

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

MOTION RECORD

January 7, 2020

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

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

**NOTICE OF MOTION
(Returnable January 9, 2020)**

XELA Enterprises Ltd. (“Xela”) will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on Thursday January 9, 2020, at 9:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard

Orally.

THE MOTION IS FOR:

- (a) An order, *nunc pro tunc*, varying and/or amending paragraph 4 of the Order of Justice McEwen dated July 5, 2019 (the “Receivership Order”);

- (b) An order suspending the operation of the Receivership Order, *nunc pro tunc*, until further Order of this Court;
- (c) An Order, if necessary, abridging and validating the time and method of service of the motion material and dispensing with further service thereof;
- (d) The costs of this motion, if opposed; and,
- (d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (A) Xela will fully satisfy the judgment debt (“Castillo Judgment”) owed to applicant, Margarita Castillo (“Ms. Castillo”), plus all receivership fees and expenses. The Receivership Order was obtained solely in support of the Castillo Judgment.
- (b) The Receivership Order provided for limited powers to the receiver provided that payment of the judgment in favour of Ms. Castillo was made by December 31, 2019, together with costs of the receivership. Due to unforeseen circumstances, there was an unexpected delay of transfer of funds;
- (c) However, Xela expects to cause the total sum of \$4,682,800.75 to be transferred to the receiver, thereby satisfying the Castillo Judgment (with enforcement costs) and all of the fees and expenses of the receivership during the week of January 13, 2020;
- (d) In light of Xela’s impending satisfaction of the Castillo Judgment and payment of the receivership fees and expenses, there will be no prejudice if the application of paragraph 4 of Justice McEwen’s order is extended;
- (e) Xela respectfully request that the restrictions placed on the Receiver’s powers by paragraph 4 of the Receivership Order be extended until further court order while the respondents satisfy any prerequisites that the court may deem appropriate.
- (f) Rules 1.04, 2.02, 2.03, 3.02, 37, 57 and 59.06 of the *Rules of Civil Procedure*;

(g) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(A) The Affidavit of Harald Johannessen Hals to be sworn;

(B) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED: JANUARY 7, 2020

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TAB 2

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

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

AFFIDAVIT OF HARALD JOHANNESSEN HALS

(Sworn December 30, 2019)

I, Harald Johannessen Hals, resident of Guatemala City, Guatemala, Central America, **MAKE OATH AND SAY:**

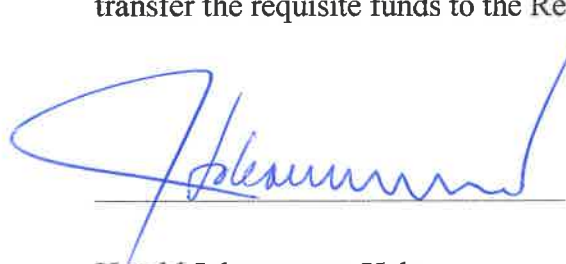
1. ~~I am the President of Lisa, S.A., a Panama corporation ("Lisa"). I make this Affidavit in support of the Debtor's Motion to Vary and/or Amend the Order of Justice McEwen dated July 5, 2019, for a short extension of the limitations placed on the receiver's powers under Paragraph 4 of that Order.~~

2. Lisa has procured a third-party loan sufficient to fully satisfy the judgment of Applicant ~~Margarita Castillo (including enforcement costs) that is the basis for this receivership (the "Castillo Judgment")~~, together with all fees and expenses of the receivership.

3. The Loan has been approved by both the lender and the borrower, and all of the Loan documents have been prepared and finalized. The only documentation standing in the way of closing the Loan and disbursing the proceeds is official authentication of the Lisa corporate resolutions authorizing the Loan.

4. I signed said corporate resolutions on December 26, 2019, upon which they were submitted ~~to the Office of Public Registry in Guatemala City for authentication of my signature by apostille.~~ I had expected to receive the necessary apostilles today, December 30, 2019, which would have enabled me to cause the appropriate amount of Loan proceeds to be transferred to the Receiver on December 31, 2019. However, owing in part to delays caused by the Holiday season in Guatemala, the apostilles were not returned today.

5. ~~I have now been told to expect the apostilles sometime during the week of January 13, 2020.~~ The Loan itself will close within one day from receipt of the necessary apostilles, and the Loan proceeds will be disbursed on the day of closing. The Loan proceeds will be transferred to the client trust account of Lisa's international lawyers in Washington, DC, who will immediately transfer the requisite funds to the Receiver.



Harald Johannessen Hals

En la Ciudad de Guatemala, el treinta de diciembre de dos mil diecinueve, como Notario DOY FE, que la firma que antecede es AUTENTICA por haber sido puesta el día de hoy en mi presencia por HARALD JOHANNESSEN HALS, quien es persona de mi anterior conocimiento, y quien

vuelve a firmar la presente acta de legalización de firma, que calza en un documento denominado "AFFIDAVIT OF HARALD JOHANNESSEN HALS", y que está contenida en tres hojas de papel bond.

Ante mi

LICENCIADO
Jeremías Lutin Castillo
ABOGADO Y NOTARIO



MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISES LTD et. al
Respondent

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

**PROCEEDING COMMENCED AT
TORONTO**

MOTION RECORD

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