

COURT OF APPEAL FOR ONTARIO

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.**

NOTICE OF APPEAL

THE APPELLANT, Juan Guillermo Gutierrez, APPEALS to the Court of Appeal from the order of The Honourable Justice Conway dated __, 2022 made at 330 University Ave, Toronto.

THE APPELLANT ASKS that the order be set aside and an order be granted as follows:

1. Declaring that Canadian courts lack jurisdiction to exercise their contempt power over the conduct alleged to constitute contempt;
2. In the alternative, declaring that the Appellant's conduct did not amount to civil contempt.

THE GROUNDS OF APPEAL are as follows:

1. The learned trial judge erred in finding that there was a real and substantial link between the conduct alleged to be contemptuous and Canada, as the learned trial judge erroneously treated the Canadian origin and application of the order alleged to be breached as sufficient to establish jurisdiction. The test for criminal jurisdiction requires that "a significant portion of the activities constituting the offence" take place in Canada: *Libman v. The Queen*, [1985] 2 S.C.R. 178 at paras. 74-75. It is not sufficient to found jurisdiction on the fact that the order or law alleged to be breached is Canadian in origin: *R. v. B.(O.)* (1997), 99 O.A.C. 313 (C.A.). The learned trial judge

failed to explain how a real and substantial link could be established if none of the activities constituting the alleged contempt took place in Canada;

2. The learned trial judge erred in finding that para. 3 of the Appointment Order is sufficiently clear and unequivocal to support a finding of contempt;
3. The learned trial judge erred in finding that the Appellant had breached para. 9 of the Appointment Order, as she failed to consider the uncontradicted evidence that the Appellant was not the individual who instituted proceedings in Panama, as well as the uncontradicted evidence that no proceedings were instituted against the Receiver;
4. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 6(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as the order appealed from is a final order which does not fall under the exceptions in ss. 6(1)(b)(i) or (ii). Leave to appeal is not required.

Dated at Toronto, this 8th day of September, 2022.

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