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, as Executor of the Estate of Juan Arturo Gutierrez

Respondents

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

APPLICATION UNDER section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended

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PART I - INTRODUCTION

1. This motion concerns a receivership that has been ongoing since July 2019. KSV Restructuring Inc. (**the "Receiver"**) seeks approval of a Sale Process for the shares of Xela Enterprises Ltd. (**"Xela"**), approval of its conduct throughout the receivership, and approval of approximately $2 million in additional fees and disbursements.[1]

2. Juan Guillermo Gutierrez (**"Juan"**) is a director and the principal of Xela. Juan opposes the relief sought.[2]

3. The proposed Sale Process should not be approved. Moreover, the Receiver's conduct should not receive blanket approval, and any fees sought by the Receiver and its counsel should be scrutinized having regard to the results achieved (or lack thereof) during the receivership.[3] Before the Receivership was instituted, Margarita collected in excess of one million dollars on the judgment debt that formed the basis of this Receivership. However, since the Receiver's appointment, nothing has been collected. The Receiver spent a majority of its time pursuing Juan and pursuing other futile attempts at collecting on the judgment debt. Now, after charging millions in fees, the Receiver seeks to discharge its duties by selling Xela in disregard of not only Xela's best interest, but also the best interest of the Applicant, Margarita Castilli, and other creditors.

4. The Receiver has listed the Cousins as a potential purchaser of Xela. However, the Receiver has also admitted that the Cousins owe significant amounts of money to Xela or its subsidiaries or affiliates.

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[1] Responding Affidavit of Juan Guillermo Gutierrez sworn June 11, 2026 (**"Gutierrez Affidavit"**), paras. 2-3.
[2] Gutierrez Affidavit, para. 1, Responding Record of the Respondent Juan Guillermo Gutierrz, dated June 11, 2026 (**"RR"**), at page 5.
[3]Second Supplement to the Fifth Report of KSV Restructuring Inc at Appendix "L", Statement of Claim dated December 20,2021, at para 34, Motion Record of the Receiver dated April 14, 2026 (**"Receiver's Record"**).
at page 197.

The Receiver will severely prejudice Xela if it is permitted to sell the company to the Cousins, who are its biggest potential debtor. In the Receiver's own statement of claim against Juan, the Receiver pleaded that the Cousins owe millions to Xela or other entities, to the tune of $400 million. The Receiver sought to pursue a claim against Juan and his family members for a purported improvident sale of shares but never made any honest attempts to collect from the Cousins. Now, the Receiver seeks to sell Xela to those very Cousins, in what can only be described as an improvident sale. No efforts have been made to value Xela, despite its significant claim against the Cousins.

5. The receiver seeks to sell Xela:

a) Without regard to significant amounts owed to it;

b) to the Cousins who owe a significant debt to Xela and its subsidiaries, thereby foreclosing any possibility of recovery by Xela, prejudicing the Applicant and other creditors;

c) in direct disregard for the purpose of this receivership, being the collection of debt owing to Margarita; and

d) ignoring the value of Margarita's preferential shares in Xela.

6. It is respectfully submitted that in the foregoing circumstances, the proposed sale should not proceed, the Receivership ought to be wound down, and Receiver's fees not approved.

PART II - SUMMARY OF FACTS

Background

7. The Receiver was appointed to enforce a judgment obtained by Margarita Castillo (**the "Applicant"**) in the approximate amount of $5 million, plus interest and costs (**the "Castillo**

Judgment").[4] Nearly seven years later, no funds have been recovered through the receivership toward satisfaction of that judgment.[5] Nevertheless, the Receiver now seeks approval of substantial additional fees and a Sale Process that would effectively conclude the receivership.[6]

8. The only entity that has benefited from the Receivership and who stands to now benefit from the sale of Xela, is the Receiver and the Applicant.[7]

9. To date, the Receiver failed to pursue or preserve what were represented to be the estate's principal assets and sources of potential recovery.[8]

10. Xela's value was derived indirectly through its ownership of Gabinvest, S.A (**"Gabinvest"**), a Panamanian holding company, which in turn was the sole shareholder of LISA S.A. (**"LISA"**).[9] Through that corporate structure, Xela held an indirect one-third interest in the Avicola Group (**the "Avicola Group"**), a large Central American poultry conglomerate founded by Juan's father and his siblings.[10]

11. Substantial unpaid dividends were owing in respect of that interest (**the "Dividend Claims"**), which represented the estate's most significant potential source of recovery.[11] The Receiver itself valued the broader Dividends Claims at approximately $400 million.[12]

12. Despite the significance of the Dividends Claims and related litigation, the Receiver failed to realize any recovery for the estate. Instead, after nearly seven years of administration and millions of

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[4] Gutierrez Affidavit, para. 4, RR, at page 6.
[5] Ibid.
[6] Receiver's Record
[7] Gutierrez Affidavit, paras. 78-79, RR at pages 30-31.
[8] Gutierrez Affidavit, paras. 37, RR at page 17.
[9] Gutierrez Affidavit, para. 11, RR at page 8.
[10] Gutierrez Affidavit, para. 12, RR at page 8.
[11] Gutierrez Affidavit, paras. 5, 16, RR at page 6, 10.
[12] Gutierrez Affidavit, para. 16, RR at page 10.

dollars in professional fees, the Receiver seeks approval of a Sale Process and substantial additional fees notwithstanding that no funds have been recovered toward satisfaction of the Castillo Judgment.[13]

13. In addition, prior to the appointment of the Receiver, the Applicant had already achieved a substantial recovery on the Castillo Judgement through ordinary enforcement proceedings.[14] By enforcing the judgment against Juan's personal assets, the Applicant recovered approximately $1.57 million.[15] This indicates that substantial means and efforts for collection were available outside of the receivership process.

14. The amount recovered before the receivership represented nearly 40 percent of the judgement debts.[16] The outstanding balance of the Castillo Judgement had already been substantially reduced before the Receiver assumed control of Xela's affairs.[17] Xela no longer possesses assets capable of generating value through a sale.[18] In 2020, LISA transferred its interest in the Avicola Group and the Dividends Claims to BDT Investments Inc. (**"BDT"**) in satisfaction of longstanding litigation funding obligations.[19] As a result, Xela no longer has any material economic value to be realized through the proposed Sale Process.[20]

15. After years of direct involvement, the receivership has not been administered for the benefit of the estate, but has instead become a further instrument of the long campaign by the heirs of the Juans's father's siblings (**referred to as the "Cousins"**), and the Applicant to injure Xela and Juan to gain an advantage

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[13] Gutierrez Affidavit, para. 37, RR at page 17.
[14] Gutierrez Affidavit, para. 35-36, RR at page 17.
[15] Gutierrez Affidavit, para. 36, RR at page 17.
[16] Gutierrez Affidavit, paras. 35-36, RR at page 17.
[17] Gutierrez Affidavit, para. 36, RR at page 17.
[18] Gutierrez Affidavit, para. 11, RR at page 8.
[19] Gutierrez Affidavit, para. 31, RR at page 15.
[20] Ibid.

in respect of the Dividends Claims, including by diverting the resources that might otherwise be devoted to those claims.[21]

Receiver's steps to block a loan that would have successfully satisfied the Castillo Judgment

16. The Receiver took affirmative steps to block a loan that would have fully satisfied the Castillo Judgment and all receivership costs.[22]

17. In late 2019 LISA secured a private, third-party loan commitment sufficient to satisfy the Castillo Judgment in full, together with the costs of the receivership (the **"Loan Commitment"**).[23] By letter dated December 17, 2019, Amsterdam & Partners LLP (on behalf of LISA – informed the Receiver about the Loan Commitment and asked for an expedited statement containing a total payoff amount for the Castillo Judgment and an estimate of the Receiver's actual and anticipated costs.[24]

18. Although the Receiver did supply the payoff information, it also demanded that LISA take "no further steps" in respect of the Loan Commitment until the Receiver approved.[25]

19. The Receiver made its demand knowing full well that LISA, a foreign, indirect subsidiary of XELA, was under authority and management of a separate and independent board of directors in Panama, not under the authority of the Receiver, as the Receiver had not sought recognition of its Appointment Order in Panama.[26]

20. Following notice of the Loan Commitment, the Receiver undertook steps to alter the governance of Gabinvest and LISA in Panama. The Receiver replaced Gabinvest's directors with lawyers acting on its

[21] Gutierrez Affidavit, para. 39, RR at page 18.
[22] Gutierrez Affidavit, para. 41, RR at page 18.
[23] Gutierrez Affidavit, para 42, RR at page 18.
[24] Ibid.
[25] Ibid.
[26] Ibid.

behalf, caused the newly constituted Gabinvest board to amend LISA's bylaws to increase the maximum number of directors from five to six, appointed additional directors to LISA, and directed that those changes be filed with the Public Registry of Panama.[27]

21. Such governance changes did not comply with LISA's bylaws, which required any change to the number of directors to be approved at a special meeting of LISA's board. Further, the shareholder meeting minutes relied upon to alter Gabinvest's board recorded that all shareholders were present or represented, notwithstanding that neither Xela nor Juan attended the meeting. The Receiver subsequently acknowledged that the Public Registry of Panama refused to recognize the appointments, and the matter remains disputed in Panama.[28]

22. The governance uncertainty created by the Receiver's actions in Panama caused, or contributed to, the withdrawal of the Loan Commitment. By directing that no further steps be taken in respect of the proposed financing while simultaneously seeking to alter control of LISA's board, the Receiver frustrated a transaction that was capable of satisfying the Castillo Judgment and bringing the receivership to an end.[29]

The Receiver advanced the Cousins' Interests over those of the Estate by Failing to Pursue Dividends Claims, the Estate's Most Significant Asset, While Those Claims were Owned by LISA

23. The Dividends Claims were the estate's most significant asset and principal source of potential recovery. However, the Receiver did not pursue or preserve those claims during the receivership.[30]

24. The significance of the Dividends Claims was acknowledged by the Receiver itself, which described them as a claim worth approximately CDN$400 million for the benefit of Xela.[31]

[27] Gutierrez Affidavit, para. 43, RR at page 19.
[28] Gutierrez Affidavit, para. 44, RR at page 19.
[29] Gutierrez Affidavit, para. 45, RR at pages 19-20.
[30] Gutierrez Affidavit, para. 46, RR at page 20.
[31] Gutierrez Affidavit, para. 47, RR at page 20.

25. The Dividends Claims have since passed to BDT under the Panama Settlement; nevertheless, the Receiver's election not to pursue them while they were still an asset of Xela remains central to improvidence of the receivership.[32] The Receiver's own assertions bolster the notion that it consistently ignored the primary source of funds that very well may have satisfied the Castillo Judgement.[33]

The Receiver advanced Margarita's Interests Over Those of the Estate by Ignoring a Potential USD 4.35M Asset in Xela's Favour

Background

26. In 2013, Xela, LISA, Gabinvest, Juan, and others commenced an action in this Court against the Applicant, her husband, and the Cousins seeking approximately $400 million in damages arising from alleged civil conspiracy, fraud, breach of fiduciary duty, unjust enrichment, and the diversion of assets associated with the Dividends Claims (**the "Canadian Action"**).[34]

27. The Castillo Judgment arose from a separate oppression application commenced by the Applicant concerning Tropic International Limited, a company in which the Applicant, Juan, and Juan's father were shareholders (**the "Oppression Claim"**). On October 28, 2015, the Court ordered that the Applicant's shares be purchased for approximately $4.25 million. Together with interest and costs, that award became the Castillo Judgment that this receivership was appointed to enforce.[35]

28. A recovery in the Canadian Action could have offset the Castillo Judgment in whole or in part.[36]

[32] Gutierrez Affidavit, para. 48, RR at page 20.
[33] Gutierrez Affidavit, para. 49, RR at page 20.
[34] Gutierrez Affidavit, para. 25, RR at pages 12-13.
[35] Gutierrez Affidavit, para. 29, RR at page 14.
[36] Gutierrez Affidavit, para. 30, RR at page 15.

29. Among the allegations advanced in the Canadian Action was a claim that approximately US$4.35 million in dividends owing to LISA were diverted and pledged as security for a loan obtained by the Applicant to fund the Oppression Action.[37]

30. Juan states that he investigated the Castillo Loan in 2016 and met with senior representatives of Banco G&T Continental, including a member of its Board of Directors and its President. According to Juan, bank representatives confirmed that the loan had been secured by a certificate of deposit linked to LISA's dividends.[38]

31. The Castillo Loan was subsequently collapsed and satisfied through realization on the collateral securing it, namely Certificate of Deposit No. 010152676, which was alleged to have been funded with dividends owing to LISA.[39]

Failure to Investigate the USD 4.35 million constructive trust claim

32. The Receiver was advised of the Castillo Loan transaction during the early stages of the receivership. Despite allegations that the transaction gave rise to a potential US$4.35 million constructive trust claim in favour of Xela and was connected to proceedings before this Court, the Receiver did not investigate the transaction and did not address it in its reports.[40]

33. The Castillo Loan was never investigated by the Receiver. If the loan had been satisfied through realization on the pledged security rather than repayment by the Applicant, the transaction could have

[37] Gutierrez Affidavit, para. 50, RR at page 21.
[38] Gutierrez Affidavit, para. 51, RR at page 21.
[39] Gutierrez Affidavit, para. 52, RR at page 22.
[40] Gutierrez Affidavit, para. 53, RR at page 22.

given rise to a substantial claim in favour of Xela and potentially reduced or eliminated the basis for the ongoing receivership.[41]

The Receiver Advanced Margarita's Interests Over Those of the Estate by Ignoring Xela's Claims Against Margarita's Husband

34. In 2007, Xela sold its 86.6% interest in Digalta LLC to Gadais Limited in exchange for a promissory note in the amount of CDN$400,000 (**the "Gadais Note"**).[42] The Digalta shares were transferred, but the Gadais Note remained unpaid and constituted a receivable owing to Xela.[43] The Receiver was advised of the Gadais Note and its non-payment. However, the Receiver did not take steps to collect upon or investigate the debt and did not address it in its reports.[44]

The Receiver was Involved in Ongoing Consultation with the Cousins' Legal Counsel, Giving Rise to Legitimate Concerns about Coordination

35. The Receiver's accounts reflect ongoing communications between the Receiver's counsel and counsel for the Cousins throughout the receivership. Billing entries record calls, correspondence, and meetings with Stikeman Elliott, including conferences involving counsel and representatives of the Cousins.[45]

36. In January 2023, counsel for the Cousins delivered a proposal to the Receiver concerning a potential purchase of LISA's interest in the Avicola Group and settlement of the Dividends Claims. The proposal contemplated negotiations being conducted through the Receiver and was not delivered directly

[41] Gutierrez Affidavit, para. 54, RR at page 22.
[42] Gutierrez Affidavit, para. 55, RR at page 23.
[43] Gutierrez Affidavit, para. 56, RR at page 23.
[44] Ibid.
[45] Gutierrez Affidavit, para. 57, RR at pages 23-24.

to LISA, BDT, or Juan.[46] The proposal subsequently led to an in-person meeting in Toronto hosted by the Receiver and attended by counsel for the Cousins.[47]

37. The invoices of the Receiver's former counsel contain partially redacted descriptions that nevertheless disclose communications with counsel for the Cousins. By contrast, the invoices of Lenczner Slaght LLP are redacted in their entirety, preventing any review of the nature or extent of communications reflected in those accounts.[48]

38. The Receiver did not disclose the nature or extent of its communications with the Cousins or their counsel and declined requests for production of those communications. During the same period, the Receiver maintained communications with counsel for the Cousins while declining requests from Juan to discuss enforcement of the Dividends Claims.[49]

39. Despite repeated requests from Juan, the Receiver met with him only twice following its appointment in 2019. During those meetings, the Receiver did not engage with Juan's proposed avenues of recovery, including the Dividends Claims, the alleged constructive trust claim arising from the Castillo Loan, and the Gadais Note.[50]

40. During the Receivership, the Receiver obtained forensic images of Juan's personal electronic devices and sought access to substantial volumes of personal and corporate email data.[51] That material was never reviewed and did not result in the identification or recovery of assets capable of satisfying the Castillo Judgment.[52] The Receiver nevertheless devoted significant resources to obtaining and preserving

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[46] Gutierrez Affidavit, para. 58, RR at page 24.
[47] Ibid.
[48] Gutierrez Affidavit, para. 59, RR at pages 24-25.
[49] Gutierrez Affidavit, para. 60-61, RR at page 25.
[50] Gutierrez Affidavit, para. 62, RR at pages 25-26.
[51] Gutierrez Affidavit, para. 65, RR at page 26.
[52] Gutierrez Affidavit, paras. 65-66, RR at page 26.

that information, despite already possessing Xela's books and records and despite no apparent connection between the Juan's personal data and the recovery efforts undertaken in the receivership.[53]

41. The Receiver has taken no meaningful steps to operate or administer Xela's business as a going concern. It has treated its mandate as one of investigation, litigation and liquidation from the outset. This course of action has allowed Xela and its subsidiaries to languish and lose value.[54]

42. The Receiver's reports acknowledge that, when funding ceased between July 2021 and February 2022, it was unable to continue its investigations and instead began taking preliminary steps toward a sales process. Once funding resumed in February 2022, the proposed sales process was suspended.[55]

43. The Receiver's reports were inaccurate, incomplete, or presented a one-sided account of the receivership, notwithstanding corrections previously provided under oath.[56] For example, the Receiver described Xela's Central American businesses as no longer operating while simultaneously identifying Xela's most significant asset as its indirect one-third interest in the Avicola Group, which the Receiver characterized as a successful and operating poultry business.[57]

44. The Receiver's reports acknowledge the value of the Dividends Claims and Xela's indirect interest in the Avicola Group, do not explain why the Receiver took no steps to pursue those claims, the alleged US$4.35 million constructive trust claim arising from the Canadian Action, or the Gadais Note. Instead, the Receiver now seeks approval of a Sale Process that would dispose of Xela's shares without first

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[53] Gutierrez Affidavit, para. 67, RR at page 27.
[54] Gutierrez Affidavit, para. 68, RR at page 27.
[55] Gutierrez Affidavit, para. 69, RR at page 27.
[56] Gutierrez Affidavit, para. 72, RR at page 28.
[57] Gutierrez Affidavit, para. 73, RR at page 28.

pursuing or preserving those potential assets and without understanding the underlying value of the company.[58]

45. The Receiver's reports also attribute much of the delay and expense of the receivership to Juan, notwithstanding his repeated offers to assist with the enforcement of the Dividends Claims and recovery efforts on behalf of Xela.[59]

46. Throughout the receivership, Juan repeatedly raised concerns regarding the Receiver's reporting, the failure to pursue significant potential assets and claims, the handling of the proposed financing transaction, and the administration of the receivership generally.[60]

47. The Receiver did not act even-handedly throughout the receivership. The Receiver maintained regular communications with counsel for the Cousins while engaging only minimally with Juan,[61] the nature and extent of those communications cannot be fully assessed due to redactions in the Receiver's accounts and those of its counsel,[62] and the proposed Sale Process was only brought forward after funding from the Applicant ceased, while significant potential assets and claims, including the Dividends Claims, the Canadian Action, and the Gadais Note, remained unpursued.[63]

48. In or around April 2026, after almost three years of inactivity, the Received brought this motion for approval of the sale of Xela.[64]

[58] Gutierrez Affidavit, para. 74, RR at page 29.
[59] Gutierrez Affidavit, para. 75, RR at page 29.
[60] Gutierrez Affidavit, para. 77 (a)-(d), RR at pages 29-30.
[61] Gutierrez Affidavit, paras. 79 and 61, RR at pages 31, 25.
[62] Gutierrez Affidavit, para. 80, RR at page 31.
[63] Gutierrez Affidavit, para. 81; see also paras. 46, 52, 56 and 70, RR at page 31; see also pages 20, 22, 23, 27.
[64] Receiver’s Record.

49. The Receiver has not kept Juan informed of material developments in the receivership and did not meaningfully consult with him regarding significant decisions affecting the estate. The proposed Sale Process was ultimately developed and brought forward without consultation with Juan, notwithstanding his role as a director and principal of Xela.[65]

50. With no clear idea of the value of Xela, the Receiver now seeks approval of its sale, ostensibly for a significantly discounted value, with its only consideration being a payment of the Receiver's fees.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

51. With respect to the Receiver's Motion, the Court should consider:

a) Whether Juan should be granted standing to make submissions on the motion;

b) Whether the proposed Sale Process should be approved, having regard to:

(i) Whether the proposed Sale Process is fair, reasonable, and in the best interests of the estate;

(ii) Whether the Cousins and Margarita should be excluded from the proposed Sale Process; and

(iii) Whether the Receiver's reports and actions should be approved en masse

c) Whether the fees and disbursements of the Receiver and its counsel should be approved, or alternatively referred to assessment.

Standing to Make Submissions

52. The Receiver seeks to silence Juan by suggesting that he should not be granted standing to make submissions concerning the viability of the proposed sale. However, the general policy that litigation costs

[65] Gutierrez Affidavit, paras. 63-64, RR at page 26.

should be paid before a party proceeds further is discretionary, not mandatory, and courts may permit a party to participate in litigation even when costs remain owing to opposing parties if it is just to do so.[66]

53. Before the Receivership was instituted, Juan paid approximately $1.5 million to satisfy the Castillo Judgment. The Applicant effectively bankrupted him in the process, she sold his home, his vehicles and much more. To prohibit him from making submissions that are not only in the interest of Xela, but the Applicant would be unjust and antithetical to the receivership. This Receiver seeks extraordinary relief, being the sale of Xela to one of its debtors. The sale could work to end Xela's ability to collect significant debt owed to it. If the Cousins are allowed to purchase Xela, they will not pursue legitimate claims worth millions that Xela has against them. With no attempts to value Xela's claims or review its records, any sale would be improvident and against Xela's interest. The Receiver's own Reports and pleadings support that conclusion. It is respectfully submitted that it is just in these circumstances to permit Juan to make submissions on this motion.

Whether The Proposed Sale Process Should Be Approved.

Whether the proposed Sale Process is fair, reasonable, and in the best interests of the estate

54. The proposed Sale Process is not fair, reasonable, or in the best interests of the estate. The Receiver seeks approval of a process that would effectively conclude a seven-year receivership that has not recovered any funds toward satisfaction of the Castillo Judgement, notwithstanding professional fees exceeding $3 million.

55. In determining whether to approve a receiver's proposed sale process, the Court must consider whether the receiver made sufficient efforts to obtain the best price and acted prudently; whether the

[66] *Baryluk v. Warner Bros. Entertainment Inc.*, 2007 CarswellOnt 6155 at para 19

interests of all stakeholders have been considered; whether the process by which offers were obtained was effective and maintained its integrity; and whether any unfairness arose in the implementation of the process.[67]

56. While courts ordinarily exercise caution before interfering with a receiver's commercial judgement and should be reluctant to second-guess a receiver's business decisions, that deference is not absolute as the conduct of the receiver should be reviewed "in the light of the specific mandate given to him by the court", with regard to its duties.[68]

57. In *On-Stream*, the Court declined to approve a receiver's proposed transaction notwithstanding the existence of an agreed sale process. The Court held that the proposed transaction had become imprudent in light of the circumstances known at the time approval was sought and concluded that approval should therefore be refused.[69] Where other considerations demonstrate that the proposed transaction is no longer prudent, the deference of the receiver may yield to the Court.[70]

58. The proposed Sale Process is neither open nor competitive. The Receiver proposes to solicit bids from only four prospective purchasers and expressly determined that broader marketing efforts would not be pursued.[71] Furthermore, the proposed Sale Process is further premised on the assumption that only the four parties could have any interest in acquiring Xela.[72]

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[67] *Royal Bank v. Soundair Corp.* (**"*Soundair*"**), 1991 CarswellOnt 205 (Ont. C.A.) at para. 16, adopting *Crown Trust Co. v. Rosenberg (1986),* 60 O.R. (2d) 87 (H.C.J.) at pp. 92-94 [O.R.], itself relying upon *Salima Investments Ltd. v. Bank of Montreal (1985)*, 21 D.L.R. (4th) 473 (Alta. C.A.).

[68] *Sondair,* at para. 14.

[69] *Bank of Montreal v. On-Stream Natural Gas Ltd. Partnership* (**"*On-stream*"**) 1995 CarswellBC 75 (B.C.S.C.) at para. 32.

[70] *On-Stream,* at para. 36.

[71] Sixth Report of the Receiver dated April 14, 2026 (**"Sixth Report"**), at ss. 3.0(2)-(3), Receiver's Record, Tab 2, at pages 20-21.

[72] Ibid.

59. Although the Receiver acknowledges the existence of substantial litigation claims connected to the Avicola Group, including claims asserted to be worth hundreds of millions of dollars, the Motion Record contains no independent valuation of Xela's shares, its disputed interests, or the claims that would pass with the shares.

60. The Court cannot be satisfied that restricting the process to a small group of identified insiders is a prudent means of maximizing value. In *Golden Dragon*,[73] the Court was initially not satisfied that the proposed sale met the *Soundair* test because the receiver had not adequately explained its marketing efforts.[74] Approval was granted only after the receiver filed supplementary evidence addressing those concerns.[75] The Court ultimately approved the sale because it was satisfied subsequently that the receiver had made reasonable efforts to expose the asset to the market and obtain the best available offer.[76]

61. The Receiver asserts that broader marketing would be a waste of time and money because Xela's remaining assets consist primarily of disputed equity interests and litigation claims involving foreign entities, and that only four parties are realistic purchasers.[77] However, that conclusion is largely speculative and does not reconcile the absence of considering sophisticated investors such as litigation funders, distressed asset purchasers, or other parties with experience acquiring companies in situations such as Xela's.

62. Instead, the receiver is seeking to limit the sale to the very group of individuals, the cousins, who Juan has from the beginning stated were, the main debtors of Xela and who have frustrated the Receivership.

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[73] *Bank of Montreal v. Golden Dragon Ho 5 Inc.* (**"*Golden Dragon*"**), 2020 ONSC 2517
[74] *Golden Dragon,* at para. 7.
[75] *Golden Dragon*, at para. 8.
[76] *Golden Dragon,* at para. 27.
[77] Sixth Report, s. 3.0(3), Receiver's Record, Tab 2, at pages 20-21.

63. In *Federal Trust Co. v Frisina,* Galligan J. provided that a Court appointed receiver-manager must be reasonably competent to perform the duties of a receiver, and they must be disinterested and impartial so as to be able to deal with the rights of all persons with an interest, in a fair and even-handed manner.[78]

64. Not only must the receiver-manager appointed by the Court be impartial and able to deal with the rights of all interested parties in a fair and even-handed manner, but he ought to appear to have those qualities.[79]

65. In this case, the Receiver's pursuit of Juan to the exclusion of other more viable options, puts the Receiver's proposed sale of Xela in question.

Whether the Cousins and Margarita should be excluded from the proposed Sale Process

66. Furthermore, each of the proposed purchasers is either directly involved in, or closely connected to, the underlying disputes from which those assets arise. The Cousins and the Applicant participated in the broader campaign to extinguish the Dividends Claims and to deprive LISA of its interest in the Avicola Group.[80] The Canadian Action further alleges that the Applicant and the Cousins participated in transactions involving the diversion of dividends otherwise payable to LISA.[81]

67. Such a proposal is arguable contrary to the principles espoused by Galligan J. in *Frisina,*[82] in which the Court provided that a receiver-manager must be reasonably competent to perform the duties of a

[78] *Federal Trust Co. v. Frisina* (**"*Frisina*"**) [1976] 86 DLR (3d) 591 at 593
[79] *Frisina*
[80] Gutierrez Affidavit, paras. 23-25, 39-40, RR at pages 12-13, 18.
[81] Gutierrez Affidavit, para. 50.
[82] *Frisina*

receiver, and they must be disinterested and impartial so as to be able to deal with the rights of all persons with an interest, in a fair and even-handed manner.[83]

The Proposed Sale Process Improperly Includes Personal and Privileged Information

68. The proposed Sale Process also includes the Data, which contains the Hard Drive Data and ATS and Juan Guillermo Emails and is subject to a Court-ordered privilege protocol.[84] The Receiver acknowledges that it has not reviewed the Data due to funding constraints.[85]

69. Notwithstanding this, the Receiver proposes to include the Data in the Sale Process and require bidders to propose how the Data will be reviewed, preserved, destroyed, or otherwise dealt with.[86] In circumstances where the Receiver has not reviewed the Data and where the Data includes information subject to a privilege protocol, the Court should not permit the Data to form part of the Sale Process.

The Receiver's reports and actions should not be approved en masse

70. The Receiver seeks approval of the Receiver's Second through Sixth Reports, together with their supplements, and all actions described therein.[87] Such relief would effectively confer retrospective approval on more than five years of conduct across a broad range of matters, notwithstanding specific objectionable actions and decisions taken during the receivership.

71. In *Akagi*,[88] the Court of Appeal held that a receivership must be carefully tailored to what is required to achieve its purpose and should go no further than necessary.[89] The Receiver's conduct

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[83] *Frisina*
[84] Sixth Report, ss. 4.0(4), (7), Receiver's Record at page 22; Gutierrez Affidavit, paras. 96-97, RR at page 35.
[85] Sixth Report, ss. 4.0(6), Receiver's Record at page 22.
[86] Sixth Report, ss. 4.0(9)-(11), Receiver's Record at page 23.
[87] Notice of Motion of the Receiver dated April 14, 2026 (**"RNOM"**) at sub-paragraph (a)(iii), Receiver's Record at pages 1-2.
[88] *Akagi v Synergy Group (2000) Inc.,* (**"*Akagi*"**), 2015 ONCA 368
[89] *Akagi*, at para. 90.

throughout the receivership reflect a focus on certain investigations and enforcement steps while declining to pursue or properly and diligently investigate other potential sources of recovery. These concerns include the Receiver's treatment of the Dividends Claims, its response to the proposed LISA Loan, its conduct in Panama relating to Gabinvest and LISA, its communications with parties adverse to Xela's interests, its pursuit of the Reviewable Transactions, its handling of the Castillo Loan and Gadais Note, its collection and proposed disposition of the Respondent's personal data, and its rejection of the BDT proposal.

72. Where, in this Motion, the Court is asked to approve and validate the courses of action addressed above, the requested approval should not be granted without careful scrutiny of the individual reports and actions of the Receiver.

73. The Receiver has done nothing for the last two years. It has not issued any reports on its efforts to collect or attempt to review documents that it deemed to be crucial for collection of the Castillo Judgment. Although the Receiver now alleges that it did no work due to a lack of funding, there is no explanation as to why it took three years to re-emerge. There was no attempt by the receiver to review any of the data that the Receiver purportedly spent over $2,000,000 to obtain. The Receiver’s efforts were futile in that regard.

74. Although the Receiver attempts to rely upon previous cost orders not paid to preclude the participation of Juan in raising challenges to the sale process before the court.

75. The Receiver’s attempt to sell Xela to the Cousins, is evidence of its previous interactions with the Cousins. The Receiver, puts little or no value in Xela, but is willing to sell Xela to the Cousins, because they are “one of a few that would likely purchase Xela.” If there is no value in Xela, it follows that the only reason that the Cousins would seek to purchase Xela is to foreclose any possibility of Xela ever

collecting on the debt owed by the Cousins. The sale of Xela to the Cousins would not be in the best interest of Xela or Margarita. The only people that may benefit from such a sale would be;

a) The receiver, as it would ensure the sale price would cover most if not all of its fees; and,

b) the Cousins, who would effectively be absolved from paying significant debt they owe.

76. On December 30, 2021, the Receiver commenced a claim specifically pleading that Xela is entitled to pursue dividend claims, linked to the Cousins. In that claim, the Receiver pleaded that there is significant debt owed by the Cousins to Xela. Further, the Receiver made serious allegations of breach of trust and improvident sale of shares to the detriment of Xela.[90] The Receiver issued the Claim but was not served upon Juan for almost 5 months. The Receiver never pursued or discontinued the claim.

77. The purchaser of Xela, especially the Cousins, could disrupt any efforts to collect on significant debt that the Cousins may owe to Xela and/or its subsidiaries, further illustrating that the sale is not in the best interest of Xela and/or the Applicant.

78. The Receiver's willingness to sell Xela to the Cousins (to the detriment of the Xela and the Applicant) further evidences the Receiver's conflict of interest and substantiates the claims that the Receiver has colluded with the Cousins throughout.

79. Despite numerous accusations of collusion and the current attempt to sell Xela to the Cousins, the Receiver refuses to produce unredacted copies of its invoices, yet asks this court to approve its fees and allow a sale to the Cousins, which sale would be contrary to the purpose of the Receivership. Ontario Court's have repeatedly held that a Receiver or Court Officers should be transparent.[91] As outlined below,

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[90] Second Supplement to the Fifth Report of KSV Restructuring Inc at Appendix "L", Statement of Claim dated December 20,2021, at paras. 34, 55, Receiver's Record at page 201.
[91] *Jethwani v. Damji* ("***Jethwani***"), [2018 ONSC 4246](#) at paras 23 and 25

the Receiver ought to produce unredacted invoices. The Receiver has failed to be transparent throughout and has failed to investigate the true value of Xela, which will lead to an improvident sale and a windfall to the purchaser of Xela (especially if it is the Cousins).

80. In its latest report, the Receiver, states that:

> "the data may be a valuable asset, given the effect of the Reviewable Transaction and the need for this information to pursue the Statement of Claim. In addition, the Receiver will require the Court approval for how it deals with or disposes of the data, prior to the Receiver's discharge. For these reasons, the Receiver intends to include the data in the sale process."[92]

81. The Receiver acknowledges that the data it collected three years ago but failed to review has value. To suggest that there is no need to quantify the value before sale is neither fair nor commercially acceptable.

A. Whether the Receiver's Fees Should be Approved

82. The Receiver bears the onus of establishing that its fees and those of its counsel are fair and reasonable.[93] In assessing the reasonableness of a receiver's accounts, the Court may consider the time spent, complexity of the proceedings, and nature of the services provided.[94] However, the predominant consideration is the value conferred on the estate.[95] The focus is not merely how much work was performed, but what was accomplished.[96]

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[92] Receiver Report at pg. 9, para 9, Receiver's Record at pg. 23
[93] *Bank of Nova Scotia v. Diemer* (**"*Diemer*"**), 2014 ONCA 851 at para. 45.
[94] Ibid.
[95] Ibid.
[96] Ibid.

83. The Receiver now seeks approval of approximately $1,997,896.70 in additional fees and disbursements.[97] Those amounts are in addition to fees previously approved by the Court.[98] The aggregate fees incurred throughout the receivership exceed $3 million.[99] Notwithstanding those expenditures, no funds have been recovered or distributed toward satisfaction of the Castillo Judgment.[100]

84. While the Receiver attributes much of the cost and duration of the receivership to resistance encountered during it's administration,[101] the existence of prior disputes or contempt proceedings does not determine whether the fees presently sought are fair and reasonable. The reasonableness of the accounts must be assessed in light of the results achieved and the benefit conferred upon the estate.[102]

85. A substantial portion of the fees sought arise from litigation conducted by the Receiver, including contempt proceedings, investigations, and disputes concerning the collection and review of data.[103] In *Akagi*, the Court of Appeal stressed the importance of a receiver remaining "mindful of its role as an officer of the Court" and to "avoid becoming a litigant advancing a cause."[104] Where a receiver elects to engage in extensive litigation, as is the case in the lifetime of this receivership, the resulting costs remain subject to scrutiny by the Court.[105]

86. Significant portion of the supporting invoices have been redacted.[106] The descriptions of the work performed by Lenczner Slaght LLP (**"Lenczner"**) have been redacted in their entirety.[107] There is a

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[97] Sixth Report, s. 5.0(1)-(5), Receiver's Record at pages 23-24.
[98] Ibid.
[99] Gutierrez Affidavit, para. 103, 105, RR at page 37.
[100] Gutierrez Affidavit, paras. 103, 106, RR at page 37.
[101] Gutierrez Affidavit, para 112, RR at page 39; Sixth Report, ss. 5.0(1)-(5), Receiver's Record at page 23.
[102] *Diemer,* at para. 45.
[103] Guttierez Affidavit, paras. 107-108, RR at page 38.
[104] *Akagi*, at para. 19.
[105] *Akagi,* at para. 19; *Haunert-Faga v. Faga*, 2013 ONSC 1581 (CanLII) at paras 12-16.
[106] Guttierez Affidavit at para. 110, RR at page 38; Receiver's Record Appendix Q-S.
[107] Guttierez Affidavit at para. 110 RR at page 38; Appendix R of the Receiver's Record, the Affidavit of Monique J. Jilesen, Sworn April 13, 2026 (**the "Lenczner Fee Affidavit"**).

complete inability for any stakeholder to assess the necessity or reasonableness of the work performed, and even if the Court may require and review the unredacted invoices upon request, the stakeholders are completely barred from viewing critical information necessary to advance their own positions in disputing such fees in this forum. The Receiver has not discharged its burden of establishing that the fees sought are fair and reasonable.

87. In *Jethwani* the court required unredacted copies of the Receiver's invoices and the judgment debtor was permitted to question the receiver on its fees.[108] The Court found that given the litigious history between the Receiver and judgment debtor the Receiver ought to have known approval of fees, particularly given that they would consume all recoveries leaving nothing for others, would be contentious.[109]

88. Here, as in *Jethwani*, the Receiver took on the role of a litigant advancing a cause and engaged in extensive litigation.[110] It follows that the Receiver ought to be prepared to prove the fees it incurred, especially at times where there was little activity.

89. In these circumstances, the fees and disbursements of the Receiver and its counsel should not be approved as sought.

PART IV - ORDER REQUESTED

90. An Order dismissing the Receiver's request for approval of the proposed Sale Process.

91. In the alternative, if a Sale is approved, an Order that the Applicant, the Cousins, and any related persons or entities be excluded from participating as purchasers.

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[108] *Jethwani,* at para 26.
[109] *Jethwani.*
[110] *Akagi*, at para. 19.

92. Further and in the alternative, if the Applicant, the Cousins, or any related persons or entities are permitted participate in the Sale Process, an Order that any claims asserted on behalf of Xela concerning ownership of the Dividends Claims and LISA’s interest in the Avicola Group first be finally resolved or extinguished.

93. An Order for Production of unredacted invoices, accounts, and communications between the Receiver, its counsel, the Cousins, and their counsel before any determination is made regarding approval of the Sale Process, the Receiver's conduct, or the fees claimed.

94. An Order that all personal and privileged information contained in Juan's electronic data be excluded from any sale process and returned or destroyed in accordance with the existing privilege protocol.

95. Order dismissing the Receiver's request for blanket approval of reports and an order assessing each report and category of conduct individually.

96. An Order that the fees and disbursements claimed by the Receiver and its counsel be disallowed, reduced, or referred to assessment, and that no fees be approved until unredacted accounts have been produced.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of June, 2026.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Akagi v Synergy Group (2000) Inc.*, 2015 ONCA 368

2. *Bank of Montreal v. Golden Dragon Ho 5 Inc.*, 2020 ONSC 2517

3. *Bank of Montreal v. On-Stream Natural Gas Ltd. Partnership*, 1995 CarswellBC 75 (B.C.S.C.)

4. *Baryluk v. Warner Bros. Entertainment Inc.,* 2007 CarswellOnt 6155

5. *Crown Trust Co. v. Rosenberg (1986),* 60 O.R. (2d) 87 (H.C.J.)

6. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

7. *Federal Trust Co. v. Frisina,* [1976] 86 DLR (3d) 591 at 593

8. *Haunert-Faga v. Faga*, 2013 ONSC 1581 (CanLII)

9. *Jethwani v. Damji,* 2018 ONSC 4246

10. *Re Federal Trust Co. and Frisina et al.*, 1976 CanLII 627 (ON HCJ)

11. *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.)

12. *Salima Investments Ltd. v. Bank of Montreal (1985)*, 21 D.L.R. (4th) 473 (Alta. C.A.).

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 23, 2026

Signature

Christopher MacLeod

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

Effect of Non-Compliance

2.01 (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part. R.R.O. 1990, Reg. 194, r. 2.01 (1).

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed. R.R.O. 1990, Reg. 194, r. 2.01 (2).

Attacking Irregularity

2.02 A motion to attack a proceeding or a step, document or order in a proceeding for irregularity shall not be made, except with leave of the court,

(a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity; or

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity. R.R.O. 1990, Reg. 194, r. 2.02.

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time. R.R.O. 1990, Reg. 194, r. 2.03.

Contested Motion

57.03 (1) On the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall,

(a) fix the costs of the motion and order them to be paid within 30 days; or

(b) in an exceptional case, refer the costs of the motion for assessment under Rule 58 and order them to be paid within 30 days after assessment. O. Reg. 284/01, s. 16.

(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. R.R.O. 1990, Reg. 194, r. 57.03 (2).

Motion Without Notice

(3) On a motion made without notice, there shall be no costs to any party, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 57.03 (3).

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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