentro de un hecho es amplia según nuestra normativa procedimental penal, se infiere que HARALD JOHANESSEN HALS, es víctima de un posible hecho delictivo como representante legal de la



Sociedad Anónima LISA, S.A., por tanto, la condición de víctima está legitimada dentro de la presente causa.

El letrado ha cumplido con las exigencias del artículo 88 del Código Procesal Penal, ha establecido los hechos y grado de participación, así como los delitos ejecutados por la persona señalada, indicando la cuantía provisional del daño causado, ofreciendo como elementos de prueba una serie de documentos que respaldan su disconformidad.

Es por ello que la Fiscal de Circuito de la Sección de Delitos Contra La Fe Pública, de la Fiscalía Superior Metropolitana DISPONE:

PRIMERO: ADMITIR la QUERRELLA PENAL, presentada por el Licenciado JAVIER ALCIDES DE LEÓN ALMENGOR.

SEGUNDO: TÉNGASE al Licenciado JAVIER ALCIDES DE LEÓN ALMENGOR, como apoderado legal de la querrela, en representación de HARALD JOHANNESSEN HALS, representante legal de la Sociedad Anónima LISA, S.A.

TERCERO: TÉNGASE como querellados a ALVARO ALMENGOR y a MANUEL CARRASQUILLA.

CUARTO: se tienen como PRESENTADOS los elementos de prueba y se ADMITE la incorporación de copia autenticada de la documentación que reposa en el Registro Público, por lo que se ORDENA girar los oficios respectivos a fin de se nos remitan las copias correspondientes; así mismo, se gestionará lo correspondiente para la incorporación de la documentación que reposa en la Notaría Octava de Circuito del Primer Circuito Judicial de Panamá.

QUINTO: NOTIFÍQUESE a las partes.

FUNDAMENTO DE DERECHO: Ley 31 de 28 de mayo de 1998. Artículos 79, 80, 84, 88, 89, 91 y demás concordantes del Código Procesal Penal.

Notifíquese y cúmplase,

La Fiscal,



LCDA. ISaura A. MEJÍA R.

Fiscal de Circuito de la Sección de Delitos Contra La Fe Pública
Fiscalía Superior Metropolitana

IAMR / sm / 202100046467



MINISTERIO PÚBLICO
FISCALÍA METROPOLITANA
SECCIÓN DE DELITOS CONTRA LA FE PÚBLICA
En Panamá, a las 11:00 de la tarde
del día 17 de enero del año 2021 notifique a
José Abelón
lo anterior y para constancia.

Firma

MINISTERIO PÚBLICO
FISCALÍA METROPOLITANA
SECCIÓN DE DELITOS CONTRA LA FE PÚBLICA
En Panamá, a las 9:45 de la mañana
del día 18 de enero del año 2021 notifique a
Alvaro Almenares
lo anterior y para constancia.

Firma



JAVIER ALCIDES DE LEON ALMENGOR

ATTORNEY AT LAW

Avenida Ricardo J. Alfaro, Edificio P.H. The CENTURY TOWER, Piso 19, oficina 1912. Telephone 61150108. email javierdeleon0873@hotmail.com

CRIMINAL COMPLAINT, AGAINST ALVARO ALMENGOR, MANUEL CARRASQUILLA AND ANY OTHER PERSON LIABLE FOR THE ALLEGED COMMISSION OF THE CRIME AGAINST THE PUBLIC TRUST (MISREPRESENTATION), TO THE DETRIMENT OF LISA S.A.

PRIMARY ATTENTION SECTION OF THE FIRST METROPOLITAN SUB REGIONAL OF THE PUBLIC PROSECUTOR'S OFFICE, E.S.D.

The undersigned, Atty. **JAVIER ALCIDES DE LEON ALMENGOR**, The undersigned, Mr. **JAVIER ALMENGOR**, holder of personal identity card No. (8-440-686), Attorney at Law, with professional domicile at Avenida Ricardo J. Alfaro, Edificio P.H. The Century Tower, Piso 19, Oficina 1912, phone number 61150108, e-mail javierdeleon0873@hotmail.com, in my capacity as Main Attorney of Mr. **HARALD JOHANESSEN HALS**, male, of legal age, with Passport 242086470, with domicile in the City of Guatemala, Republic of **GUATEMALA**, in his capacity as President and Legal Representative of **LISA S.A.**, Limited Company registered in Folio No. 117512 (S), of the Commercial Section of the Public Registry of Panama, duly authorized by the Board of Directors, I come before your Office with my accustomed respect for the purpose of filing a **FORMAL CRIMINAL COMPLAINT**, against Messrs. **ALVARO ALMENGOR**, male, Panamanian citizen, of legal age, with personal identity card No. 8-751-1550, **MANUEL CARRASQUILLA**, other generals that we swear not to know, and **AGAINST ANY OTHER PERSON WHO RESULTS LIABLE**, for the alleged commission of the crime **AGAINST PUBLIC TRUST**, in the modality of **MISREPRESENTATION**, to the detriment of **LISA, S.A.**

I. COMPLAINANT



It is constituted for these purposes by **HARALD JOHANESSEN** of legal age, with Passport 242086470 with domicile in the City of Guatemala, Republic of **GUATEMALA**, in his capacity as President and Legal Representative of **LISA, S.A.**, Limited Company registered under Folio No. 117512, in the Public Registry of Panama, duly authorized by the Board of Directors.

II. THE DEFENDANTS

The following are being held as defendants: **ALVARO ALMENGOR**, male, Panamanian citizen, of legal age, with personal identity card N° 8-751-1550, **MANUEL CARRASQUILLA**, other generals that we swear we do not know, and **AGAINST ANY OTHER PERSON WHO RESULTS LIABLE.**

III. CRIMINAL OFFENSE ATTRIBUTED

The offense to the criminal legislation is contemplated in Book II, Chapter III, Title XI, of the Criminal Code, which in its article 366 states:

Whoever falsifies or alters, totally or partially, a public deed, public or authentic document in such a way that may result in damage, shall be punished with imprisonment from four to eight years.

The same penalty shall be imposed on anyone who inserts or causes to be inserted in an authentic public document false statements concerning a fact that the document is intended to prove, whenever it may cause damage to another.

IV. EVIDENTIAL ELEMENTS THAT SUPPORT OUR CRIMINAL COMPLAINT

FIRST: LISA S.A., is a limited company registered and protected under the laws of the Republic of Panama, and legally constituted in our country since 1983.



SECOND: for the date of April 29, 2020, ALVARO ALMENGOR, representing the Law Firm HATSTONE ASOCIADOS, inscribes to the PUBLIC REGISTRY OF PANAMA, the Deed 4958 dated April 29, 2020, of the Eighth Notary Office of Panama, by which a Shareholders' Meeting Act is subscribed, with the participation of ALL THE SHAREHOLDERS, with the purpose of MODIFYING the Social Pact of the referred Limited Company, to wit:

“...After due and careful consideration, it was RESOLVED:

3.1 To amend the Social Pact of the Limited Company to insert a new article, numbered twelfth, at the end of the Social Pact as follows:

Twelfth: Shareholders' meetings may be held by telephone and other forms of electronic communication and shall be considered meetings at which directors are physically present.

3.2 Amend and replace in its entirety the eighth article of the Social Pact of the Limited Company, so that it now reads as follows: EIGHTH: The Board of Directors shall be composed of no less than three (3) or more than six (6) directors.

3.3 To confirm the appointment of the following Directors of the Limited Company:

ALVARO ALMENGOR---DIRECTOR

MANUEL CARRASQUILLA---DIRECTOR

O'SHEA---DIRECTOR”

THIRD: It is important to highlight that **THE SHAREHOLDER** of the referred Company did **NOT PARTICIPATE** in the Shareholders' Meeting for the date established in the referred deed, with the purpose of making modifications to the Social Pact; as well as **Mr. HARALD JOHANNESSEN HALS**, as **PRESIDENT AND LEGAL REPRESENTATIVE** of **LISA S.A.**, did not participate, much less request the call for the meeting to be held, therefore, what is stated in the 4958 of April 29, 2020, of the Eighth Circuit Notary Office of Panama, **IS TOTALLY FALSE**, on the other hand, it is necessary to point out that the Social Pact of the Limited



Company affected, none of its clauses established the holding of meetings by telephone or any other electronic means, as it intends to modify in the same Public Deed in its Twelfth clause, a situation that is contradicted by the holding of that same meeting, so that the punishable act is totally configured.

FOURTH: That ALVARO ALMENGOR, in representation of the Law Firm HATSTONE ASOCIADOS, subscribes a Shareholders' Meeting Act, by which he intends to modify the recognized Board of Directors of the aforementioned Limited Company LISA S.A., and provide for the appointment of a New Board of Directors being the same, ALVARO ALMENGOR, MANUEL CARRASQUILLA and CARL O'SHEA as Directors, without them having the endorsement to make such modification. Thus, the crime was consummated at the moment that such Decision was consigned through the Deed 4958 of April 29, 2020, of the Eighth Circuit Notary Office of Panama and its subsequent registration in the Public Registry of Panama.

FIFTH: Mr. HARALD JOHANNESSEN HALS, in his capacity as PRESIDENT and LEGAL REPRESENTATIVE of the Company LISA S.A., made a sworn affidavit before a Notary Public in the City of GUATEMALA, Republic of GUATEMALA, on June eighteenth (18), 201 [Sic], in which he stated the following:

"a) That in the capacity in which I act and the powers expressly granted by the Articles of Incorporation of the entity LISA S.A., as well as by the laws of the Republic of Panama, it is my function to call and preside over the meetings of Assemblies or Meetings of Shareholders, both ordinary and extraordinary, for that reason I DECLARE that at no time or form, did I notify or call an Assembly or Meetings, both ordinary and extraordinary, of Shareholders of the entity LISA S.A. on January twenty-second, two thousand and twenty, and/or April twenty-ninth, two thousand and twenty, nor was I notified by any shareholder or member of the BOARD OF DIRECTORS, of the call for said dates, therefore the decisions taken and registered in the Public Registry of Panama, Commercial Section in the marginal of the entity LISA, S.A., by which they modify the Articles of Incorporation of said entity and



providing in such sense, the appointment of new DIRECTORS in the board of directors, Mr. Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos, all domiciled at BICSA Financial Center, Avenida Balboa y Calle Aquilino De la Guardia, Piso 51, Office 5102, Ciudad de Panama, Republica de Panama. Said persons are not known to my client, and neither do they have the endorsement, authorization or mandate to represent the entity LISA, S.A." (emphasis added).

SIXTH: In that order of ideas, JOHANNESSEN HALS, stated that:

"d) I also (sic), DECLARE that my client has NOT held a Shareholders' Meeting or been informed of any meeting of this nature with Mr. Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos, nor has it appointed the law firm HATSTONE ABOGADOS to notarize any minutes".

SEVENTH: The crime of misrepresentation, also known as historical misrepresentation, provided for in former article 366 of the Code of Criminal Procedure, punishes whoever includes or causes to be included in a public deed or public or authentic document, false statements concerning a fact that the document must approve in such a way that it may result in damage. In principle, the doctrine states "...it is a document that in its formal aspect (date, signature, seals, signs of authenticity) is authentic, it conforms to the truth, but suffers from falsity due to its content where false declarations appear" (GUERRA DE VILLALAZ, Aura Emerita. Compendium of Criminal Law (Special Part), Panama, 2010, p.363.

EIGHTH: Thus, the crime of misrepresentation in a private document, like all other types of documentary falsehood, is an offense against public trust. We must understand the concept of public trust through Carrara's thesis on this legal right.

Carrara understands that public trust is linked to the power of the creator of the documents, specifically, to the idea of the state as the creator of the document from which the public trust emanates. In fact, Carrara understood that it is a human need to believe in other people or in certain signs, values, or objects. To the extent that this belief is not based on the Authority (the state), we are dealing with private trust,⁴ which is based on trust in the



good faith of others; whereas, if this trust is imposed by the Authority, we are dealing with public trust, so that when the citizen believes in a coin, he does so because the authority provides for it.

In effect, Carrara states the following:

“As long as we consider men in a state of natural association, ordered on egalitarian principles, it will not be possible for us to imagine the concept of public trust, that is to say, of a common bond that forces them to believe certain things. As man comes into contact with his fellows, he has in his operations and contracts frequent necessity to believe; but, if no authority is presupposed which imposes upon him superior reasons for believing, he will always believe, either induced by his senses, his experience, or his judgment, or carried away by confidence in the individual who assures him of some certain fact”

Jurisprudence and doctrine maintain that the interest legally protected through the criminalization of misrepresentation is related to the collective trust in certain documents, signs, securities or objects that have evidentiary capacity.

On this point, Francisco Bernate Ochoa points out in his book "*Apuntes sobre el Delito de Falsedad Ideológica, Borradores de Investigación* No. No. 62, ISSN: 0124-700X Faculty Jurisprudence, University of Rosario, that:

The development of social relationships necessarily implies a minimum of trust among the associates and between them and the public authority; on this depends the peaceful coexistence and the legitimacy and enforceability of the acts issued by the administration, being precisely for these purposes that the Colombian Political Constitution establishes that "the actions of individuals and public authorities must adhere to the principles of good faith". From this principle of trust, public trust arises as an autonomous value and legal good object of criminal protection, of which the community itself is the owner, and finds concretion in the credibility enjoyed by those signs, objects or external forms that constitute means of proof of the creation, modification or extinction of legally relevant situations.



NINTH: That the actions deployed by the now **DEFENDANTS**, constituted an economic damage to my client, since to this date it has not been possible to dispose of the sum of money delivered to the aforementioned **DEFENDANTS**, for which we estimate a provisional damage in **TWO MILLION BALBOAS (B/. 2,000,000.00)**.

V. EVIDENCE

- Electronic copy of the Public Deed 4958 of April 29, 2020 of the Eighth Circuit Notary Office of the Province of Panama.
- Certificate of existence of the LISA S.A. Limited Company.
- Notarized declaration of the President and Legal Representative of Limited Company LISA S.A. in which he makes clear his non-participation in the aforementioned meetings.

VI. SPECIAL REQUEST

- As a matter of **URGENCY**, an Ocular Inspection to the Public Registry of Panama, in order to corroborate the above mentioned.
- An ocular inspection of the offices of **HATSTONE ABOGADOS**, the law firm where the alleged meetings of the shareholders' of LISA S.A. were held.
- As a matter of **URGENCY**, the Public Registry of Panama should be requested to provisionally **SUSPEND** the deeds accused of being spurious until the facts are clarified.
- As a matter of **URGENCY**, an Ocular Inspection should be made at the Eighth Circuit Notary Office of the First Judicial Circuit of Panama, in order to locate the Minute / Minutes of the shareholders' meetings held on April 29, 2020, which were subsequently notarized in public deed 4958.



LEGAL BASIS: Articles 220, 221 of the Criminal Code; 84, 85, 86, 87, 88 and 89 of the Criminal Procedural Code of Panama.

With all due respect

Panama, at the filing date

[SIGNATURE]

Atty. JAVIER A. DE LEON ALMENGOR
ATTORNEY AT LAW

[SIGNATURE]

HARALD JOHANNESSEN HALS
DEFENDANT

DATE AND PLACE: [SIGNATURE]

In the city of Guatemala, on the fifth day of July of the year two thousand twenty-one, as Notary Public, I **WITNESS** that the foregoing signature is **AUTHENTIC** for having been placed this day in my presence by **HARALD JOHANNESSEN HALS**, who is a person of my previous knowledge and is identified with the Personal Identification Document with Unique Identification Code two thousand four hundred twenty, eighty-six thousand four hundred seventy, one thousand one hundred and one (2420 86470 1101) issued by the National Registry of the people of the Republic of Guatemala; as well as passport number two hundred and forty-two million eighty-six thousand four hundred and seventy (242086470) issued by the General Directorate of Immigration of the Republic of Guatemala, and who signs again with me at the bottom of this act of legalization of signatures.

[SIGNATURE]

[SIGNATURE]

[SIGNATURE]

ATTORNEY
Jeremias Lutin Castillo
ATTORNEY AT ALAW AND NOTARY

[Official Stamp:
2209315
2021]

[Official Stamp:
AY-0978661
[Barcode]]



**JAVIER ALCIDES DE LEON ALMENGOR
ABOGADO- ATTORNEY AT LAW**

**Avenida Ricardo J. Alfaro, Edificio P.H. The CENTURY TOWER, Piso 19, oficina
1912. Teléfono 61150108. Correo Electrónico javierdeleon0873@hotmail.com**

**QUERRELLA PENAL, EN CONTRA DE ALVARO
ALMENGOR, MANUEL CARRASQUILLA Y
CUALQUIER OTRA PERSONA QUE RESULTE
RESPONSABLE, POR LA SUPUESTA
COMISION DEL DELITO CONTRA LA FE
PUBLICA (FALSEDAD IDEOLOGICA), EN
PERJUICIO DE LISA S.A.**

**SECCION DE ATENCION PRIMARIA DE LA PRIMERA SUB REGIONAL
METROPOLITANA DEL MINISTERIO PUBLICO, E.S.D.**

Quien suscribe , Licenciado **JAVIER ALCIDES DE LEON ALMENGOR**, portador de la cédula de identidad personal No. ocho- cuatrocientos cuarenta- seiscientos ochenta y seis (8-440-686), Abogado en ejercicio, con domicilio profesional en Avenida Ricardo J. Alfaro, Edificio P.H. The Century Tower, Piso 19, Oficina 1912, con teléfono 61150108, correo electrónico javierdeleon0873@hotmail.com, en mi condición de Apoderado Principal del señor **HARALD JOHANESSEN HALS**, Varón, mayor de edad, con Pasaporte 242086470 con Domicilio en la Ciudad de Guatemala, República de **GUATEMALA**, en su calidad de Presidente y Representante Legal de **LISA S.A.**, Sociedad Anónima registrada a Folio N°117512 (S), de la sección Mercantil en el Registro Público de Panamá, debidamente autorizado por la Junta Directiva, acudo ante su Despacho con mi respeto acostumbrado, a efectos de interponer **FORMAL QUERRELLA PENAL**, en contra de los señores **ALVARO ALMENGOR**, Varón, ciudadano Panameño, mayor de edad, con cédula de identidad personal **N°8-751-1550**, **MANUEL CARRASQUILLA**, demás generales que juramos desconocer, y **CONTRA CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE**, por la presunta comisión del Delito **CONTRA LA FE PUBLICA**, en la modalidad de **FALSEDAD IDEOLOGICA**, en perjuicio de **LISA, S.A.**

I. PARTE QUERELLANTE



Lo constituye para estos efectos, **HARALD JOHANESSEN HALS**, Varón, mayor de edad, con Pasaporte 242086470 con Domicilio en la Ciudad de Guatemala, República de **GUATEMALA**, en su calidad de Presidente y Representante legal de **LISA, S.A.**, Sociedad Anónima registrada a Folio N°117512, en el Registro Público de Panamá, debidamente autorizado por la Junta Directiva.

II. LOS QUERELLADOS

Se tienen como Querellados a los señores **ALVARO ALMENGOR**, Varón, ciudadano Panameño, mayor de edad, con cédula de identidad personal N°8-751-1550, **MANUEL CARRASQUILLA**, demás generales que juramos desconocer, y **CONTRA CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE**.

III. INFRACCION PENAL QUE SE ATRIBUYE

La infracción a la norma penal, se encuentra contemplada dentro del Libro II, Capítulo III, Título XI, del Código Penal, que en su artículo 366 señalan:

Artículo 366. Quien falsifique o altere, total o parcialmente una escritura pública, un documento público o auténtico de modo, que pueda resultar perjuicio, será sancionado con prisión de cuatro a ocho años.

Igual sanción se impondrá a quien inserte o haga insertar en un documento público auténtico declaraciones falsas concernientes a un hecho que el documento deba probar, siempre que pueda ocasionar un perjuicio a otro.

IV. ELEMENTOS DE CONVICCION QUE FUNDAMENTAN NUESTRA QUERRELLA

PRIMERO: **LISA S.A.**, es una Sociedad Anónima registrada y amparada bajo las leyes de la República de Panamá, y legalmente constituida en nuestro País desde 1983.

SEGUNDO: para la fecha del 29 de Abril de 2020, **ALVARO ALMENGOR**, en representación de la Firma de Abogados **HATSTONE ASOCIADOS**, inscribe al



REGISTRO PUBLICO DE PANAMA, la Escritura 4958 de fecha 29 de abril de 2020, de la Notaría Octava de Panamá, mediante la cual se suscribe un Acta de reunión de Accionistas, con la participación de TODOS LOS ACCIONISTAS, con la finalidad de MODIFICAR el Pacto Social de la referida Sociedad, a saber:

“...Luego de la debida y cuidadosa consideración, se RESOLVIO:

3.1 Modificar el Pacto Social de la Sociedad para insertar un nuevo artículo, numerado duodécimo al final del Pacto Social de la siguiente manera:

Duodécimo: Las reuniones de accionistas pueden realizarse por teléfono y otras formas electrónicas de comunicación y se considerarán reuniones en las que los directores estuvieran físicamente presentes.

3.2 Enmendar y reemplazar en su totalidad el artículo octavo del Pacto Social de la Sociedad, para que ahora lea como sigue: OCTAVO: La Junta de Directores estará compuesta de no menos de tres (3) o más de seis (6) directores.

3.3 Confirmar el nombramiento de los siguientes Directores de la Sociedad:

ALVARO ALMENGOR-----Director

MANUEL CARRASQUILLA-----Director

CARL O'SHEA-----Director”

✓ **TERCERO:** Que es importante destacar, que **EL ACCIONISTA** de la referida Sociedad **NO PARTICIPO** en reunión de Junta de Accionistas para la fecha establecida en la referida escritura, con la finalidad de realizar modificaciones al Pacto Social; así como tampoco el señor **HARALD JOHANNESSEN HALS**, en calidad de **PRESIDENTE Y REPRESENTANTE LEGAL TITULAR** de **LISA S.A.**, participó ni mucho menos solicitó la convocatoria para la celebración de la misma, por lo que lo manifestado en la 4958 de 29 de Abril de 2020, de la Notaría Octava de Circuito de Panamá, **ES TOTALMENTE FALSO**. Por otro lado es menester indicar que el Pacto Social de la Sociedad Anónima



afectada, en ninguna de sus cláusulas establecía la celebración de reuniones a través de teléfono ni ningún otro medio electrónico, como pretende modificar en la misma Escritura Pública en su cláusula Duodécima, situación que se contradice con la celebración de esa misma reunión, por lo que el hecho punible se configura totalmente.

CUARTO: Que **ALVARO ALMENGOR**, en representación de la Firma de Abogados **HATSTONE ASOCIADOS**, suscribe un Acta de reunión de Accionistas, mediante la cual pretende modificar la Junta Directiva reconducida de la prenombrada Sociedad Anónima **LISA S.A.**, y disponen el nombramiento de una Nueva Junta Directiva siendo los mismos, **ALVARO ALMENGOR**, **MANUEL CARRASQUILLA** y **CARL O'SHEA** como Directores, sin que los mismos tuvieran el aval para realizar dicha modificación. Así las cosas el delito se consumó en el momento que dicha Decisión quedó consignada a través de la Escritura 4958 de 29 de Abril de 2020, de la Notaría Octava de Circuito de Panamá y su posterior inscripción en el Registro Público de Panamá.

QUINTO: El señor **HARALD JOHANNESSEN HALS**, en su calidad de **PRESIDENTE y REPRESENTANTE LEGAL** de la Sociedad **LISA S.A.**, rindió declaración jurada Notarial ante Notario Público en la Ciudad de **GUATEMALA**, República de **GUATEMALA**, para la fecha del dieciocho (18) de junio de 201, en la cual señaló lo siguiente:

"a)Que en la calidad con que actuó y las facultades expresamente otorgadas por el acta de constitución de la entidad **LISA S.A.**, así como por las leyes de la República de Panamá, es mi función la de convocar y presidir las reuniones de Asambleas o Reuniones de Accionistas, tanto ordinarias como extraordinarias, por lo que **MANIFIESTO que en ningún tiempo o forma, notifiqué o convoqué a Asamblea o Reuniones, tanto ordinarias como extraordinarias de Accionistas de la entidad LISA S.A. en fecha veintidós de enero de dos mil veinte, y/o veintinueve de abril de dos mil veinte, ni me fue notificada por ningún accionista o miembro de la JUNTA DIRECTIVA, convocatoria para dichas fechas, por lo que las decisiones tomadas e inscritas en el Registro Público de Panamá, Sección Mercantil en el marginal de la entidad LISA, S.A., mediante las cuales modifican la Escritura Social de dicha entidad y**



disponiendo en tal sentido, el nombramiento de una nuevos DIRECTORES en la junta directiva, al señor Alvaro Almengor, Manuel Carrasquilla y Lidia Ramos, todos con domicilio en la BICSA Financial Center, avenida Balboa y Calle Aquilino De la Guardia, Piso 51, Oficina 5102, Ciudad de Panamá, República de Panamá. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad LISA, S.A." (lo resaltado es nuestro).

SEXTO: En ese mismo orden de ideas, **JOHANNESSEN HALS**, manifestó que:

"d) asimismo (sic), DECLARO, que mi representada, NO ha celebrado Asamblea de Accionistas o ha estado informado de ninguna sesión de esta naturaleza con los señores Alvaro Almengor, Manuel Carrasquilla y Lidia Ramos, ni ha designado a la firma forense HATSTONE ABOGADOS para protocolizar ninguna acta".

SEPTIMO: El delito de falsedad ideológica también conocido como falsedad histórica, previsto en el anterior artículo 366 del Código Procesal Penal, sanciona a quien incluye o haga incluir en una escritura pública o documento público o auténtico, declaraciones falsas concernientes a un hecho que el documento deba aprobar de modo que pueda resultar perjuicio. En principio señala la doctrina "... se trata de un documento que en su aspecto formal (fecha, firma, sellos signos de autenticidad) es auténtico, se ajusta a la verdad, pero adolece de falsedad por su contenido donde aparecen declaraciones falsas"(GUERRA DE VILLALAZ, Aura Emérita. Compendio de Derecho Penal (Parte Especial), Panamá, 2010, pág.363.

OCTAVO: Así las cosas el delito de falsedad ideológica en documento privado, como todas las demás modalidades de falsedad documental, atenta contra la fe pública. Debemos entender el concepto de fe pública a través de la tesis de Carrara sobre este bien jurídico.

Carrara entiende que la fe pública se encuentra ligada a la potestad del creador de los documentos, en concreto, a la idea del estado como creador del documento del que emana la fe pública. En efecto, carrara entendía que es una necesidad del hombre el creer en otras personas o en determinados signos, valores u objetos. En



la medida en que esa creencia no se fundamente en la Autoridad (el estado) estamos frente a la fe privada,⁴ que se basa en la confianza en la buena fe ajena; mientras que, si esa confianza es impuesta por la Autoridad, estamos frente a la fe pública, de manera que cuando el ciudadano cree en una moneda, lo hace porque la autoridad así lo dispone.

En efecto, afirma Carrara lo siguiente:

“Mientras consideremos a los hombres en un estado de mera asociación natural, ordenada sobre principios igualitarios, no nos será posible imaginar el concepto de fe pública, es decir, de un vínculo común que los obligue a creer ciertas cosas. Al ponerse el hombre en contacto con sus semejantes, tiene en sus operaciones y contratos frecuente necesidad de creer; pero, si no se presupone una autoridad que le imponga razones superiores para creer, él creerá siempre, o inducido por sus sentidos, su experiencia o su juicio, o llevado por la confianza en el individuo que le asegura algún hecho determinado”.

La jurisprudencia y la doctrina sostienen que el interés jurídicamente tutelado a través de la criminalización de la falsedad ideológica se relaciona con la confianza colectiva en determinados documentos, signos, valores u objetos que tengan capacidad probatoria.

Sobre el punto, señala Francisco Bernate Ochoa en su libro “Apuntes sobre el Delito de Falsedad Ideológica, Borradores de investigación No. No. 62, ISSN: 0124-700X Facultad de Jurisprudencia, Universidad del Rosario, que:

“El desenvolvimiento de las relaciones sociales implica, necesariamente, un mínimo de confianza entre los asociados y de éstos con la autoridad pública; de ello depende la coexistencia pacífica y la legitimidad y obligatoriedad de los actos que la administración expida, siendo precisamente a esos propósitos que la Constitución Política colombiana establece que “las actuaciones de los particulares y de las autoridades públicas deberán ceñirse a los postulados de la buena fe”. De este principio de confianza, surge la fe pública como valor autónomo y bien jurídico objeto de tutela penal, del cual es titular la colectividad misma, y halla concreción en la credibilidad de que gozan aquellos



signos, objetos o formas exteriores que constituyen medios de prueba de la creación, modificación o extinción de situaciones jurídicamente relevantes.

NOVENO: Que las acciones desplegadas por los hoy **QUERELLADOS**, constituyeron un perjuicio económico a mi representado, toda vez que hasta la fecha no ha sido posible disponer de la suma de dinero entregada a los precitados **QUERELLADOS**, por lo que estimamos un perjuicio provisional en **DOS MILLONES DE BALBOAS (B/. 2,000.000.00)**.

V. PRUEBAS

- Copia electrónica de la Escritura Pública 4958 del 29 de abril de 2020 de la Notaría Octava de Circuito de la Provincia de Panamá.
- Certificación de existencia de la Sociedad Anónima **LISA S.A.**
- Declaración Notarial del Presidente y Representante Legal de la Sociedad Anónima **LISA S.A.** en la cual deja claro su no participación en las reuniones aludidas.

VI. SOLICITUD ESPECIAL

- Con carácter de **URGENCIA** Se realice una Inspección Ocular al Registro Público de Panamá, a efectos de corroborar lo aquí externado.
- Se lleve a cabo una Inspección Ocular a las oficinas de **HATSTONE ABOGADOS**, firma forense en la cual se realizaron las supuestas reuniones de junta de accionistas de la Sociedad **LISA S.A.**
- Con carácter de **URGENCIA** Se oficie al Registro Público de Panamá, a fin de que **SUSPENDAN** provisionalmente las escrituras tachadas de espúreas hasta se esclarezcan los hechos.
- Con carácter de **URGENCIA** Se realice una Inspección Ocular en la Notaría Octava de Circuito del Primer Circuito Judicial de Panamá, a



efectos de ubicar la Minuta / Acta de celebración de las reuniones de accionistas llevadas a cabo el día 29 de abril de 2020, que posteriormente protocolizaron en la escrituras públicas 4958.


FUNDAMENTO DE DERECHO: Artículos 220, 221 del Código Penal; 84, 85, 86, 87, 88 y 89 del Código Procesal de Panamá.

Con mi respeto acostumbrado

Panamá, a la fecha de su presentación,


Licdo. JAVIER A. DE LEON ALMENGOR
ABOGADO.

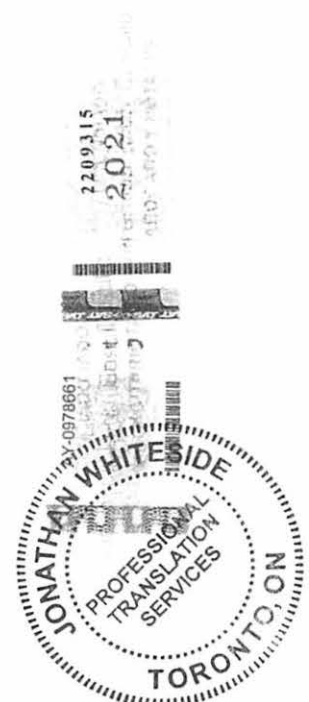

HARALD JOHANNESSEN HALS
QUERELLANTE
LUGAR Y FECHA: Guatemala, 5 Julio 2021

16 Julio 2021


En la ciudad de Guatemala, el cinco de julio de dos mil veintiuno, como Notario, DOY FE Que la firma que antecede es AUTÉNTICA por haber sido puesta el día de hoy en mi presencia por **HARALD JOHANNESSEN HALS**, quien es persona de mi anterior conocimiento y se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil cuatrocientos veinte, ochenta y seis mil cuatrocientos setenta, un mil ciento uno (2420 86470 1101), extendido por el Registro Nacional de las personas de la República de Guatemala; así como con el pasaporte número doscientos cuarenta y dos millones ochenta y seis mil cuatrocientos setenta (242086470) extendido por la Dirección General de Migración de la República de Guatemala, y quien vuelve a firmar junto conmigo al pie de la presente acta de legalización de firmas.




LICENCIADO
Jeremias Lujan Castillo
ABOGADO Y NOTARIO



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE McEWEN

)
)
)

FRIDAY, THE 25TH
DAY OF MARCH, 2022

B E T W E E N:

(Court Seal)

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,
FRESH QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO
GUTIERREZ and CARMEN S. GUTIERREZ, Executor of the Estate of
Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.

ORDER

THIS CASE CONFERENCE, called by McEwen J. following an email report dated March 23, 2022 (the “**Email Report**”) 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, undertakings, and property of Xela Enterprises Ltd. (the “**Company**”) was heard virtually on March 25, 2022 via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario.

WHEREAS on August 28, 2020, this Court made an Order with respect to the Company's documents and devices.

WHEREAS on October 27, 2020, this Court made an Order (the "**ATS Order**") authorizing Duff & Phelps to make a single disk image of certain servers under the control of Arturo's Technical Services Ltd. ("**ATS**").

WHEREAS on October 27, 2020, this Court made an Order (the "**Juan Guillermo Imaging Order**") authorizing Duff & Phelps to make a single forensic image of the devices of Juan Guillermo Gutierrez ("**Juan Guillermo**").

WHEREAS on March 25, 2021, this Court made an order that Juan Guillermo immediately provide the Receiver and Epiq Global ("**Epiq**") with all encryption codes, keys, passwords, or any other such information or knowledge necessary to unlock and access the data on the images of Juan Guillermo's devices, including but not limited to the DataShield Fantom Drive (the "**Hard Drive**").

AND WHEREAS the March 25, 2021 Order also provided, among other things, that within 14 days of the Order, ATS provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded and regardless of whether the email was sent directly to him or it was one on which he was copied) at any email address maintained on ATS servers to the date of the Order, along with any encryption codes, keys, or passwords used to secure the emails.

ON READING the Email Report and the material filed by Juan Guillermo, the

August 28, 2020 Order, the October 27, 2020 ATS Order, the October 27, 2020 Juan Guillermo Imaging Order, and the March 25, 2021 Order, and on hearing the submissions of the Receiver, counsel for Juan Guillermo, and counsel for ATS,

1. **THIS COURT ORDERS** that, by March 28, 2022 at 5 pm EST, Juan Guillermo and his solicitors shall attend a videoconference with Epiq Global (with the Receiver and counsel absent) and provide Epiq with all encryption codes, keys, passwords, or any other information necessary to unlock and access the data on the images of Juan Guillermo's devices, including but not limited to the Hard Drive (collectively the "**Hard Drive Data**").
2. **THIS COURT ORDERS** that following Epiq accessing and downloading the Hard Drive Data, Epiq shall re-lock the Hard Drive.
3. **THIS COURT ORDERS** that, by March 28, 2022 at 5 pm EST using Epiq's secure file transfer protocol, ATS shall provide Epiq with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded, if the email was sent directly to him or if the email was one on which he was copied) at any email address maintained on any ATS server for the period up to March 25, 2021 (the "**ATS Juan Guillermo Emails**"), along with any encryption codes, keys, or passwords used to secure the emails.
4. **THIS COURT ORDERS** that the Hard Drive Data and the ATS Juan Guillermo Emails in Epiq's possession as a result of this Order shall be subject to the privilege protocol set out in the October 27, 2020 Juan Guillermo Imaging Order.

(Signature of judge, officer or registrar)

MARGARTIA 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

LENCZNER SLAGHT LLP

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

Peter H. Griffin (19527Q)

pgriffin@litigate.com
Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com
Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com
Tel: (416) 865-3018

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9
Kyle Plunkett

Email: kplunkett@airdberlis.com
Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500
Fax: (416) 863-1515

Lawyers for the Receiver



**Second Supplement to the Fifth Report of
KSV Restructuring Inc.,
as Receiver and Manager of
Xela Enterprises Ltd.**

April 4, 2022

Contents	Page
1.0 Introduction and Purpose	1
1.1 Restrictions	2
2.0 Background	2
3.0 Non-Compliance with the March 25, 2021 Compliance Order.....	3
3.1 March 2, 2022 Case Conference.....	3
3.2 March 9, 2022 Case Conference.....	3
3.3 March 17, 2022 Case Conference.....	5
4.0 Allegations against the Receiver	8
4.1 March 25, 2022 Case Conference.....	8
4.2 Motion for a Stay and Motion for Leave to Appeal to the Divisional Court	11
5.0 Funding	12



COURT FILE NO.: CV-11-9062-00CL

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

MARGARITA CASTILLO

Applicant

- And -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ AND CARMEN S. GUTIERREZ, AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ

Respondents

**AND IN THE MATTER OF THE RECEIVERSHIP OF
XELA ENTERPRISES LTD.**

**SECOND SUPPLEMENT TO THE FIFTH REPORT OF
KSV RESTRUCTURING INC.**

APRIL 4, 2022

1.0 Introduction and Purpose

1. This report (the “Second Supplemental Report”) supplements the Fifth Report of the Receiver dated February 28, 2022 (the “Fifth Report”) and the Supplement to the Fifth Report of the Receiver dated March 7, 2022 (the “Supplemental Report”).
2. Capitalized terms used but not defined in this Second Supplemental Report have the meaning provided to them in the Fifth Report and the Supplemental Report.
3. The purposes of the Second Supplemental Report are to provide the Court and the Divisional Court with an update since the Supplemental Report, particularly:
 - a) the continuing non-compliance by Juan Guillermo and ATS of the orders issued in these proceedings dated October 27, 2020 and March 25, 2021 (the “March 25, 2021 Compliance Order”), as well as subsequent related orders and endorsements;

- b) Juan Guillermo's various allegations against the Receiver made in support of a motion for injunctive relief to the Court (served on March 25, 2022) and a motion for a stay pending a motion for leave to appeal to the Divisional Court (served on March 28, 2022), as well as the motion for leave to appeal (served on March 31, 2022); and
- c) the status of funding from Mr. Volgemut.

1.1 Restrictions

1. This Second Supplemental Report is subject to the restrictions provided in the Fifth Report.

2.0 Background

1. As set out in the Fifth Report and the Supplemental Report, the March 25, 2021 Compliance Order required, among other things:
 - a) Juan Guillermo to immediately provide the Receiver with all encryption codes, keys, passwords, or any other such information or knowledge necessary to unlock and access the data on the JG Hard-Drive; and
 - b) ATS to, within 14 days, 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.
2. Juan Guillermo and ATS sought leave to appeal the March 25, 2021 Compliance Order from the Divisional Court. One of the grounds for seeking leave to appeal was a claim of privilege by Juan Guillermo over his emails on ATS's servers. The Divisional Court dismissed the motion for leave to appeal on July 9, 2021 with costs in the amount of \$5,000.
3. Thereafter, the Receiver sought compliance with the March 25, 2021 Compliance Order. When compliance was not forthcoming, the Receiver requested a case conference which was scheduled for September 17, 2021.
4. On September 16, 2021, the day prior to the case conference, Juan Guillermo and ATS advised that funding from Mr. Volgemut sufficient to discharge the Receiver was imminent.
5. For months, compliance with the Orders was placed on the "backseat" (as described by McEwen J. in his March 25, 2022 endorsement) pending the receipt of the funding which was said to be imminent. However, nearly six months and five court attendances later, the funding had not arrived.¹

¹ The Receiver attended case conferences on September 17, 2021; December 2, 2021; January 21, 2022; February 7 and 17, 2022.

3.0 Non-Compliance with the March 25, 2021 Compliance Order

3.1 March 2, 2022 Case Conference

1. On March 2, 2022, the Court directed Juan Guillermo and ATS to comply “immediately” with the March 25, 2021 Compliance Order. The Court also rescheduled a contempt motion against Juan Guillermo related to Juan Guillermo’s involvement in criminal proceedings against the Receiver’s legal representatives in Panama (“Hatstone”) for May 30-31, 2022. The contempt motion was and is unrelated to the production of passwords and emails that are to be produced pursuant to the March 25, 2021 Compliance Order.²
2. Following the March 2, 2022 endorsement, Juan Guillermo did not provide the passwords, and ATS did not provide the emails. The Receiver requested another case conference.

3.2 March 9, 2022 Case Conference

1. On March 9, 2022, the parties attended for a case conference. Juan Guillermo again asserted privilege over his emails on ATS’s servers. The Court directed Juan Guillermo and ATS to begin the “smooth flow of documents” to the Receiver.³
2. Later that day, on March 9, 2022, the Receiver wrote to Juan Guillermo’s counsel (“Cambridge”) to request the passwords and to ATS’s counsel (“WeirFoulds”) to request the emails.
3. Cambridge responded that evening. Cambridge asked for a copy of the image of the Devices on the JG Hard-Drive.⁴
4. WeirFoulds responded that evening. WeirFoulds advised that they intended to provide Juan Guillermo’s emails on ATS’s servers to Juan Guillermo rather than to the Receiver.⁵
5. On March 11, 2022, the Receiver wrote to Cambridge and WeirFoulds:
 - a. the Receiver advised Juan Guillermo that he made the same request for a copy of the image of his Devices a year earlier, which request was expressly rejected by the Court when it issued the March 25, 2021 Compliance Order;

² The issues at stake in the contempt motion are set out in the Receiver’s notice of motion for contempt dated February 9, 2021 and the endorsement and order of McEwen J. dated February 10, 2021. Brief of Documents to the Second Supplemental Report (“Brief of Documents”), Tabs 1, 2, and 3. March 2, 2022 endorsement, Brief of Documents, Tab 4”

³ March 9, 2022 endorsement, Brief of Documents, Tab 5

⁴ Letter from Cambridge to the Receiver dated March 9, 2022, Brief of Documents, Tab 6

⁵ Email from WeirFoulds to the Receiver dated March 9, 2022, Brief of Documents, Tab 7

- b. the Receiver advised ATS that it took no position on whether ATS chose to provide Juan Guillermo's emails to Juan Guillermo. The obligation to produce Juan Guillermo's emails to the Receiver was ATS's obligation, with which it was obligated to comply. The Receiver offered to meet with ATS to discuss the best way to transfer Juan Guillermo's documents from ATS to the Receiver; and
 - c. the Receiver advised both parties that the issue of privilege was being improperly conflated with the contempt motion. The review of emails and documents was intended to assist the Receiver in its investigation of the Reviewable Transactions. The Receiver did not rely (and did not intend to rely) on any evidence contained on the JG Hard-Drive or the emails that ATS was to produce in support of the contempt motion.⁶
6. Later, on March 11, 2022, WeirFoulds responded. They insisted on providing Juan Guillermo's emails to Juan Guillermo rather than the Receiver. They declined a meeting with the Receiver.⁷
7. On March 13, 2022, the Receiver responded. The Receiver noted that non-privileged documents were to be produced immediately in accordance with the direction of the Court. "How ATS goes about ensuring there is a smooth flow of documents to the Receiver is up to ATS". The Receiver reiterated its willingness to discuss this with ATS.⁸ A further case conference was scheduled for March 17, 2022.
8. On March 14, 2022, Cambridge responded. They said that the emails on the JG Hard-Drive were duplicative of the emails on ATS's servers. They wanted to compare the emails on the JG Hard-Drive to the emails on ATS's servers and to conduct their own de-duplication process. They reiterated their request for a copy of the image of the Devices on the JG Hard-Drive.⁹
9. Later, on March 14, 2022, the Receiver noted that, even if Juan Guillermo's request was accepted (which it was not), the Receiver could not provide Juan Guillermo with a copy without the passwords to the JG Hard-Drive.¹⁰
10. On March 16, 2022, Cambridge responded. They advised that they wanted Juan Guillermo (and Juan Guillermo's own IT consultant) to attend at the office of the Receiver's IT expert (Epiq) where Juan Guillermo could unlock the JG Hard-Drive and make a copy, after which Juan Guillermo would re-lock the JG Hard-Drive. Juan Guillermo could then compare the data on the JG Hard-Drive to the data on ATS's servers and perform his own de-duplication without any oversight by Epiq.¹¹

⁶ Letter from the Receiver to Cambridge and WeirFoulds dated March 11, 2022, Brief of Documents, Tab 8

⁷ Email from WeirFoulds to the Receiver dated March 11, 2022, Brief of Documents, Tab 9

⁸ Email from the Receiver to WeirFoulds dated March 13, 2022, Brief of Documents, Tab 10

⁹ Email from Cambridge to the Receiver dated March 14, 2022, Brief of Documents, Tab 11

¹⁰ Email from the Receiver to Cambridge dated March 14, 2022, Brief of Documents, Tab 12

¹¹ Email from Cambridge to the Receiver dated March 16, 2022, Brief of Documents, Tab 13

11. The Receiver responded that day, querying why the protocol for Juan Guillermo's privilege review (contained in the October 27, 2020 Order) could not be followed.¹²
12. Later, on March 16, 2022, Juan Guillermo delivered a Case Conference Brief in advance of the March 17, 2022 case conference. Among other things, Juan Guillermo claimed that compliance with the March 25, 2021 Compliance Order "would represent an inordinate amount of additional expense and should be rejected" because the money (from Mr. Volgemut, which Mr. Guillermo had for six months promised), was "already in transit". In the Case Conference Brief, Cambridge reiterated their request for a copy of the image of the Devices on the JG Hard-Drive.

3.3 March 17, 2022 Case Conference

1. On March 17, 2022, the parties attended for a case conference. In an effort to move the matter forward, the Receiver consented to the application of the October 27, 2020 protocol (which already applied to the images on the JG Hard-Drive) to Juan Guillermo's emails on ATS's servers—thereby preventing the Receiver from reviewing any of Juan Guillermo's emails until Juan Guillermo had the opportunity to review and object to production to the Receiver. At the conclusion of the case conference, McEwen J. asked that he be updated in the coming days about compliance. His Honour said that he would make himself available the following week for an urgent case conference, if necessary. Later that day, McEwen J. issued an endorsement, which said, among other things:

Forthwith, [Juan Guillermo] will provide the passwords to his devices to Epiq so the images can be fully accessed...;

ATS emails, contained on their servers, will also be provided to Epiq forthwith; [and]

Subsequently, the protocol contained in my [October 27, 2020] Order will be followed¹³

2. Later that day, on March 17, 2022, the Receiver wrote to Cambridge to request the passwords, and the Receiver wrote to WeirFoulds to request a meeting to discuss the best way for ATS to send Juan Guillermo's emails to Epiq.
3. On March 18, 2022, Cambridge asked for Epiq's direct contact information, which the Receiver provided. The Receiver noted that Epiq was ready to speak as soon as possible.¹⁴

¹² Email from the Receiver to Cambridge dated March 16, 2022, Brief of Documents, Tab 14

¹³ March 17, 2022 Endorsement, Brief of Documents, Tab 15

¹⁴ Email exchange between Cambridge and the Receiver dated March 18, 2022, Brief of Documents, Tab 16

4. On March 18, 2022, WeirFoulds advised that the earliest date by which it would be available for a meeting with Epiq was likely Tuesday, March 22, 2022. However, the Receiver was not available that day. The Receiver offered Wednesday, March 23, 2022, which was subsequently accepted.¹⁵
5. On March 21, 2022, Cambridge responded to the Receiver's March 18, 2022 email. Through that email, Cambridge connected Epiq with Juan Guillermo's IT consultant (Teel Tech). Later that day, Epiq contacted Teel Tech. Epiq asked Teel Tech to send the passwords to the JG Hard-Drive. In the alternative, Epiq offered to speak via a Teams' videoconference to allow them to give Epiq the passwords to avoid creating an email of the passwords.¹⁶
6. Later, on March 21, 2022, Teel Tech's representative responded to Epiq (copying counsel). He noted that Teel Tech did not have the passwords to the JG Hard-Drive. He said that only Juan Guillermo had the passwords. The Receiver reminded Cambridge and Juan Guillermo's co-counsel, Mr. Brian Greenspan, that Mr. Greenspan was also in possession of Juan Guillermo's passwords (which counsel had confirmed by email on April 30, 2021). The Receiver noted that physical access to the JG Hard-Drive was unnecessary. The passwords could be provided to Epiq alone via videoconference to assuage Juan Guillermo's privacy concerns.¹⁷
7. On March 22, 2022, Cambridge sent an email and attached a letter signed by Teel Tech about "how best to upload" the data and begin the protocol in the October 27, 2020 Order. The Teel Tech letter recommended that Juan Guillermo attend at Epiq's office (along with Teel Tech), where Juan Guillermo "will privately unlock" the JG Hard-Drive. After the data was uploaded, Juan Guillermo would re-lock the JG Hard-Drive or take it with him.¹⁸
8. On March 23, 2022 at 11 am, WeirFoulds, Julio Fabrini (Xela's former IT director and ATS's current Chief Information Officer), Andres and Thomas Gutierrez (Juan Guillermo's sons), the Receiver, and Epiq attended at a videoconference call. Epiq confirmed that it had a secure file transfer protocol ("FTP") and that this was the best, most secure, and most efficient way to receive the emails. ATS and its representatives advised that:
 - a. Juan Guillermo had three email accounts on ATS's servers. The emails for one of those accounts had already been collected. ATS had not started to collect the other two email accounts;

¹⁵ Email exchange between WeirFoulds and the Receiver dated March 18, 2022, Brief of Documents, Tab 17

¹⁶ Email exchange among Cambridge, Teel Tech, the Receiver, and Epiq dated March 21, 2022, Brief of Documents, Tab 18

¹⁷ Email exchange among Cambridge, Mr. Greenspan, Teel Tech, the Receiver, and Epiq dated March 21, 2022, Brief of Documents, Tab 19

¹⁸ Letter and cover email from Cambridge to the Receiver dated March 22, 2022, Brief of Documents, Tab 20

- b. ATS could immediately transfer the one email account via Epiq's secure FTP, and it could begin collecting the other two email accounts; but
 - c. ATS wanted to consult with Juan Guillermo first to see whether Juan Guillermo had any objections to ATS transferring the emails via Epiq's secure FTP.
9. The Receiver advised ATS that there was no basis for it to wait to consult with Juan Guillermo prior to sending the emails. The Receiver asked ATS to send the emails or to advise of its position by 5 pm because it intended to update McEwen J. by the end of the day in accordance with His Honour's request.
10. At 5:01 pm on March 23, 2022, WeirFoulds emailed the Receiver. WeirFoulds said that it was in receipt of the FTP login information from Epiq. However, WeirFoulds was not prepared to send the emails until Juan Guillermo had received legal advice.¹⁹
11. At 5:21 pm on March 23, 2022, the Receiver updated the Court:
 - a. the Receiver noted Juan Guillermo's desire to "privately unlock" the JG Hard-Drive and communicated Epiq's concerns with this approach. The Receiver recommended that Juan Guillermo attend via a videoconference call with Epiq (but with the Receiver absent) to provide the passwords to Epiq. In an effort to assuage Juan Guillermo's concerns, the Receiver agreed to have Epiq re-lock the JG Hard-Drive after the data was uploaded; and
 - b. the Receiver noted that it had a call with ATS and its representatives, wherein ATS confirmed that it could begin to immediately comply with the March 25, 2021 Compliance Order. However, ATS wanted to consult with Juan Guillermo before sending emails through the secure FTP. The Receiver recommended that ATS provide Juan Guillermo's emails to Epiq using the secure FTP.²⁰
12. At 5:40 pm on March 23, 2022, McEwen J. directed the parties and the Receiver to attend before His Honour the next day at 1:30 pm.²¹
13. On March 24, 2022 at 9:22 am, Cambridge advised that they were not available to attend that day. Mr. MacLeod advised that he was waiting to hear from Mr. Greenspan about his availability the next day.²²
14. A case conference was subsequently scheduled for the following day, March 25, 2022, at 10:30 am.

¹⁹ Email from WeirFoulds to the Receiver dated March 23, 2022, Brief of Documents, Tab 21

²⁰ Email from the Receiver to the Court dated March 23, 2022, Brief of Documents, Tab 22

²¹ Email from McEwen J. to the Receiver and parties dated March 23, 2022, Brief of Documents, Tab 23

²² Email from Cambridge to McEwen J. dated March 24, 2022, Brief of Documents, Tab 24

4.0 Allegations against the Receiver

4.1 March 25, 2022 Case Conference

1. On March 25, 2022 at 9:47 am, Cambridge circulated a Case Conference Brief and a notice of motion for injunctive relief. Cambridge made accusations against the Receiver (without evidence). In the Case Conference Brief, Cambridge alleged that:
 - a. the Receiver was “refusing to permit the hard drive to be secured after the data are uploaded to Relativity” (para. 2);
 - b. Juan Guillermo’s only new request (which the Receiver had denied) was to allow him to re-lock the JG Hard-Drive (para. 3);
 - c. the Receiver’s March 23, 2022 email to the Court was a “now-familiar pattern of complaining to the Court” (para. 4);
 - d. the third-party loan from Mr. Volgemut was in the process of clearing “the international banking system” (para. 7);
 - e. the Receiver was complicit in using Juan Guillermo’s data for “illicit purposes” by posting a copy of a purported SWIFT confirmation (from March 2, 2022) that contained “detailed banking information” on the Receiver’s website (para. 8);
 - f. the Receiver’s motion for contempt contains misrepresentations (para. 9); and
 - g. the Receiver is engaged in “ongoing strategic discussions” with the Cousins (para. 10).
2. The Receiver responds to each of these allegations as follows:
 - a. although there was no requirement for the Receiver “to permit the hard drive to be secured after the data was uploaded to Relativity,” the Receiver did offer to re-lock the JG Hard-Drive, as noted in the Receiver’s March 23, 2022 email to the Court, which was an accommodation to try to find a resolution to this issue and alleviate Juan Guillermo’s concerns;
 - b. although the Case Conference Brief stated that Juan Guillermo’s only new request was to allow him to re-lock the JG Hard-Drive, Juan Guillermo had insisted that he attend at Epiq’s office and privately unlock the JG Hard-Drive, and that he perform his own de-duplication as against his emails on ATS’s servers before delivering data to the Receiver. This was inconsistent with any protocol in place and with ensuring the security of the data. Epiq’s concerns about the risks associated with Juan Guillermo’s approach were described to the Court in the Receiver’s March 23, 2022 email;

- c. although Juan Guillermo describes the Receiver's March 23, 2022 email to the Court as a "now-familiar pattern of complaining to the Court" (para. 4), McEwen J. asked for an update within a few days regarding his endorsement issued on March 17, 2022. Following the March, 17 2022 endorsement, the Receiver waited nearly a week before reporting and did not request an attendance. The March 25, 2022 case conference was convened at the request of His Honour;
 - d. there is no direct evidence, sworn or otherwise, that the third-party loan from Mr. Volgemut is in the process of clearing "the international banking system" (para. 7). The Receiver is in possession of a redacted SWIFT confirmation from March 2, 2022. Whether the funding exists or is clearing the international banking system is unknown to the Receiver. No evidence has been provided by Mr. Volgemut as to the reasons for the delay in funding, despite requests by the Receiver to Cambridge for an explanation;
 - e. Juan Guillermo alleges that the Receiver was complicit in using Juan Guillermo's data for "illicit purposes" by posting on the Receiver's website a copy of what Juan Guillermo and his representative say is a SWIFT confirmation that contained "detailed banking information" (para. 8). The Receiver, as an officer of the Court, posts all of its reports and court materials on its website and has done so throughout these proceedings to the knowledge of the parties. The SWIFT confirmation in question was redacted by Juan Guillermo of any detailed banking information;
 - f. the Receiver's motion for contempt contains no misrepresentations to the knowledge of the Receiver. The allegations made here by Juan Guillermo are the same ones made in Juan Guillermo's December 3, 2020 sworn declaration, which the Court ordered him to withdraw (on February 10, 2021) and for which a contempt motion is scheduled for May 30-31, 2022; and
 - g. the Receiver is not engaged in "ongoing strategic discussions" with the Cousins (para. 10). Juan Guillermo has also previously made these allegations. The Receiver addressed this accusation at s. 2.0 of its Third Supplement to the Fourth Report dated March 1, 2021. The Receiver is an officer of the Court, and its duties and obligations in such capacity are well known to it.
3. In addition to the Case Conference Brief, Cambridge sent a notice of motion for injunctive relief, in which Juan Guillermo asked the Court to stay the October 27, 2020 Order, the March 25, 2021 Compliance Order, and "any endorsements made in respect thereof". In addition to the allegations above, Cambridge made further accusations against the Receiver in support of the prayer for relief, including:
- a. there was a "high risk that the [Cousins] will engage in new malfeasance and corporate espionage to try to obtain copies of" the data in Epiq's possession (para. 3(f));
 - b. the Receiver is being funded by the Cousins (para. 3(g)(1));

- c. the Receiver is trying to “prejudice the recovery” of Xela’s assets (in particular, dividends owed to Xela’s wholly-owned, indirect subsidiary, LISA) (para. 3(g)(2)); and
 - d. Mr. Volgemut has “transferred the full amount” necessary to satisfy the Judgment Debt (para. 3(h)).
4. The Receiver responds as follows to these allegations:
 - a. Epiq’s network is secure and not accessible to the Receiver, Cousins, or any other person;
 - b. the Receiver is being funded by the Applicant. The details of that funding have been addressed in the Receiver’s prior Reports;
 - c. the Receiver is conducting an investigation and seeking recovery of assets for the benefits of Xela’s stakeholders;
 - d. no funding has been received from Mr. Volgemut. As reported in the Receiver’s Fifth Report, the promised funding from Mr. Volgemut appears to be insufficient to satisfy the Judgment Debt, related costs, and the payment of other creditors who rank *pari passu* with the Judgment Debt, and accordingly, even if received, appears to be insufficient to discharge the Receiver pursuant to the provisions of the Appointment Order.
5. On March 25, 2022, the Receiver and the parties attended at the case conference. Justice McEwen issued an endorsement in which he stated:
 - a. the case conference was convened by His Honour;
 - b. he considered Juan Guillermo’s notice of motion for injunctive relief. His Honour noted that it “generally speaking, repeats historical complaints” that Juan Guillermo has “raised against the Receiver”;
 - c. Justice McEwen was “not prepared to defer the access/productions any further”. He ordered Juan Guillermo and ATS to follow the recommended method of production as set out in the Receiver’s March 23, 2022 email to the Court; and
 - d. In issuing this endorsement, McEwen J. noted, among other things, that:
 - i. Epiq is accountable to the Court and its proposal is a “sensible and secure manner to secure the passwords and ATS’s documents”;
 - ii. there is “no reasonable basis to suggest that the Receiver has in some way colluded with” the Cousins or that the Cousins “can somehow engage in ‘corporate espionage’ to secure the data that Epiq will secure. [Juan Guillermo], in some fashion or another, for some time has made these allegations without proof”;

- iii. the protocol contained in the October 27, 2020 Order allows Juan Guillermo alone to review the documents and assert any objections to disclosure;
 - iv. His Honour had allowed compliance with His Orders to take a “backseat” to see if funding might materialize. However, several months had passed. Further promises of funding were no basis to grant a stay of Orders made over a year ago. Moreover, a similar argument (of a proposed settlement offer) was made by Juan Guillermo at the March 2021 motion as a basis to avoid production, which His Honour rejected because the offer “was no offer at all”; and
 - v. His Honour had “made no findings of any misconduct against the Receiver” but expressed concerns about Juan Guillermo’s involvement in the criminal complaint against Hatstone (which is the subject of the upcoming contempt motion).
- e. Juan Guillermo was directed to attend a videoconference with Epiq by March 28, 2022 at 5 pm to provide Epiq with the passwords to the JG Hard-Drive. ATS was directed to provide Epiq with Juan Guillermo’s emails using Epiq’s secure FTP by March 28, 2022 at 5 pm.²³

4.2 Motion for a Stay and Motion for Leave to Appeal to the Divisional Court

1. On March 28, 2022 at 4:08 pm, Cambridge served a notice of motion for a stay pending a motion for leave to appeal (the “Stay Motion”). The Stay Motion repeated a number of Juan Guillermo’s allegations in his March 25, 2022 Case Conference Brief and notice of motion for injunctive relief. The notice of motion for the Stay Motion stated that Juan Guillermo would “seek leave to appeal the [March 25, 2022] Endorsement on the question of whether [McEwen J.] erred in ordering compliance” with His Honour’s past Orders by a “particular date and time”.
2. On March 28, 2022 at 4:57 pm, Cambridge advised the Receiver that they had asked the Divisional Court for a date to hear their Stay Motion. They said, “We will not be proceeding with Epiq until this is decided” and asked for the Receiver’s consent to a stay. The Receiver declined to consent to the stay.²⁴
3. On March 29, 2022, Corbett J., of the Divisional Court, advised the parties and the Receiver that McEwen J.’s Orders “**are not stayed pending decision on the stay motion or pending a motion for leave to appeal**”.²⁵
4. Later that morning, on March 29, 2022, Cambridge delivered an affidavit sworn (the day prior) by Juan Guillermo in support of the Stay Motion. In it, Juan Guillermo repeats the accusations noted above.

²³ March 25, 2022 Endorsement, Brief of Documents, Tab 25

²⁴ Email exchange between Cambridge and the Receiver dated March 28, 2022, Brief of Documents, Tab 26

²⁵ Email from the Divisional Court to the Receiver and parties, Brief of Documents, Tab 27

5. On March 31, 2022, Cambridge delivered a notice of motion for leave to appeal to the Divisional Court (the “Leave Motion”). The notice of motion on the Leave Motion seeks leave to appeal the March 25, 2022 endorsement. It is, in essence, identical to the notice of motion on the Stay Motion. The Leave Motion is supported by a new affidavit sworn by Juan Guillermo on March 30, 2022. However, the new affidavit simply adopts his March 28, 2022 affidavit (filed in support of the Stay Motion).

5.0 Funding

1. On March 17, 2022, the Receiver emailed Cambridge to request an update on the status of Mr. Volgemut’s transfer of funds. The Receiver noted that Cambridge, during the case conference that day, had indicated that the funds were being held by an intermediary bank. The Receiver asked for an explanation of the process, as well as any documents to evidence the assertion that funds were being held by an intermediary bank.²⁶
2. As of the date of this Second Supplemental Report, the Receiver has not received a response to this email.
3. Despite this, in his March 28, 2022 affidavit, Juan Guillermo states that the transfer of funds from Mr. Volgemut (which appears to be insufficient to satisfy the Judgment Debt and related costs, as set out in the Receiver’s Fifth Report) “has been significantly delayed [due] to additional compliance and due diligence measures being undertaken by the intermediary bank in the U.S.”. However, despite previously filing two affidavits, Mr. Volgemut has tendered no affidavit since December 1, 2021. Moreover, no evidence was tendered by Juan Guillermo (as an exhibit or otherwise) to corroborate the alleged due diligence efforts by the intermediary bank.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN PERSONAL OR CORPORATE CAPACITY**

²⁶ Email from the Receiver to Cambridge dated March 17, 2022, Brief of Documents, Tab 28

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
---	--

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

**CASE CONFERENCE BRIEF OF THE RECEIVER
(May 20, 2022 Case Conference)**

LENCZNER SLAGHT LLP

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

Peter H. Griffin (19527Q)
Tel: (416) 865-2921
Fax: (416) 865-3558
Email: pgriffin@litigate.com
Monique J. Jilesen (43092W)
Tel: (416) 865-2926
Fax: (416) 865-2851
Email: mjilesen@litigate.com
Derek Knoke (75555E)
Tel: (416) 865-3018
Fax: (416) 865-2876
Email: dknoke@litigate.com

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett
Email: kplunkett@airdberlis.com
Sam Babe
Email: sbabe@airdberlis.com
Tel: (416) 863-1500
Fax: (416) 863-1515

Lawyers for the Receiver