

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

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

FILING REQUEST

- a. Title of Proceedings, file number (if one already exists), and jurisdiction (judicial region) from which the case originates.

Xela Enterprises Ltd., et al ats. Margarita Castillo, CV-11-9062-00CL, Commercial List, Toronto.

- b. The names and email addresses of representatives of the parties (counsel or self-represented persons).

Chris MacLeod: cmacleod@cambridgellp.com and Joan Kasozi: jkasozi@cambridgellp.com, Counsel for Juan Guillermo Gutierrez

Derek Knoke: dknoke@litigate.com and Monique Jilesen: mjilesen@litigate.com, Counsel for the Receiver

Kyle Plunkett: kplunkett@airdberlis.com and Sam Babe: sbabe@airdberlis.com, Counsel for the Receiver

Sean Zweig ZweigS@bennettjones.com, Jeffery Leon: LeonJ@bennettjones.com and . Jason Woycheshyn, jwoycheshyn@stewartmckelvey.com, Counsel for the Applicant, Margarita Castillo.

Mr. Philip Cho: pcho@weirfoulds.com and Michael C. Ly: mly@weirfoulds.com, Counsel for Arturo's Technical Services

Katherine Kay: kkay@stikeman.com and Aaron Kreaden: akreaden@stikeman.com, Counsel for Avicola Group, Juan Luis Bosch Gutierrez, Felipe Antonio Bosch Gutierrez, Dionisio Gutierrez, Mayorga and Juann Jose Gutierrez Moyorga

Kevin Boyce: kevin.boyce@clarkes.com.bb and Shena-Ann Ince: shena-ann.ince@clarkes.com.bb, Barbados Counsel for the Receiver

Mr. Alvaro Almengor: alvaro.almengor@hatstone.com and Carl O'Shea: carl.oshea@hatstone.com, Panama Counsel for the Receiver

Diane Winters: DianeWinters@Justice.gc.ca, Counsel for Canada Revenue Agency Department

- c. The nature of the matter to be scheduled (motion, application or appeal) and brief particulars (for example, "appeal from the final order of Doe J. of the Superior Court of Justice (2020 ONSC 123456) granting judgment of \$25,000 in a defamation action" or "judicial review from the Ontario Labour Board decision granting / denying certification"). The explanation should not be more than a sentence or two in length. Where the decision below has been reported on CanLII, a citation to that decision should be included. Where the decision below has not been reported on CanLII, a copy of the decision should be attached.

Juan Guillermo Gutierrez is seeking leave to appeal the interlocutory Order of Justice McEwen dated March 25, 2022, *inter alia*, ordering disclosure of documents that are subject of litigation.

Juan Guillermo Gutierrez will also be seeking an order staying the Order of Justice McEwen pending a determination of the Leave Motion and if Leave is granted, the Appeal.

A Copy of the Order of Justice McEwen is attached.

- d. The estimated time required for the hearing.

The Motion for Leave to Appeal is to be heard in writing.

The Motion for a stay of the Order of Justice McEwen requires a 2 hour motion

- e. A brief explanation of any urgency, time sensitivity, or other factors the party wishes the court to take into account in scheduling.

The Order of Justice McEwen requires Juan Guillermo Gutierrez to immediately disclose personal emails and devices to the Receiver without adequate safeguards. Xela is in receivership and not Juan Guillermo Gutierrez. If a stay of the Order of Justice McEwen is not granted and Juan Guillermo

Gutierrez is forced to produce his devices and disclose his emails to the receiver, then the motion for leave to appeal would be rendered ineffectual.

- f. Whether some or all parties consent to scheduling the matter (**consent is not required**).

No consent has been obtained

- g. Whether the matter was commenced before the suspension of regular court operations in March 2020 or whether this is a new proceeding.

The Notice of Motion for Leave to Appeal will be served on March 28, 2022.

- h. Where parties have agreed on a timetable for the exchange of materials in advance of the hearing request, the proposed agreed timetable should be included.

Moving Party's Proposed Timetable:

The Moving Party (Juan Guillermo Gutierrez) to serve the Motion Record by March 28, 2022 and Factum served four days before the hearing date.

The Responding Parties shall serve and file a Responding Record (if any) and Factum two days before the hearing.