

**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 25, 2022

CAMBRIDGE LLP
333 Adelaide Street West
4th Floor
Toronto, Ontario
M5V 1R5

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Lawyers for the Receiver

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QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ
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**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

1. The Court's Orders call for Mr. Gutierrez to permit the data on his personal devices to be uploaded to a Relativity platform hosted by Epiq, the IT consultant engaged by the Receiver. The data is to be reviewed on that platform solely by Mr. Gutierrez and his counsel, and any production issues are to be resolved by this Court in advance of any disclosure to the Receiver. Once uploaded to the Relativity platform, the Court will have the ability to resolve any disputes and, where appropriate, order Epiq to provide disclosure to the Receiver without any further digital locking mechanism in place. However, no additional copies of the data on the hard drive are permitted pursuant to the Order.

2. The Receiver is refusing to permit the hard drive containing the image of Mr. Gutierrez's personal devices to be secured after the data are uploaded to Relativity, thereby subjecting the data remaining on the hard drive – which is highly sensitive – to an unwarranted security risk, without

any justification. There is no rational basis to refuse a request to re-lock the hard drive after the data is uploaded to the Relativity platform and under Epiq's control.

3. Promptly after the last case conference on March 17, 2022, Teel Tech Canada (“TTC”) – Mr. Gutierrez’s IT consultant – engaged with Epiq to suggest a protocol for Mr. Gutierrez to unlock the hard drive to permit the data to be uploaded to Epiq’s Relativity platform under TTC’s supervision, whereafter Mr. Gutierrez would re-lock the hard drive to safeguard the data while the hard drive remained in Epiq’s possession. Once uploaded to Relativity, any data from Mr. Gutierrez’s personal devices determined by this Court to be subject to disclosure would be fully accessible by Epiq for delivery to the Receiver. The *only* new assurance requested by TTC was that the sensitive personal data remaining on the hard drive after the upload process was complete would not be exposed to risk of loss or compromise, either: (a) by allowing Mr. Gutierrez to re-lock the hard drive, leaving it with Epiq; or (b) by allowing Mr. Gutierrez to take the hard drive with him. A complete copy of the imaged data, however, would remain under Epiq’s control in the Relativity database. Copies of the relevant email communications are attached collectively at Tab 1. A copy of TTC’s proposal for ensuring the security of the data remaining on the hard drive after the upload is attached at Tab 2.

4. Before providing a response to TTC’s proposal, and without any attempt to discuss the substance of the TTC proposal, or even to acknowledge the legitimacy of Mr. Gutierrez’s privacy concerns, the Receiver’s counsel followed its now-familiar pattern of complaining to the Court. Subsequently, at 7:13pm on March 23, 2022 – well after the Receiver’s counsel reported Mr. Gutierrez’ purported non-compliance – Epiq rejected the TTC proposal on the grounds that COVID concerns precluded Mr. Gutierrez from appearing physically to unlock the hard drive,

supervise the upload to Relativity, and re-lock the hard drive. No counter-proposal was made to address Mr. Gutierrez's security concerns. A copy of the Epiq response is attached as Tab 3.

5. The Receiver has employed similarly heavy-handed tactics with ATS. Mid-morning on Wednesday, March 23, 2022, counsel for ATS met with the Receiver's counsel, as they had agreed in advance. Counsel for Mr. Gutierrez was not present. During that meeting, they discussed a suitable protocol for the transfer of the @xela.com and @arturos.com emails on the ATS servers to Epiq, for upload to Epiq's Relativity platform. Because the emails are subject Mr. Gutierrez' privilege claims, ATS promptly notified Mr. Gutierrez's counsel of Epiq's proposed methodology for the transfer. Mr. MacLeod did not receive that communication until the end of the business day on Wednesday, owing to attendance at a funeral. Before he could even discuss the issue with Mr. Gutierrez, the Receiver's counsel reported to the Court that ATS was non-compliant with the production Order. All of the foregoing occurred within the span of a single day.

6. The manner in which the Receiver reported these events to the Court brings into focus the Receiver's continuous pattern of biased reporting of the facts to this Court in order to cast Mr. Gutierrez as non-cooperative. The Receiver supplied none of the foregoing context to this Court, which should give rise to serious questions about this Receiver's objectivity and suitability for the role.

7. The Receiver's cavalier attitude toward Mr. Gutierrez's privacy rights, as described herein, is cause for grave concern that his digital data might be compromised for illicit purposes, and that no protocol calling for them to be maintained on a platform fully accessible to the Receiver's agent is adequate to protect them. Those concerns have been exacerbated this week by advancements in the criminal proceedings against the Majority Shareholders in Panama relating to the alleged theft

of the unpaid dividends, such that Mr. Gutierrez is submitting concurrently herewith a motion for interlocutory injunction to temporarily suspend the Receiver's discovery efforts in order to safeguard Mr. Gutierrez's data while the third-party loan from Mr. Volgemut clears the international banking system.


8. In light of these recent developments, Mr. Gutierrez believes it important to highlight for the Court that following the Receiver's posting of a copy of the SWIFT confirmation of the most recent wire transfer of funds sufficient to pay out substantially all amounts owing, the third-party lender was subject to lengthy questioning and compliance checks resulting in the present delay to the flow of funds. There is no reason for the Receiver to have posted this detailed banking information on its website, particularly when the identity of the lender had been made public when an affidavit had been filed to demonstrate the good faith efforts being made by Mr. Gutierrez to pay the Judgment which the Receiver is appointed to enforce.

9. Perhaps the clearest example of misrepresentation is the manner in which the Receiver reported Mr. Gutierrez's sworn statement to the Prosecutor in Panama. While Mr. Gutierrez's affirmation that he had not authorized a Gabinvest shareholder meeting might have inadvertently run afoul of the Receiver's Appointment Order, the Receiver completely omitted the relevant context, which is that the Receiver had authorized counsel in Panama to engage in conduct that resulted in the submitting of inaccurate information to the Public Registry, while knowing that the Receiver's appointment and authority had not been recognized in Panama. Neither should it be forgotten that the instruction had the effect of preventing a third-party loan commitment from funding, which would have satisfied the Castillo judgment and all authorized receivership costs in January 2020. Far from engaging in activities to collect funds to satisfy the judgment herein, the Receiver's strategy is seemingly to prevent the receivership from being discharged.

10. Similarly, the Receiver’s reports have failed to acknowledge the influence in these proceedings of the decades-long multi-jurisdictional dispute over the non-payment of hundreds of millions of U.S. dollars in dividends owed to LISA. Neither has the Receiver acknowledged the relationship between Ms. Castillo – who instructs the Receiver – and the majority shareholders who have improperly withheld those dividends (the “**Majority Shareholders**”), or the role Ms. Castillo has played in helping the Majority Shareholders avoid payment. Indeed, Ms. Castillo herself supplied stolen documents from Xela’s computer servers to the Majority Shareholders some ten years ago by attaching them wholesale to the complaint that led to this judgment, which documents were then used by the Majority Shareholders as a foundation for baseless, fig-leaf lawsuits in Guatemala to delay the payment of the dividends, which lawsuits have only recently been resolved. Billing records submitted by the Receiver reflect ongoing strategic discussions between the Receiver’s counsel and lawyers for those same Majority Shareholders, but the Receiver has made no effort to provide this Court with any rational basis for such coordination.

11. In all of the circumstances, Mr. Gutierrez submits that no data should be uploaded to Relativity pending a determination of his motion for urgent injunctive relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of March, 2022.



Chris MacLeod

March 25, 2022

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4th Floor
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AND TO: Lenczner Slaght Royce Smith Griffin LLP
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Toronto, Ontario
M5H 3P5

Monique Jilesen (LSO 43092W)
mjilesen@litigate.com

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

Lawyers for the Receiver

TAB 1

From: [Derek Knoke](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:Bobby.Kofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:Noah.Goldstein@ksvadvisory.com); [Monique Jilesen](#); [Sarah Millar](#); [Grygier, David](#); [Burt-Gerrans, Harold](#)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 21, 2022 3:34:51 PM
Attachments: [image001.png](#)
[Re Margarita Castillo v. Xela Enterprises Ltd. et al - file # 31421 LS-LSDOCS.FID635496.msg](#)

Chris and Brian,

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

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

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

Derek

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

EXTERNAL MESSAGE

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

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

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

Sincerely,

Bob

Bob Elder

CEO

Teel Technologies Canada

bob.elder@teeltechcanada.com

www.teeltechcanada.com

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

Partner

Sanderson Forensics

<https://sqliteforensictoolkit.com/>

bob.elder@sandersonforensics.ca

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

Office: 250-893-6125

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

Detective Constable (Retired) - Victoria Police Department

From: Chris Macleod <cmacleod@cambridgellp.com>

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

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

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

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

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

Chris

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

Hi Chris,

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

Derek

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

EXTERNAL MESSAGE

Derek-

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

Regards,
Chris

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

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

Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

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

Derek



Derek Knoke*

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

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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.

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From: [Chris Macleod](#)
To: [Derek Knoke](#); [Joan Kasozi](#); [bgreenspan@15bedford.com](#)
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](#); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](#)
Subject: Re: Passwords [DM-LSDOCS.FID727411]
Date: March 18, 2022 9:38:34 AM
Attachments: [image001.png](#)

Derek-

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

Regards,
Chris

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

Chris,

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

Derek



Derek Knoke*

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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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TAB 2

From: [Chris Macleod](#)
To: [Derek Knoke](#); [Monique Jilesen](#); [Brian Greenspan](#); [Philip Cho](#); [Joan Kasozi](#)
Subject: Letter
Date: March 22, 2022 8:21:18 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[TTC Secured Drives.pdf](#)

Monique and Derek-

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

Regards,
Chris

Chris Macleod

Partner, Cross-Border Litigation & Business Litigation Groups

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www.teeltechcanada.com
bob.eder@teeltechcanada.com

To Whom it may concern:

March 21, 2022

RE: Reccommdations for uploading secure data to Relativity:

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

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

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

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

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

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

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

Sincerely Yours,

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

Bob Elder – CEO

Teel Technologies Canada

TAB 3

From: [Joan Kasozi](mailto:Joan.Kasozi)
To: [Joan Kasozi](mailto:Joan.Kasozi)
Subject: FW: Transfer of data to Epiq from Mr. Juan Gutierrez
Date: March 24, 2022 10:21:12 PM
Attachments: [image001.png](#)

From: dave.burton@teeltechcanada.com
Date: March 23, 2022 at 7:36:44 PM EDT
To: Chris Macleod <cmacleod@cambridgellp.com>
Subject: Fwd: Transfer of data to Epiq from Mr. Juan Gutierrez

Hi Chris,

I just received this from David Grygier from Epiq.

It appears that they have no intention of allowing us to attend their offices at this time.

Regards,

Dave Burton
dave.burton@teeltechcanada.com



Begin forwarded message:

From: "Grygier, David" <David.Grygier@epiglobal.ca>
Subject: RE: Transfer of data to Epiq from Mr. Juan Gutierrez
Date: March 23, 2022 at 7:13:17 PM EDT
To: "dave.burton@teeltechcanada.com"
<dave.burton@teeltechcanada.com>
Cc: DL-LNZ0005 <LNZ0005@epiglobal.com>

Hi Mr. Burton,

It is Epiq's position and the position of the Receiver that the passwords can be provided to Epiq via videoconferencing call as initially suggested to your client. A physical attendance at Epiq's office is neither recommended nor available at this time for a number of reasons. The Receiver has advised the judge of those reasons, and the judge has directed counsel to attend tomorrow at 1:30, where we expect to receive further direction.

If a further response from me is necessary following the court attendance

tomorrow, I will reach out to you then.

Thank you,

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

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

People. Partnership. Performance.
www.epiqglobal.com

From: dave.burton@teeltechcanada.com <dave.burton@teeltechcanada.com>

Sent: March 23, 2022 5:43 PM

To: Grygier, David <David.Grygier@epiqglobal.ca>

Subject: Transfer of data to Epiq from Mr. Juan Gutierrez

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

Hi Mr. Grygier,

I just wanted to follow up with you about Mr. Gutierrez and myself attending Epiq offices to facilitate the transfer of data. As I stated in my email on the 22nd March, I have previously arranged commitments both tomorrow and Friday and will be unavailable. Perhaps we can speak on Monday to arrange something for possibly Tuesday or Wednesday of next week? Unfortunately I leave Thursday morning for a short trip not returning until the weekend, so if next week does not accommodate your schedule we can look toward the future.

Please let me know the best way to reach you so we can speak Monday, if this is convenient.

Regards,

Dave Burton
dave.burton@teeltechcanada.com



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