

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

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

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

Respondents

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

**COSTS OUTLINE**

The Court-appointed Receiver, KSV Restructuring Inc., provides the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

	<b>Partial Indemnity</b>	<b>Substantial Indemnity</b>	<b>Actual Rate</b>
Fees and HST (as detailed below)	116,263.10	174,393.92	193,726.07
Disbursements and HST (see Schedule "A" attached)	1,310.95	1,310.95	1,310.95
Estimated Attendance Fee (4 hrs, 2 lawyers)	3,612.00	4,816.00	6,020.00
<b>TOTAL</b>	<b>\$121,186.05</b>	<b>\$180,520.87</b>	<b>\$201,057.02</b>

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- The amount claimed and the amount recovered in the proceeding

N/A – the Receiver sought compliance with prior court orders.

The Receiver was appointed in respect of a judgment debt in the amount of \$5,083,866.04. There are other stakeholders with claims against Xela. No amounts have been recovered to-date in the receivership proceedings.

- The complexity of the proceeding

Xela has many subsidiaries in multiple jurisdictions (Panama, Guatemala, Barbados, and Venezuela, among others). Xela's multi-jurisdictional, corporate structure has been used to prevent the Receiver from accessing Xela's records and property.

The Receiver has had to respond to a criminal complaint in Panama against its Panamanian counsel, Hatstone. The sole evidence filed in support of the complaint was the sworn declaration of Juan Guillermo Gutierrez ("**Juan Guillermo**"). Despite a February 10, 2021 Court Order requiring Juan Guillermo and his brother-in-law to withdraw the declaration and the complaint, the criminal complaint was affirmed by a petition filed April 9, 2021. Subsequently, Juan Guillermo volunteered to be interviewed by the Panamanian public prosecutor. The interview occurred on December 14, 2021. It appears that Juan Guillermo re-affirmed much of the content of his sworn declaration (which this Court ordered him to withdraw) during that interview.

Juan Guillermo and Arturo's Technical Services Ltd. ("**ATS**") have delayed or avoided compliance with Court Orders by making numerous, repeated promises of imminent funding. Their repeatedly unfulfilled promises led to seven court attendances over several months. As of the present date, the funding has not been provided. Juan Guillermo continues to suggest that the funding is coming.

- The importance of the issues

Compliance with Court Orders (in this case, Court Orders made approximately one year ago) goes to the integrity of the administration of justice and the rule of law. As of the present date, compliance remains outstanding. The Receiver's IT agent, Epiq Global, still cannot access the image of Juan Guillermo's devices (which were imaged in January 2021), and ATS has not produced any of Juan Guillermo's emails for the period until March 25, 2021 (as required by the March 25, 2021 Order).

The liberty of the court-appointed agents in Panama (members of Hatstone) remains at risk because of Juan Guillermo's disregard for Court Orders.

There is an outstanding judgment owing to the Applicant which led to the making of the Appointment Order, as well as significant amounts owing to other stakeholders of Xela. Xela's principal asset is its indirectly owned interest in the Avicola Group, which has been estimated in these receivership proceedings to be worth over \$400 million by Juan Guillermo. A key issue in these proceedings is determining whether Xela's interest in the Avicola Group was transferred for less than fair value to BDT Investments Inc. and Corporacion Arven, Limited, which entities are owned by a trust, the beneficiaries of which are Juan Guillermo's wife, Juan Guillermo's mother, and Juan Guillermo's children.

- The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

The Receiver has encountered numerous complications and received little assistance from Juan Guillermo, his sons, ATS, or any of Xela’s subsidiaries.

- The Receiver obtained four production orders (dated July 5, 2019; August 28, 2020; October 27, 2020; and March 25, 2021), none of which have yet been complied with. Efforts to effect compliance have substantially increased the costs of the Receivership.

Juan Guillermo and those associated with him have hindered and interfered with every attempt by the Receiver to access information, such that the costs of the proceedings are a direct result of non-compliance.

- Whether any step in the proceeding was improper, vexatious, or unnecessary or taken through negligence, mistake or excessive caution

Juan Guillermo, with the support of ATS, promised that funding (sufficient to discharge the Receiver) was imminent. Those promises were repeated over six months at seven court attendances. As of the present date, the funding has not been provided. Juan Guillermo continues to suggest that the funding is coming.

Juan Guillermo and ATS continue to disregard the Court Order dated March 25, 2021, despite this Court’s affirmation of that Order in recent endorsements made in March 2022.

- A party’s denial of or refusal to admit anything that should have been admitted

Juan Guillermo asserts privilege over his emails on ATS’s servers, and ATS refuses to produce Juan Guillermo’s emails because of Juan Guillermo’s assertion of privilege. However, Juan Guillermo and ATS made this argument about privilege in March 2021 (which this Court rejected when it issued its March 25, 2021 Order) and made this argument again to the Divisional Court in their motion for leave to appeal (which the Divisional Court rejected when it issued its July 9, 2021 Order). Juan Guillermo’s and ATS’s refusal to admit that this Court and the Divisional Court have already dealt with assertions of privilege constitutes a refusal to admit something that should be admitted.

- The experience of the party’s lawyer

Monique J. Jilesen, Called to the Ontario Bar in 2000  
 Sarah G. Millar, Called to the Ontario Bar in 2003  
 Derek N. Knoke, Called to the Ontario Bar in 2018  
 Grace Tsakas, Law Clerk  
 Christina Shiels-Singh, Law Clerk  
 Maddie Andrew Gee, Law Student

- The hours spent, the rates sought for costs and the rate actually charged by the party’s lawyer

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE		SUBSTANTIAL INDEMNITY RATE		FULL RATE	
			/hr	Total	/hr	Total	/hr	Total
	Monique J. Jilesen	7.4 hrs	\$558	4,129.20	\$837	6,193.80	\$930	6,882.00

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE		SUBSTANTIAL INDEMNITY RATE		FULL RATE	
			/hr	Total	/hr	Total	/hr	Total
Tasks related to seeking compliance with Court Order	Sarah G. Millar	0.8 hrs	\$393	314.40	\$590	471.60	\$655	524.00
	Derek N. Knoke	18.1 hrs	\$273	4,941.30	\$410	7,411.95	\$455	8,235.50
	Christina Shiels-Singh, Law Clerk	1.9 hrs	\$219	416.10	\$329	624.15	\$365	693.50
	Maddie Andrew Gee, Law Student	4.9 hrs	\$168	823.20	\$252	1,234.80	\$280	1,372.00
Tasks related to responding to promised funding	Monique J. Jilesen (2021)	7.0 hrs	\$558	3,906.00	\$837	5,859.00	\$930	6,510.00
	Monique J. Jilesen (2022)	5.4 hrs	\$591	3,191.40	\$887	4,787.10	\$985	5,319.00
	Derek N. Knoke (2021)	16.0 hrs	\$273	4,368.00	\$410	6,552.00	\$455	7,280.00
	Derek N. Knoke (2022)	13.5 hrs	\$312	4,212.00	\$468	6,318.00	\$520	7,020.00
	Christina Shiels-Singh, Law Clerk (2021)	1.7 hrs	\$219	372.30	\$329	558.45	\$365	620.50
	Christina Shiels-Singh, Law Clerk (2022)	1.7 hrs	\$225	382.50	\$338	573.75	\$375	637.50
Tasks related to reporting to Court about promised funding and compliance with Court Order	Monique J. Jilesen	2.6 hrs	\$591	1,536.60	\$887	2,304.90	\$985	2,561.00
	Sarah G. Millar	5.1 hrs	\$450	2,295.00	\$675	3,442.50	\$750	3,825.00
	Derek N. Knoke	44.7 hrs	\$312	13,946.40	\$468	20,919.60	\$520	23,244.00
	Grace Tsakas, Law Clerk	22.0 hrs	\$210	4,620.00	\$315	6,930.00	\$350	7,700.00
	Christina Shiels-Singh, Law Clerk	0.8 hrs	\$225	180.00	\$338	270.00	\$375	300.00
Tasks related to all sections noted above completed by the Receiver	Robert Kofman	59.45 hrs	\$459	27,287.55	\$689	40,961.05	\$765	45,479.25
	Noah Goldstein	60.75 hrs	\$397	24,117.75	\$595	36,146.25	\$661	40,155.75
	Emily Klein	7.7 hrs	\$240	1,848.00	\$360	2,772.00	\$400	3,080.00
Subtotal				102,887.70		154,330.90		171,439.00
HST (13%)				13,375.40		20,063.02		22,287.07
				<b>\$116,263.10</b>		<b>\$174,393.92</b>		<b>\$193,726.07</b>

\* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

See Schedule "A" to the Costs Outline regarding disbursements.

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: March 22, 2022



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Lawyers for the Receiver

TO: **THE SERVICE LIST**

**SCHEDULE "A"**  
**DISBURSEMENTS**

<b>ITEM</b>	<b>CHARGE</b>
Online Searches Fees	504.87
Process Server Fees	487.50
eDiscovery Data Processing and Hosting Fees	167.76
<b>TOTAL DISBURSEMENTS</b>	1,160.13
HST at 13%	150.82
<b>TOTAL</b>	<b>\$1,310.95</b>

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-and-

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

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SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**COSTS OUTLINE OF THE RECEIVER**

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