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

***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.

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## TABLE OF CONTENTS

**Page No.**

## PART I - OVERVIEW

1. This is a motion by AlixPartners Restructuring, formerly KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela Enterprises Ltd. ("**Xela**") for an order:

(a) Approving a sale process to cancel the existing issued and outstanding shares of Xela and to issue new shares (the "**Shares**") of Xela (the "**Sale Process**");

(b) Approving the reports of the Receiver and the actions described in them;

(c) Approving the fees and disbursements of the Receiver and its legal counsel, Lenczner Slaght LLP and Aird & Berlis LLP, for the periods referenced in their respective fee affidavits; and

(d) Prohibiting Juan Guillermo Gutierrez ("**Juan Guillermo**") from making submissions in respect of the relief sought in this motion because of his failure to pay four costs awards and his failure to post security for costs.

2. The Receiver seeks to market and sell the Shares and to provide them to the successful purchaser through a reverse vesting order ("**RVO**") structure.

3. Since its appointment by this Court in July 2019 (the "**Appointment Order**"), the Receiver has undertaken extensive efforts to gain access to Xela's records, to investigate potentially reviewable transactions, and to address the contempt of Juan Guillermo.

4. Juan Guillermo has consistently frustrated the process, including through baseless allegations, contemptuous behaviour, a refusal to comply with costs orders, and by engaging in the potentially reviewable transactions, which had the effect of transferring all value out of Xela for the benefit of his family.

5. In addition, the receivership has been frustrated by the lack of funding. The outstanding fees of the Receiver and its counsel have remained unpaid for over a year with no apparent prospect for any further funding.

6. The Sale Process is fair, reasonable, and appropriate in the circumstances, and it reflects the limited universe of potential purchasers, the apparent absence of further funding, and the nature of Xela's remaining assets. It is the only practical means by which the Receiver can conclude these proceedings.

7. Juan Guillermo's opposition to this motion, relying upon allegations that have been repeatedly dismissed by the Court, is a collateral attack and an abuse of process and should not be permitted. In addition, Juan Guillermo has over $700,000 in unpaid costs in this proceeding, comprising four separate costs awards spanning from 2022 to 2024. On that basis alone, he should not be heard on this motion.

## PART II - SUMMARY OF FACTS

### A. BACKGROUND

8. On January 18, 2011, Margarita Castillo ("**Margarita**") commenced a court application against Xela and her brother, Juan Guillermo, among others.[1]

9. On October 28, 2015, the Court granted judgment in Margarita's favour (the "**Judgment Debt**"). Xela and Juan Guillermo were jointly and severally ordered to pay Margarita approximately $5 million, plus interest and costs.[2] Neither the Judgment Debt nor the costs have been paid.

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[1] Receiver's Sixth Report dated April 14, 2026 (the "**Sixth Report**"), at s. 1.1(1), Motion Record of the Receiver dated April 14, 2026 ("**MR**"), Tab 2, at p. 15

[2] Sixth Report, s. 1.1(2), MR, Tab 2, at p. 15

10. On January 15, 2019, Margarita made an application to the Court for the appointment of the Receiver.[3] The Court granted the Appointment Order on July 15, 2019, empowering and authorising the Receiver to manage and deal with Xela's property and assets.[4]

## B. XELA'S CORPORATE STRUCTURE AND ASSETS

11. Xela is (or was) the parent of more than two dozen direct or indirect subsidiaries located predominantly in Central and South America, operating in the food and agricultural sectors. Its most significant asset was believed to be its indirect one-third interest (through Gabinvest S.A. ("**Gabinvest**")) in a group of family-owned vertically integrated poultry businesses operating in Central America known as the "**Avicola Group.**"[5]

12. Dionisio Gutierrez Sr., Isabel Gutierrez de Bosch, and their children (collectively, the "**Cousins**") are believed to own and operate the remaining two-thirds of the Avicola Group. Juan Guillermo, through Xela, and the Cousins have been litigating since 1999 in various jurisdictions in relation to the Avicola Group (the "**Avicola Litigation**"). Xela and its subsidiaries have received no dividends from the Avicola Group since commencing the Avicola Litigation in 1999.

## C. THE REVIEWABLE TRANSACTIONS

13. Xela's other primary direct subsidiary (Empress Arturo International, "**EAI**") is a holding company for active businesses in Central and South America that were operated by Juan Guillermo, his family, and their employees.

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[3] Sixth Report, s. 1.1(2), MR, Tab 2, at p. 15
[4] Sixth Report, s. 1.1(2), MR, Tab 2, at p. 15
[5] Sixth Report, s. 2.2(1), MR, Tab 2, at p. 17

14. In the course of its mandate, the Receiver identified four principal reviewable transactions (the "**Reviewable Transactions**") that appear to have transferred all value out of Xela, which benefited Juan Guillermo's family, including during the course of the receivership.[6]

15. Prior to the Reviewable Transactions, the EAI subsidiaries generated millions of dollars per year for Xela.[7]

16. In December 2021, the Receiver commenced an action against Juan Guillermo, his family, and related entities, alleging breaches of fiduciary duty, oppression, fraudulent conveyances, and conspiracy arising from the Reviewable Transactions (the "**Action**").[8]

## D. CONTEMPT MOTION & OTHER PROCEEDINGS

17. In 2022, the Receiver brought a contempt motion against Juan Guillermo. The contempt allegations arose from Juan Guillermo executing a sworn declaration (the "**Declaration**") in Guatemala that was relied upon by his brother-in-law to initiate criminal proceedings in Panama against the Receiver's Panamanian legal counsel, Hatstone Lawyers.[9]

18. On June 29, 2022, the Court found Juan Guillermo in civil contempt of the Appointment Order.[10] Justice Conway concluded that Juan Guillermo has a history of knowingly and intentionally interfering with the Receiver and showing an "outstanding lack of respect for this court".[11] The Court imposed a 30-day term of incarceration and ordered Juan Guillermo to pay the

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[6] Sixth Report, s. 2.3(1)-(2), MR, Tab 2, at p. 18
[7] First Report of the Receiver dated October 17, 2019, s. 4.1(4), Supplementary Motion Record dated June 22, 2026, Tab 1, at p. 11
[8] Sixth Report, s. 2.3(3), MR, Tab 2, at p. 19
[9] Sixth Report, s. 2.4(1), MR, Tab 2, at p. 19
[10] *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006, Brief of Orders and Endorsements dated June 15, 2026 ("**Brief of Orders**"), Tab 31
[11] *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006, at para. 37, Brief of Orders, Tab 31

Receiver's costs of the contempt proceedings on a full indemnity basis in the amount of $563,485.[12]

19. Juan Guillermo appealed both the contempt finding and sentencing decision. The Court of Appeal dismissed the appeal in 2024 finding that the appellant's conduct was "'blatant, deliberate, wilful and …unrepentant', not just accidental or misguided."[13] In addition to awarding costs of $40,000, the Court noted that "this receivership is an ongoing matter on the commercial list. It would be appropriate for the appellant to offer that court a sincere apology for his conduct, express his remorse and give his assurance of respect and compliance with orders going forward." [14] No such apology or assurance has been offered; instead, Juan Guillermo continues to oppose these proceedings and to repeat allegations which were dismissed in the contempt proceedings.

20. In 2022, following the contempt finding, Juan Guillermo sought to bring a motion to replace the Receiver, baldly alleging that the Receiver was conspiring with the Cousins and otherwise acting improperly (the "**Recusal Motion**"). The Receiver brought a motion for security for costs, which was granted with costs payable to the Receiver in the amount of $30,092.10.[15] Juan Guillermo never posted security for costs of $100,000 nor paid the costs order.

21. In granting security for costs, McEwen J. accepted that the Receiver had demonstrated that the Recusal Motion appeared frivolous and vexatious, suggesting a tentative conclusion of an absence of merit.[16]

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[12] *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 5594, Brief of Orders, Tab 39; and *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 6696, Brief of Orders, Tab 42
[13] *Castillo v. Xela Enterprises Ltd*., 2024 ONCA 141, at para. 94, Brief of Orders, Tab 51
[14] *Castillo v. Xela Enterprises Ltd*., 2024 ONCA 141, at para. 109, Brief of Orders, Tab 51
[15] December 1, 2022, Endorsement of McEwen J., Brief of Orders, Tab 44; and December 1, 2022, Order of McEwen J., Brief of Orders, Tab 45
[16] December 1, 2022, Endorsement of McEwen J., Brief of Orders, Tab 44

22. Juan Guillermo sought leave to appeal the security for costs motion which was dismissed by the Divisional Court with costs to the Receiver in the amount of $5,000.[17]

23. As of March 31, 2026, Juan Guillermo owed $719,370.45 in costs to the Receiver.[18]

## E. STATUS OF RECEIVERSHIP

24. The receivership proceedings have not progressed since the conclusion of the contempt proceedings in 2022 and the dismissal of Juan Guillermo's appeal of the contempt finding by the Court of Appeal on February 28, 2024 due to lack of funding.

25. It is of note that at various points throughout the receivership, the Receiver attempted to resolve the Avicola Litigation consensually with Margarita, Juan Guillermo, and the Cousins. Those efforts were unfortunately unsuccessful.[19]

26. The Receiver's investigation into the Reviewable Transactions remains incomplete because Juan Guillermo frustrated the Receiver's efforts to gain access to relevant documents. As reflected in the Brief of Orders and Endorsements, the Receiver required three years and 20 court orders before it received any access to relevant records.[20]

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[17] *Castillo v. Xela Enterprises Ltd.*, 2023 ONSC 1064 (Div. Ct.), Brief of Orders, Tab 48
[18] Sixth Report, s. 2.4(5), footnote 5, MR, Tab 2, at p. 19
[19] Sixth Report, s. 2.5(3), MR, Tab 2, at p. 20
[20] (1) October 29, 2019, Order re disclosure; (2) March 24, 2020, Endorsement re request for information from directors; (3) March 24, 2020, Order re approval of the Receiver's actions re Gabinvest Board changes; (4) August 28, 2020, Order re production of Xela's Documents and Devices; (5) October 27, 2020, Order re protocol to image Juan Guillermo's devices; (6) October 27, 2020, Order re imaging servers under ATS' control; (7) March 25, 2021, Order re various issues (e.g. Investigative Powers, Fees, etc.); (8) March 25, 2020, Order re recognition in Panama; (9) July 28, 2021, Order re costs; (10) September 17, 2021, Endorsement re case conference and funding; (11) December 2, 2021, Endorsement re funding and productions; (12) January 24, 2022, Endorsement re productions; (13) March 2, 2022, Endorsement re productions and contempt motion; (14) March 9, 2022, Endorsement re productions; (15) March 17, 2022, Endorsement re compliance; (16) March 25, 2022, Endorsement and Order re compliance with earlier production orders; (17) May 20, 2022, Order re Form of Order and motion to replace the Receiver; (18) July 25, 2022, Endorsement re refusal to schedule motion; (19) September 14, 2022, Endorsement re deferral to review the

27. Margarita has been the sole funder of the receivership since the Receiver's appointment. Following the conclusion of the contempt proceedings, Margarita ceased funding the receivership, save for one payment that was not sufficient to bring the Receiver current on its fees and costs. The Receiver has not received confirmation that Margarita is prepared to provide further funding.[21]

28. In the absence of funding, the Receiver is unable to advance the Action or to investigate and pursue recovery of the assets transferred by way of the Reviewable Transactions, including review of the extensive data that was finally produced (the "**Data**").[22]

## PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

29. The Receiver asks that this Court:

(a) Approve the Sale Process;

(b) Decline to receive evidence or submissions from Juan Guillermo;

(c) Approve the reports of the Receiver and the actions described in them; and

(d) Approve the fees and disbursements of the Receiver and its legal counsel.

### A. THE SALE PROCESS

30. The Receiver seeks approval of the proposed Sale Process to market and sell the Shares. The Sale Process is fair, reasonable, commercially appropriate, and consistent with the Receiver's duties and the applicable legal principles.

31. The Receiver proposes to market and sell the Shares and to provide them to the successful purchaser through the RVO structure. This will allow the successful purchaser to pursue whatever

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status of compliance with prior orders, among other things; and (20) September 27, 2022, Endorsement re dispute about access to data. See Brief of Orders, Tabs 6-8, 10-12, 17-18, 20-26, 28-30, 32, and 35-36

[21] Sixth Report, s. 2.5(1)-(2), MR, Tab 2, at p. 20

[22] Sixth Report, s. 4.0(1)-(6), MR, Tab 2, at p. 22

right, title, and interests Xela may have in its direct and indirect subsidiaries, including by pursuing the Action, if desired.[23]

32. The Receiver does not recommend pursuing an asset sale, being the shares of Gabinvest or EAI through which Xela indirectly owns other entities. Juan Guillermo, his family members, or their employees will likely dispute Xela's legal interest in its direct and indirect subsidiaries. This would be further complicated by jurisdictional, evidentiary, and procedural issues under Panamanian (Gabinvest is a Panamanian company) and Barbadian (EIA is a Barbadian company) law, increasing cost, delay, and risk. The Receiver has determined that it would be impractical for the Receiver to attempt to sell Xela's direct or indirect interests in those entities.[24]

33. An RVO is appropriate in these circumstances given Xela's complex multi-jurisdictional corporate structure and the challenges in locating and possessing Xela's current issued and outstanding shares. Xela has more than two dozen direct or indirect subsidiaries located predominantly in Central and South America, incorporated under the laws of Panama, Barbados, and other foreign jurisdictions.[25] Attempting to transfer these interests individually would require the Receiver to navigate the corporate and insolvency laws of each jurisdiction, at significant cost and with uncertain prospects of success. This is not feasible without any financing for the receivership.

34. An RVO avoids these complications by allowing the successful purchaser to acquire the shares of Xela itself, thereby stepping into Xela's position as the direct or indirect shareholder of its subsidiaries.

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[23] Sixth Report, s. 3.0(4), MR, Tab 2, at p. 21
[24] Sixth Report, s. 3.0(1)-(3), MR, Tab 2, at pp. 20-21
[25] Sixth Report, s. 2.2, MR, Tab 2, at p. 17

35. The RVO structure also protects Xela's creditors. The proceeds of sale will be transferred to a newly formed residual entity ("**ResidualCo**") together with Xela's unassumed liabilities. The proceeds held by ResidualCo will be distributed in accordance with the priority rules that govern insolvency proceedings, ensuring that creditors are paid before any residual value flows to equity.

36. The Receiver has identified four potential purchasers of the Shares: (i) the Cousins, (ii) Juan Guillermo, (iii) Margarita, and (iv) ATS. In the Receiver's view, any third party without a pre-existing relationship to the underlying dispute would face significant informational, legal, and jurisdictional barriers in evaluating and pursuing such interests. However, the Receiver will consider any unsolicited expression of interest received from another party during the Sale Process.[26]

37. The Receiver considered whether a broader marketing process should be conducted. However, given the nature of Xela's remaining assets – disputed equity interests and related lawsuits involving foreign entities – the Receiver believes marketing Xela's assets would be a waste of time and money and would not maximise value.[27]

38. Interested parties will have 30 days to submit a bid, which is a reasonable timeline given the limited pool of potential purchasers and their pre-existing familiarity with Xela's affairs.

39. A court must exercise extreme caution before it interferes with a sale process adopted by a receiver.[28] When a court appoints a receiver:

> [I]t is inescapable that it [the Court] intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the

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[26] Sixth Report, s. 3.0(3), MR, Tab 2, at pp. 20-21
[27] Sixth Report, s. 3.0(3), MR, Tab 2, at p. 21
[28] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA)

> receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver...[29]

40. In reviewing a proposed sale process, the Court must keep the *Soundair* principles in mind and assess:

(a) the fairness, transparency, and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and

(c) whether the proposed process will optimise the chances, in the circumstances, of securing the best possible price for the assets to be sold.[30]

41. Each of the relevant factors warrants approval of the Sale Process.

***(i) The Sale Process is fair, transparent, and has integrity***

42. The purpose of the receivership is to enhance and facilitate the preservation and realisation of the debtor's assets for the creditors' benefit.[31] A fair process is one in which the interests of all parties have been considered and it is unlikely that unfairness will result from the process.[32] A sale process that markets to identified potential purchasers will be fair and non-prejudicial if broader marketing efforts are unlikely to result in a higher price.[33]

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[29] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA)
[30] *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONSC 4233, at para. 56, citing *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, 2020 ONSC 3517, at paras. 14-16; and *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750
[31] *Nuance Pharma Ltd v. Antibe Therapeutics Inc.*, 2025 ONSC 706, at para. 10
[32] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA); and *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, 2020 ONSC 3517
[33] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), at p. 21

43. The Sale Process is fair, transparent, and will be conducted with integrity. The interests of all stakeholders have been considered, including Juan Guillermo's concerns about the Data. The Receiver will require bidders to include Data Proposal Provisions that fairly consider the interests of Juan Guillermo and will require Court approval.

44. There is no basis, as Juan Guillermo suggests, to exclude the Cousins or Margarita as potential purchasers, particularly since they are likely to enhance or facilitate a value-maximising transaction. Xela's creditors have remained unpaid for over a decade and will be prejudiced if those most familiar with the assets are excluded from participation.

45. Any complaints about who might be the successful purchaser are premature. No one has made an offer, and the Sale Process has not commenced. Ultimately, the Receiver will have to consider all offers (if any), provide a recommendation about any potential sale, and satisfy the Court that the recommended sale is fair and reasonable in the circumstances.

46. Given the unusual and complex nature of Xela's multi-jurisdictional corporate structure and the circumstances of this receivership, significant deference is owed to the Receiver's recommended process.[34]

### *(ii) The Sale Process is commercially efficacious in the circumstances*

47. Commercial efficacy is determined by reference to the circumstances facing the receivership and is aimed at securing the best sale price in that context.[35] Without the Sale Process, it is unlikely that the Receiver can recover any money for Xela's creditors.

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[34] *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739, at paras. 63 and 99-102
[35] *West End Motors v. 189 Dundas Street West Inc.*, 2019 ONSC 5124, at paras. 16-18

48. EAI's subsidiaries with operating income are located in foreign jurisdictions and held by a foreign-domiciled trust for the benefit of Juan Guillermo's family (the "**Trust**"). During this receivership, Xela's indirect, one-third interest in the Avicola Group has apparently been transferred to one of EAI's subsidiaries and, therefore, to the Trust.[36] The conduct of Juan Guillermo to date demonstrates that any actions in foreign jurisdictions will continue to be challenged at great cost to the receivership process.

49. Any third party without a pre-existing relationship to the underlying dispute would face significant informational, legal, and jurisdictional barriers in evaluating and pursuing Xela's interests. Accordingly, a targeted Sale Process is the only commercially appropriate and efficient way to proceed.

***(iii) The Sale Process will optimise the chances of securing the best possible price***

50. A sale process optimises the chances of securing the best price if it exposes the assets to potentially interested purchasers and allows them to engage in a process of competitive offers.[37]

51. The duration of a sale process must be assessed in context. Where a receiver lacks funding to support a company's operation, a quick sale process is appropriate.[38] Where a commercially viable sale to a broad market is unlikely, it is reasonable to limit marketing to interested purchasers who possess the knowledge required to evaluate the assets being sold.[39]

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[36] Second Supplement to the Second Report of the Receiver, s. 3(1), MR, Tab 2(C), at p. 54
[37] *West End Motors v. 189 Dundas Street West Inc.*, 2019 ONSC 5124, at para. 17
[38] *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para. 14
[39] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), at p. 9

52. An RVO will optimise the chances of securing the best possible price because the successful purchaser can pursue Xela's rights and interests, to the extent they exist, in Gabinvest and EAI and their respective direct and indirect subsidiaries using its own resources and judgment.

53. It is both appropriate and necessary that the receivership be concluded by means of a sale process that allows whatever residual value exists in Xela's assets to be realised, while permitting the Receiver to be discharged of its obligations. The Sale Process represents the only practical means to advance and conclude the receivership in these circumstances.[40]

## B. JUAN GUILLERMO'S OBJECTIONS AND STANDING

54. Juan Guillermo's alternate proposals – to "wind down" the receivership or to exclude the Cousins or Margarita from the sale process – are uniquely self-interested. The effect would be that Xela would revert to Juan Guillermo without him having to pay the Judgment Debt to Margarita or pay any of the unpaid costs awards in this proceeding. His self-interested and abusive arguments should be ignored and rejected.

55. First, if a party fails to pay costs of a motion, the court may dismiss or stay the party's proceeding, strike out a defence, or make such other order as is just.[41] In exercising discretion under Rule 57.03, the Court may consider whether its processes are being abused and whether there has been a pattern of unnecessary and unreasonable steps in the proceedings.[42]

56. The abuse of process of this Court's processes is demonstrated in his resistance to this motion by relying on accusations already made in these proceedings and rejected by the Court.

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[40] Sixth Report, s. 2.5(4), MR, Tab 2, at p. 20
[41] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 57.03(2)
[42] *Re Proex Logistics*, 2025 ONSC 51, at para. 44, aff'd 2025 ONCA 832

57. Juan Guillermo argues that it was "inappropriate" for the Receiver to cause Xela to replace Gabinvest's directors in Panama (and take other steps) and that the Receiver was "not authorized to act in Panama."[43]

58. This is the very issue that is the subject of the false Declaration that gave rise to the contempt proceedings[44] and has been the subject of repeated judicial consideration. The March 24, 2020 Order declared that the Gabinvest Resolution was a proper exercise of the Receiver's power under the Appointment Order.[45] The Court of Appeal, on the appeal of the contempt order, squarely rejected the argument that the Receiver lacked authority in Panama, holding that "the fact that the Receiver did not domesticate the Order under Panama law did not affect its authority under the Order or the requirement of compliance by the appellant. If the appellant had wanted to challenge any action by the Receiver, he could have done so by seeking the direction of the court."[46]

59. In addition, Juan Guillermo has long argued that the Receiver has acted improperly in precisely the same ways he has done so on this motion. This Court has previously disagreed and has noted that the allegations are unsubstantiated:

(a) In March 2021, McEwen J. held that "I am not of the view that the Receiver or its counsel has acted in anything other than a neutral position, to date."[47]

(b) In July 2021, McEwen J. held that "The Receiver was put to extra expenses as a result of the failure of Juan Guillermo and ATS to comply with my aforementioned

[43] Affidavit of Juan Guillermo sworn June 11, 2026, Responding Motion Record of Juan Guillermo, Tab 1, at paras. 42-45
[44] *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006 at paras. 24-25, Brief of Orders, Tab 31
[45] March 24, 2020, Order of Justice McEwen, Brief of Orders, Tab 8
[46] *Castillo v. Xela Enterprises Ltd*., 2024 ONCA 141, at para. 29, Brief of Orders, Tab 51
[47] March 25, 2021, Endorsement of McEwen J., Brief of Orders, Tab 16

orders and their other actions referred to in my February 10, 2021 and March 25, 2021 endorsements."[48]

(c) In March 2022, McEwen J. held that "there is no reasonable basis to suggest that the Receiver has in some way colluded with 'the Nephews' [Cousins] or that 'the Nephews' [Cousins] can somehow engage in 'corporate espionage'… Mr. Gutierrez, in some fashion or another, for some time has made these allegations without proof… it bears noting that the Receiver has consistently denied these longstanding allegations."[49]

(d) In the same endorsement in March 2022, McEwen J. noted that he had made no finding of misconduct against the Receiver but that he had been critical of Juan Guillermo with respect to the initiating of the criminal complaint in Panama. He noted that the latest proposed motion by Juan Guillermo at that time was an attempt to "delay the compliance with my earlier orders concerning access/production."[50]

(e) In May 2022, a case conference was convened with respect to the order arising from the March 25, 2022 hearing. Justice McEwen noted that "the Receiver also sought an order/endorsement confirming its authority to review documents in accordance with the terms of the March 25, 2021 Order. Normally such an endorsement would be unnecessary, but given Mr. Gutierrez' counsel's correspondence to the Receiver that access to the data (by the Receiver) on the Blue Servers would 'suggest

[48] July 28, 2021, Endorsement of McEwen J., Brief of Orders, Tab 19
[49] March 25, 2022, Endorsement of McEwen J., Brief of Orders, Tab 28
[50] March 25, 2022, Endorsement of McEwen J., Brief of Orders, Tab 28

intentional misconduct', I am prepared to grant the endorsement to provide clarity that this is not the case."[51]

(f) In June 2022, Conway J. found Juan Guillermo in contempt of the Appointment Order for swearing a false Declaration in Panama against the Receiver. She found him not to be a credible witness and his evidence not to be believable on its face. Justice Conway found that "Mr. Gutierrez knew exactly what he was doing when he signed the Declaration. He was aware of the contents of the document and swore that they were true." She further found that "he knew that the purpose of signing the Declaration was to file a criminal complaint in Panama to challenge the Receiver's removal and replacement of the Gabinvest board."[52]

(g) In December 2022, on the Recusal Motion brought by Juan Guillermo and the security for costs motion brought by the Receiver, Justice McEwen noted that Juan Guillermo made a number of allegations unsupported by any affidavit, that "to date the Receiver has not been the subject of any negative judicial comment", and that, in a number of his previous endorsements, "many of the complaints Gutierrez has raised have been litigated and/or unsupported by evidence."[53]

60. Juan Guillermo also re-litigates issues relating to access to records, all of which were granted by this Court. Justice McEwen specifically rejected Juan Guillermo's arguments. He held that he did not "accept the argument of ATS/Juan Guillermo that the nature of the Receivership

[51] May 20, 2022, Endorsement of McEwen J., Brief of Orders, Tab 30
[52] *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006, at para. 33, Brief of Orders, Tab 31
[53] December 1, 2022, Endorsement of McEwen J., Brief of Orders, Tab 44

should fetter access. The Receivership was granted pursuant to s. 101 of the CJA, which allows for broad powers if appropriate – it is appropriate here to grant unfettered access."[54]

61. The allegations about the Receiver blocking funding are also an abuse of process. The Court has previously heard and rejected unsupported arguments about opportunities for financing or loans:

(a) In March 2021, McEwen J. held, with respect to a "settlement offer" by BDT, "I accept the Receiver's position that the offer ought not be accepted where there is no payment, no timeline for payment, is likely unenforceable, and involves a related company."[55]

(b) In March 2022, McEwen J. noted, with respect to a proposed financing by Taras Volgemut, that such promises had been made before and nothing materialised:

> [18] …compliance with my aforementioned Orders took a backseat in the fall of 2021 when Mr. Gutierrez claimed to have financing to pay the Castillo judgment. I paused the access production issues to determine if the funding could lead to resolution.
>
> [19] 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 action of the Receiver in Feb/22, but several months passed before that date without the promised funding arriving which was first promised in Sept/21.
>
> [20] It also bears noting that Mr. Gutierrez also proposed in March/21, when the motion was 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.
>
> [21] It may be that the currently promised financing may arrive, but that cannot form the basis of a stay given the above.[56]

[54] March 25, 2021, Endorsement of McEwen J., Brief of Orders, Tab 16
[55] March 25, 2021, Endorsement of McEwen J., Brief of Orders, Tab 16
[56] March 25, 2022, Endorsement of McEwen J., Brief of Orders, Tab 28

62. It is important to bring finality to proceedings in which orders of the Court have been "cavalierly ignored" by a litigant who "continuously fails to comply with [their] obligations" and "fails to abide by the costs consequences attendant upon that behaviour."[57]

63. On this motion, Juan Guillermo is advancing the same conspiracy and unfairness arguments for which he was ordered to post security for costs. Rule 56.06 should extend to prohibit his opposition to the relief sought on this motion because doing so will secure the just, most expeditious, and least expensive determination of this motion on its merits.[58]

64. For all these reasons, it is fair and just that this Court refuse to receive evidence or submissions from Juan Guillermo with respect to the relief sought in this motion.

## C. THE RECEIVER'S REPORTS AND ACTIONS

65. Where receivers act in good faith and within the ambit of their powers granted by the appointment order, courts will approve the reports and activities of the receiver described therein.[59]

66. Criticisms of court-appointed officers should not be made lightly. They are a serious matter.[60]

67. In this case, the Receiver acted in good faith and within the ambit of its powers under the Appointment Order. The Receiver has acted diligently and prudently with the goal of accessing Xela's documents and records to evaluate the Reviewable Transactions and exercising control over Xela's direct and indirect subsidiaries for the benefit of Xela's creditors.

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[57] *Re Proex Logistics*, 2025 ONSC 51, at para. 44, aff'd 2025 ONCA 832
[58] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 1.04
[59] *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONSC 4233, at paras. 68-70
[60] *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONSC 4233, at para. 66

68. There is no credible evidence to the contrary. The complaints now raised by Juan Guillermo have been repeatedly raised and rejected in the dozens of appearances before McEwen J. between 2019 and 2023, and were the subject of the Recusal Motion, for which Juan Guillermo has failed to post security for costs. Juan Guillermo's allegations and position on this motion is an abuse of process.

## D. FEES AND DISBURSEMENTS

69. The fees and disbursements of the Receiver and its legal counsel are fair and reasonable based on the relevant factors:

(a) The nature, extent, and value of the assets;

(b) The complications and difficulties encountered;

(c) The degree of assistance (or resistance) provided by the debtor;

(d) The time spent;

(e) The Receiver's knowledge, skill, and experience;

(f) The diligence and thoroughness displayed and responsibilities assumed;

(g) The results of the Receiver's efforts; and

(h) The cost of comparable services when performed in a prudent and economical manner.[61]

70. All the relevant factors support approval of the fees and disbursements:

(a) The EAI subsidiaries generated millions of dollars per year in revenue, which was enjoyed by Xela prior to the Reviewable Transactions, and Juan Guillermo

[61] *Re Nortel Networks Corporation et al,* 2017 ONSC 673, at para. 14

estimates that Xela's one-third interest in the Avicola Group is worth hundreds of millions of dollars;

(b) The Receiver faced significant complications and difficulties, at great personal peril, because of the criminal allegations pursued in Panama against the Receiver's Panamanian counsel and threats of same against Mr. Kofman personally;

(c) Juan Guillermo repeatedly flouted production orders and was obstructionist throughout the proceeding;

(d) The Receiver and its counsel, collectively, spent over 3,600 hours over the past five-and-a-half years;

(e) The Receiver and its counsel have special expertise in insolvency and restructuring matters, like this one, which they brought to bear with diligence;

(f) While the Receiver has not recovered any monies yet, it is hoped that this Sale Process will achieve that result; and

(g) The hourly rates charged by the Receiver and its counsel are consistent with the rates charged by law firms practising litigation as well as insolvency and restructuring in the Toronto market.[62]

71. The Receiver and its counsel have undertaken extensive efforts to gain access to Xela's records, to investigate the Reviewable Transactions, and to prosecute Juan Guillermo's contempt. The Receiver has been met with resistance and delay at every turn.

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[62] Sixth Report, s. 5.0(5), MR, Tab 2, at p. 24

72. The high costs of the receivership are the direct result of Juan Guillermo's behaviour. Some of those orders simply demanded that Juan Guillermo comply with prior court orders.

73. In total, there are approximately 50 endorsements and orders arising from 33 court appearances over the past seven years for which this Court, the Divisional Court, or the Court of Appeal rendered a decision—all of them in favour of the Receiver.[63]

74. The fees and disbursements of the Receiver and its counsel are fair and reasonable in all the circumstances.

**PART IV - ORDER REQUESTED**

75. The Receiver requests an order granting each of the four heads of relief sought on this motion as well as its costs against Juan Guillermo.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22nd day of June, 2026.

per ______________________
Monique J. Jilesen

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Lawyers for the Receiver, KSV Restructuring Inc.

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[63] Index in Brief of Orders

## SCHEDULE "A"

## LIST OF AUTHORITIES

1. *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006

2. *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 5594

3. *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 6696

4. *Castillo v. Xela Enterprises Ltd.*, 2023 ONSC 1064 (Div. Ct.)

5. *Castillo v. Xela Enterprises Ltd.*, 2024 ONCA 141

6. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750

7. *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, 2020 ONSC 3517

8. *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739

9. *Nuance Pharma Ltd v. Antibe Therapeutics Inc.*, 2025 ONSC 706

10. *Re Nortel Networks Corporation et al*, 2017 ONSC 673

11. *Re Proex Logistics*, 2025 ONSC 51, aff'd 2025 ONCA 832

12. *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONSC 4233

13. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA)

14. *West End Motors v. 189 Dundas Street West Inc.*, 2019 ONSC 5124

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date June 22, 2026

*Signature*

## SCHEDULE "B"

## TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

**Interpretation - General Principle**

1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

**Security for Costs - Default of Plaintiff or Applicant**

56.06 Where a plaintiff or applicant defaults in giving the security required by an order, the court on motion may dismiss the proceeding against the defendant or respondent who obtained the order, and the stay imposed by rule 56.05 no longer applies unless another defendant or respondent has obtained an order for security for costs.

**Costs of a Motion - *Contested Motion***

57.03(2) Where a party fails to pay the costs of a motion as required under subrule (1), the court may dismiss or stay the party's proceeding, strike out the party's defence or make such other order as is just.

MARGARITA CASTILLO -and- XELA ENTERPRISES LTD. et al.
Applicant Respondents

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

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

PROCEEDING COMMENCED AT TORONTO

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