

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

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

Respondents

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

March 16, 2022

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Lawyers for the Receiver

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Respondents

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
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PART I - OVERVIEW

1. All parties seek compliance with the outstanding Orders. The challenge has been that Mr. Gutierrez's emails on the ATS servers (approximately 70 gigabytes of data) are at least partially duplicative of the data on his personal devices, and therefore both sets of data must be reviewed for privileged and personal information in advance of disclosure.¹ The time and expense involved in reviewing such a volume of data (largely in Spanish) is extreme, and Mr. Gutierrez has not been able to secure the Receiver's cooperation to take the basic step of de-duplicating the two sets of data in order to achieve some level of efficiency.

2. At least three times, Mr. Gutierrez has asked the Receiver to supply a duplicate of the image of his personal devices in possession of the Receiver's IT consultant, but the Receiver has flatly refused. Indeed, the Receiver has *never* entertained Mr. Gutierrez's legitimate concerns about his

¹Counsel has referred in the past to 40 gigabytes of data, which inadvertently included only @xela.com emails. When emails with the @arturors.com domain are included, the amount of data on the ATS servers is approximately 70 gigabytes.

privacy. Every time the issue is raised, the Receiver has refused to discuss the matter, and has instead scheduled time before this Court to cast Mr. Gutierrez as uncooperative. That pattern continues, as underscored in the email exchange of March 16, 2022 between Mr. Gutierrez's counsel and counsel for the Receiver, attached hereto at **Tab 4**.

3. The Receiver's discovery strategy in these proceedings has already led to more than a million dollars in fees, all charged to Mr. Gutierrez, without any prospect whatsoever of satisfying the judgment at issue. As noted previously, no rational relationship between the Receiver's examination of the "reviewable transactions" and the potential recovery of funds has ever been articulated. Having recently replenished its funding, the Receiver has now relaunched its strategy by submitting two additional reports that supply no significant new facts but repeat the same inaccurate and incomplete information Mr. Gutierrez has previously clarified and corrected. Placing 70 gigabytes of emails onto a data hosting platform would represent an inordinate amount of additional expense and should be rejected, particularly where, as here, a third-party loan sufficient to satisfy the judgment and all approved expenses is already in transit and is only awaiting clearance of the international banking system.

PART II - OCTOBER 27, 2020 ORDER

4. Paragraph 10 of the October 27, 2020 Order states as follows:

THIS COURT ORDERS that Juan Guillermo, but not the Receiver or its agents, shall have thirty-five (35) days after Duff & Phelps grants Juan Guillermo and his authorized agents access to the Platform to assert any objections to disclosure to the Receiver of any documents on the Platform based on privilege, personal information, or any other reasonable basis (the "**Objections**" or the "**Objections Date**").

5. As indicated at the case conference on March 9, 2022, most (if not all) of the emails on Juan Gutierrez's personal iPhone and iPad are duplicative of some portion of the roughly 70 gigabytes of Mr. Gutierrez's emails on the ATS servers ordered to be produced pursuant to the March 25, 2021 Order.

6. However, the March 25, 2021 Order did not provide for a similar Objections protocol as provided for in the October 27 2020 Order, as the issues on the March 22, 2021 motion focused on whether the email productions should be limited to emails with the domain @xela.com, or should include additional email addresses used by Mr. Gutierrez. The issue of Mr. Gutierrez's personal privilege was not addressed on the motion; only Mr. Gutierrez's ability to assert Xela's privileges had been considered and previously decided by the Court.

7. Counsel for ATS raised this concern with the Receiver's counsel, but the issue was summarily dismissed and instead raised at a case conference. Attached at **Tab 1** is an email chain from September 2021 that shows some of the difficulty engaging in meaningful discussions with the Receiver on the issue.

8. The emails on the ATS server will include privileged communications between Mr. Gutierrez and his counsel relating to, among other things, advice in respect of the motion leading to the March 25, 2021 Order, as well as advice relating to the Receiver's contempt motion. Also on the ATS servers will be numerous emails of a personal nature, wholly unrelated to the receivership proceedings.

9. Thus, turning over the emails on the ATS servers without proper advanced review by Counsel for Mr. Gutierrez, would improperly, and without the requisite safeguards, disclose the same emails contained on Mr. Gutierrez's personal devices, thereby circumventing the protections contained in the Order dated October 27, 2020. During the March 9 case conference, Justice McEwen communicated his expectation that the parties coordinate production of those two universes of emails so that the issue of duplication could be managed appropriately and efficiently, while preserving Mr. Gutierrez's rights.

PART III - DOCUMENT REVIEW PROTOCOL

10. We understand from Philip Cho's email on Friday, attached hereto as **Tab 2**, that ATS has arranged to provide counsel for Mr. Gutierrez with the emails on the ATS servers, which we would plan immediately to compare against the data on Mr. Gutierrez's personal devices in order to identify and eliminate the duplicate emails and accelerate what promises to be, under best conditions, a time consuming and onerous review process.

11. In or around January 7, 2021 Counsel for the Respondent requested a duplicate of the image of Mr. Gutierrez's personal devices, currently in possession of the Receiver's IT consultant. As noted, the Receiver refused to cooperate. The request was repeated again on January 10, 2021, but the Receiver again declined and instead submitted a motion to compel compliance. Had the Receiver been willing to provide a duplicate of the image in its control, this issue could have been resolved in January 2021. The January 2021 correspondence between counsel for the parties is attached hereto at **Tab 3**. The parties became embroiled in motion practice thereafter, and the Receiver subsequently exhausted its funding.

12. We therefore renew our request for a duplicate of the image of Mr. Gutierrez's personal devices, so that we can perform the data de-duplication and begin our review. Counsel for the Respondent has made Mr. Gutierrez and his IT consultant available to the Receiver's IT consultant to coordinate for a duplicate of the image of the personal devices to be made. Attached at **Tab 4** is the correspondence between counsel on that subject.

PART IV - STATEMENT OF THE RELIEF SOUGHT

13. The Respondent seeks direction with respect to the protocol for review of the documents on the ATS servers given the impending contempt motion and the disagreement with respect to how documents should be disclosed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of March, 2022.



Chris Macleod

March 16, 2022

CAMBRIDGE LLP

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Lawyers for the Respondent

Juan Guillermo Gutierrez

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Margarita Castillo

AND TO: **Lenczner Slaght Royce Smith Griffin LLP**
2600 -130 Adelaide Street West
Toronto, Ontario
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Monique Jilesen (LSO 43092W)
mjilesen@litigate.com

Derek Knoke (LSO 75555E)
jknoke@litigate.com

Lawyers for the Receiver

TAB 1

From: [Monique Jilesen](#)
To: [Philip Cho](#)
Cc: [Bobby Kofman](#); [Michael Ly](#); ngoldstein@ksvadvisory.com; [Derek Knoke](#); [Chris Macleod](#); bgreenspan@15bedford.com
Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]
Date: September 26, 2021 4:14:18 PM
Attachments: [image001.png](#)

[External Message]

Philip –

The relief the Receiver sought was clear and the Order is clear. The Company document and devices referred to in the August 2020 Order included Mr. Gutierrez' emails. This fact was squarely before the Court on the March 2021 Order. If a claim for privilege was being made it should have been made on the motion, not after the order was issued. No one has sought any relief from the Order notwithstanding that it has been in place for six months. There is simply no excuse for failing to comply with the Order.

The Receiver will rely on this correspondence to seek full indemnity costs for any future attendances required to enforce this or any other order.

We look forward to receive the payment of costs of the motion tomorrow.

Monique

From: Philip Cho <pcho@weirfoulds.com>
Sent: September 24, 2021 4:06 PM
To: Monique Jilesen <mjilesen@litigate.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Michael Ly <mly@weirfoulds.com>; ngoldstein@ksvadvisory.com; Derek Knoke <DKnoke@litigate.com>; Esther Saint Clair <clair@litigate.com>; Chris Macleod <cmacleod@cambridgellp.com>; bgreenspan@15bedford.com
Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique, I have copied Mr. Macleod and Mr. Greenspan as this issue primarily concerns their client.

You are referring to a passage of the ATS factum that set out some of the facts from April 2020 - not something that was at issue and argued before Justice McEwen. The August 28, 2020 order deals with the ability to make claims of privilege against the Receiver over Company documents and devices.

As I understand, the current issue that has been raised is in relation to Mr. Gutierrez's personal privilege claims over emails that are not necessarily Xela documents but to which the Receiver may be entitled. This issue was not expressly raised before Justice McEwen and nothing in the order or the endorsement expressly states that the Receiver is entitled to solicitor-client privileged communications. Particularly in relation to the @Arturos.com emails which would include all of Mr. Gutierrez's emails with his counsel Mr. Greenspan and Mr. Macleod, I cannot see how the Receiver would believe it is entitled to unfettered access to those communications, and why it would undertake this risk without certainty and express authorization.

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

WeirFoulds LLP

From: Monique Jilesen <mjilesen@litigate.com>

Sent: September 24, 2021 3:15 PM

To: Philip Cho <pcho@weirfoulds.com>

Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Michael Ly <mly@weirfoulds.com>; ngoldstein@ksvadvisory.com; Derek Knoke <dknoke@litigate.com>; Esther Saint Clair <eclair@litigate.com>

Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

[External Message]

Philip,

ATS made the very argument you are now making on the March 22, 2201 motion and did not succeed. Paragraph 15 of your factum in support of the motion says "Juan expressed concern that the servers could contain solicitor-client privileged information and other confidential and protectible information, requiring some review before delivery to the Receiver."

Justice McEwen said in his endorsement "The August 28, 2020 order (which was made on notice to ATS, but ATS did not appear) provided, inter alia, that the Receiver be entitled to conduct forensic examinations of Xela devices, and that no privilege claims could be asserted in respect of any Xela documents or devices. "

You sought leave to appeal the order and did not succeed. The issue has been repeatedly finally determined. ATS is in repeated breach of the various orders of the Court. There is no absolutely no basis for failing to comply with the March 25, 2021 Order.

Regards,

Monique Jilesen

From: Philip Cho <pcho@weirfoulds.com>
Sent: Friday, September 24, 2021 2:36 PM
To: Monique Jilesen <mjilesen@litigate.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Michael Ly <mly@weirfoulds.com>;
ngoldstein@ksvadvisory.com; Derek Knoke <dknoke@litigate.com>; Esther Saint Clair
<eclair@litigate.com>
Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique, I do not believe the issue of Mr. Guitierrez's privilege on the emails was addressed on the motion. Can you point to where in the endorsement it was addressed?

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

WeirFoulds LLP

From: Monique Jilesen <mjilesen@litigate.com>
Sent: September 24, 2021 2:31 PM
To: Philip Cho <pcho@weirfoulds.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Michael Ly <mly@weirfoulds.com>;
ngoldstein@ksvadvisory.com; Derek Knoke <dknoke@litigate.com>; Esther Saint Clair
<eclair@litigate.com>
Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

[External Message]

Mr. Cho –

The clear direction of the Court is in the order. Claims of privilege were made on the motion. The Court nevertheless ordered that the emails should be produced. No relief has been sought from the order. ATS' continuing failure to produce the emails in accordance with the order is a breach of the order.

Regards,

Monique Jilesen

From: Philip Cho <pcho@weirfoulds.com>
Sent: Friday, September 24, 2021 2:21 PM
To: Monique Jilesen <mjilesen@litigate.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Michael Ly <mly@weirfoulds.com>;
ngoldstein@ksvadvisory.com; Derek Knoke <dknoke@litigate.com>; Esther Saint Clair
<eclair@litigate.com>
Subject: RE: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique, I am advised that the other set of emails to and from Juan Gutierrez at the @arturos.com email address have been compiled for the Receiver. I am also advised that apart from the @xela.com and @arturos.com emails, no other email addresses for Mr. Gutierrez are on the ATS servers.

As you know, Mr. Macleod's client has asserted privilege claims over some of the emails in ATS' possession. The case conference was requested to deal specifically with this issue as we understood from your July 30, 2021 email, and in the email exchange between you and Mr. Macleod on August 3, 2021 (copies attached). However, you did not inform Justice McEwen of this issue as the reason for the delay in providing this information to the Receiver. As a result, these issues were not addressed at the case conference as anticipated and much time was spent dealing with the contempt hearing and the Receiver's lack of funding instead. Given the privilege claim made by Mr. MacLeod and his client, ATS is not prepared to release these emails to the Receiver and breach another party's privilege without further clear direction from the court.

I have reminded my client about the costs award and the timing.

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

WeirFoulds LLP

From: Esther Saint Clair <eclair@litigate.com>
Sent: September 21, 2021 4:12 PM
To: Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; ngoldstein@ksvadvisory.com; Monique Jilesen
<mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Subject: Xela Enterprises Ltd. [DM-LSDOCS.FID727411]

[External Message]

Good afternoon. Please see the attached correspondence from Monique Jilesen.

Assistant to William McDowell, Monique Jilesen and 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

TAB 2

From: [Philip Cho](#)
To: [Monique Jilesen](#); [Chris Macleod](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Michael Ly](#)
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: March 11, 2022 5:16:19 PM
Attachments: [image001.png](#)

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

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

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

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

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

WeirFoulds LLP

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

[External Message]

Counsel,

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

Monique



Monique Jilesen*

pronouns: she/her

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M 416-407-5034

F 416-865-2851

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

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

TAB 3



From: Monique Jilesen <mjilesen@litigate.com>

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

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

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: RE: Followup and Affidavit

Chris,

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

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

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

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

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

Thanks

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 7, 2021 10:39 AM

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

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Followup and Affidavit

Derek and Monique-

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

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

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

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

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

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

Regards,
Chris

--

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

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 10, 2021 1:49 PM

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

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Follow-up

Monique-

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

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

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

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

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

Regards,
Chris

--

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

TAB 4

From: [Chris Macleod](#)
To: [Monique Jilesen](#); [Joan Kasozi](#); [Philip Cho](#); [Brian Greenspan](#); mly@weirfoulds.com
Cc: [Derek Knoke](#)
Subject: Xela [DM-LSDOCS.FID727411]
Date: March 16, 2022 1:37:53 PM
Attachments: [image001.png](#)

Hi Monique-

There should be no confusion. To be clear, the personal devices contain emails that are duplicated in the data on the ATS servers. We propose to de-duplicate the data so that we don't waste additional time and resources reviewing the same data twice. This requires you to allow us to take a duplicate of the image, which -after all - is Mr. Gutierrez's own data. There is no rational basis to object to our request.

The fact that the Receiver is unwilling to discuss the issue with us is disconcerting. It represents a pattern of conduct by the Receiver that is inconsiderate of Mr. Gutierrez's privacy rights and has the effect of significantly increasing costs. We again ask you to reconsider and assist us to ensure that we minimize the burden and expense of what is already a severely burdensome (not to mention questionable) discovery exercise.

Regards,

Chris

From: Monique Jilesen <mjilesen@litigate.com>
Date: Wednesday, March 16, 2022 at 9:45 AM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasoz@cambridgellp.com>, Brian Greenspan <bhg@15bedford.com>, Philip Cho <pcho@weirfoulds.com>, "mly@weirfoulds.com" <mly@weirfoulds.com>
Cc: Derek Knoke <dknoke@litigate.com>
Subject: RE: Xela [DM-LSDOCS.FID727411]

Hi Chris –

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

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Wednesday, March 16, 2022 9:39 AM
To: Monique Jilesen <mjilesen@litigate.com>; Joan Kasozi <jkasoz@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; mly@weirfoulds.com
Cc: Derek Knoke <dknoke@litigate.com>
Subject: Re: Xela [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique-

We assumed it was obvious that Mr. Gutierrez would temporarily unlock the hard drive so that a duplicate could be made of the image. David Burton, Mr. Gutierrez's IT consultant, will accompany Mr. Gutierrez to the Epiq offices (or wherever the image may currently be located) and make the copy under Epiq's supervision. Mr. Gutierrez will then re-lock the image, leaving it with Epiq, and will retain the duplicate image for purposes of running a de-duplication against the ATS data.

Messrs. Gutierrez and Burton are available any time on Thursday, or alternatively early next week. Please have your IT consultant coordinate the place and time directly with Dave, who can be reached at dave.burton@teeltechcanada.com. We would appreciate being on copy.

Regards
Chris

From: Monique Jilesen <mjilesen@litigate.com>

Date: Monday, March 14, 2022 at 8:58 AM

To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, Brian Greenspan <bhg@15bedford.com>, Philip Cho <pcho@weirfoulds.com>, "mly@weirfoulds.com" <mly@weirfoulds.com>

Cc: Derek Knoke <dknoke@litigate.com>

Subject: RE: Xela [DM-LSDOCS.FID727411]

Hi Chris –

To be clear, we cannot provide you with an image of the devices without the password. It is also entirely unclear to us why the review for privilege of Mr. Gutierrez' devices can't or shouldn't be completed in accordance with the privilege protocol set out in the order. If you provide the password, we can ask Epiq move immediately to get the database set up for your review. That is what the order provides.

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: Monday, March 14, 2022 7:54 AM

To: Monique Jilesen <mjilesen@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; mly@weirfoulds.com

Cc: Derek Knoke <dknoke@litigate.com>

Subject: Xela [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique-

As we indicated at the last case conference, most (if not all) of the emails on Juan Gutierrez's personal iPhone and iPad are duplicative of the roughly 40 gigabytes of @arturos.com emails on the ATS servers. Consequently, turning over the emails on the ATS servers without proper advance review by Mr. Gutierrez's legal team would expose the same emails contained on Mr. Gutierrez's personal devices, thereby circumventing the protections contained in the Order dated October 27, 2020. Justice McEwen expressed the expectation that we coordinate production of those two universes of emails so that the issue of duplicates could be managed appropriately and efficiently, while preserving Mr. Gutierrez's rights.

We understand from Philip Cho's email on Friday that ATS will be providing us with the @arturos.com emails, which we would plan immediately to compare against the data on Mr. Gutierrez's personal devices in order to eliminate the duplicate emails and accelerate what promises to be, under best conditions, a significant review process. Accordingly, we renew our request for a duplicate of the image of Mr. Gutierrez's personal devices, so that we can perform the data comparison and begin our review. We suggest that Epic contact our IT expert, Bob Elder, to coordinate a time early this week to duplicate the image for us. Bob can be reached at bob.elder@teeltechcanada.com. We would appreciate being on copy.

Regards,
Chris

From: Monique Jilesen <mjilesen@litigate.com>
Date: Friday, March 11, 2022 at 11:59 AM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, Brian Greenspan <bhg@15bedford.com>, Philip Cho <pcho@weirfoulds.com>, "mly@weirfoulds.com" <mly@weirfoulds.com>
Cc: Derek Knoke <dknoke@litigate.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>, "bkofman@ksvadvisory.com" <bkofman@ksvadvisory.com>
Subject: Xela [DM-LSDOCS.FID727411]

Counsel,

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

Monique



[Monique Jilesen](#)*

pronouns: she/her

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

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

March 9, 2022

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

SENT VIA EMAIL TO: MJILESEN@LITIGATE.COM

Ms. Monique Jilesen

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

SENT VIA EMAIL TO: DKNOKE@LITIGATE.COM

Mr. Derek Knoke

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

Dear Counsel:

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

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

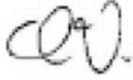
For your convenience, we attach the email correspondence from January 2021 where this request had been made but refused, as you indicated that you could not recall whether this had been requested before.

We look forward to your prompt response.

Yours very truly,

CAMBRIDGE LLP

Per:

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

CHRISTOPHER MACLEOD

CRM/am

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

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