

**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

AFFIDAVIT OF BOBBY KOFMAN
(Sworn March 31, 2020)

I, **ROBERT KOFMAN**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of KSV Kofman Inc., in its capacity as the Court-appointed Receiver of Xela Enterprises Ltd. (the “**Receiver**”) and, as such, I have knowledge of the matters to which I hereinafter depose.
2. This Affidavit is sworn in support of a motion (the “**Contempt Motion**”) brought by the Receiver for an Order, among other things, declaring the Respondent, Juan Guillermo Gutierrez, to be in contempt of the following Orders made in these proceedings: (a) the Order of Justice McEwen made July 5, 2019 by which the Receiver was appointed (the “**Appointment Order**”); and (b) the Order of Justice McEwen made October 29, 2019 (the “**Disclosure Order**”).

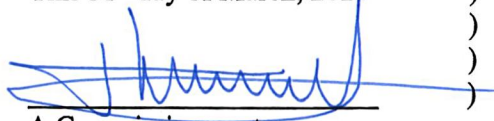
3. The Receiver has filed the following in support of, among other motions, the Contempt Motion:

- (a) the Second Report of the Receiver, dated February 18, 2020 (the “**Second Report**”), a copy of which Second Report is attached as **Exhibit “A”** to this Affidavit;
- (b) the Supplement to the Second Report, dated March 17, 2020 (the “**First Supplement**”), a copy of which First Supplement is attached as **Exhibit “B”** to this Affidavit; and
- (c) the Second Supplement to the Second Report, dated March 23, 2020 (the “**Second Supplement**”), a copy of which Second Supplement is attached as **Exhibit “C”** to this Affidavit.

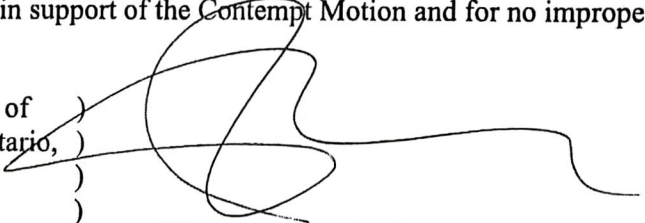
4. I have knowledge of the matters described in the Second Report, the First Supplement and the Second Supplement, except where the information therein is based upon the information I have received from others, in which case I have stated the source of that information and, in all such cases, believe it to be true.

5. This Affidavit is made in support of the Contempt Motion and for no improper purpose.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
This 31st day of March, 2020)


_____)

A Commissioner, etc.
Kyle B. Plunkett


_____)

ROBERT KOFMAN

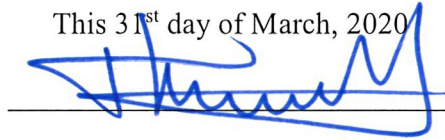
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

This 31st day of March, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc



**Second Report of
KSV Kofman Inc.
as Receiver and Manager of
Xela Enterprises Ltd.**

February 18, 2020

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COURT FILE NO.: CV-11-9062-00CL

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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.

SECOND REPORT OF KSV KOFMAN INC.

FEBRUARY 18, 2020

1.0 Introduction

1. On January 18, 2011, Margarita Castillo (“Margarita”) commenced an application in the Ontario Superior Court of Justice (the “Court”) seeking, among other things, relief against her now-deceased father, Juan Arturo Gutierrez (“Juan Arturo”), and her brother, Juan Guillermo Gutierrez (“Juan Guillermo”), in her capacity as a director of Tropic International Limited, a wholly-owned subsidiary of Xela Enterprises Ltd. (the “Company”).
2. Pursuant to a judgement issued by the Court on October 28, 2015, the Company, Juan Guillermo and Juan Arturo became jointly obligated to pay Margarita approximately \$5 million, plus interest and costs (the “Judgment Debt”). The Receiver understands that the present balance owing in respect of the Judgment Debt is approximately \$4.4 million, plus interest and costs which continue to accrue, including costs incurred during these proceedings.
3. Margarita, through an Alberta company, also owns preference shares in the Company in the face amount of approximately \$14 million.
4. On January 15, 2019, Margarita made an application to the Court for, among other things, the appointment of KSV Kofman Inc. (“KSV”) as receiver and manager of the Company (the “Receiver”) pursuant to Section 101 of the *Court of Justices Act* (Ontario). A copy of the receivership order is attached as Appendix “A” (the “Receivership Order”).

5. The Receivership Order contained certain limitations regarding the Receiver's involvement in the Avicola Litigation (as defined below). Effective January 1, 2020, such restrictions expired and the Receiver is fully empowered and authorized under the Receivership Order to manage and deal with any and all of the property and assets of the Debtor, including the Avicola Litigation.
6. Further details regarding the background and the lead up to the Receivership Order are set out in the Receiver's First Report to Court dated October 17, 2019 (the "First Report"). A copy of the First Report is attached as Appendix "B", without appendices.

1.1 Avicola Group

1. As described in the First Report, the Company is the parent of more than two dozen direct or indirect subsidiaries located predominantly in Central America that carry on, or carried on, business in the food and agricultural sectors. Most of these businesses are no longer operating or, as discussed in the First Report and below, were conveyed to the ARTCARM Trust (the "Trust"), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo's children. The Trustee of the Trust is Alexandria Trust Corporation ("ATC").
2. The Company's most significant asset is its indirect one-third interest in a group of successful family-owned vertically integrated poultry businesses operating in Central America known as the "Avicola Group". The Company's interest in the Avicola Group is held as follows:
 - a) 25% through its wholly owned indirect subsidiary, Lisa, S.A. ("Lisa"), a Panamanian holding company; and
 - b) 8.3% through Villamorey S.A. ("Villamorey"), a Panamanian holding company¹.

Attached as Appendix "C" is what the Receiver believes to be the Company's present corporate organizational chart.²

3. Dionisio Gutierrez Sr., Isabel Gutierrez de Bosch and their children (collectively, the "Cousins") are believed to own the remaining two-thirds of the Avicola Group through entities they own, including the remaining two-thirds of Villamorey.
4. Margarita, Juan Guillermo and the Cousins have been litigating for decades, primarily related to shareholder disputes involving the Avicola Group (the "Avicola Litigation").

1.2 EAI Transaction and Assignment Transaction

1. The Receiver previously detailed certain reviewable transactions in the First Report which were completed in April 2016 by the Company and its direct subsidiary, Empress Arturo International ("EAI"), a Barbados company. Prior to April 2016, EAI indirectly owned and operated the "Arturos" restaurant business in Venezuela through its wholly-owned subsidiaries, BDT Investments Ltd. ("BDT") and Corporacion Arven, Limited ("Arven").

¹ Villamorey owns 25% of the Avicola Group, of which the Company has an indirect one-third ownership interest.

² The Company's corporate organizational chart does not show the Villamorey interest in the Avicola Group; however, the Receiver understands based on court pleadings and its conversations with Juan Guillermo that Villamorey owns a 25% interest in the Avicola Group.

2. Juan Guillermo has advised the Receiver that the Arturos restaurant chain has a history of profitability. BDT, Arven and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA (“PAICA”) are purported to have advanced over \$100 million to the Company and to Lisa to fund the Avicola Litigation, which amounts are purported to still be owing (the “Intercompany Receivables”). Despite several requests by the Receiver to Juan Guillermo and others who should have information relating to the Intercompany Receivables, the Receiver has not been provided with any evidence of these advances.
3. In 2012, judgment was issued by the Panamanian Court in favour of BDT against Lisa in the amount of approximately \$25,323,773 (the “BDT Judgement”). At the time of the BDT Judgement, Lisa and BDT were both indirectly owned by the Company. The Receiver has not been able to confirm that the obligations which gave rise to the BDT Judgement were advanced by any of BDT, Arven or PAICA to Lisa and/or the Company.
4. In April 2016, EAI transferred the shares of BDT and Arven to Juan Arturo for US\$6.5 million in partial satisfaction of a debt then owing to Juan Arturo by EAI. Juan Arturo then transferred the shares of BDT and Arven to the Trust (the “EAI Transaction”).
5. The Receiver was advised by Juan Guillermo that in January 2018, BDT agreed to fund Lisa’s costs in the Avicola Litigation, provided Lisa assigned its interest in the Avicola Litigation to BDT. Under this agreement, BDT agreed to pay Lisa 30% of the net litigation proceeds, after deducting costs and the repayment by Lisa of any amounts it then owed to BDT (the “Assignment Transaction” and together with the EAI Transaction, the “Reviewable Transactions”). At the time of the Assignment Transaction, Lisa allegedly owed BDT approximately \$47 million.
6. As a result of the Reviewable Transactions, the majority of the economic value of the Company (which is indirectly held through Lisa) has been transferred outside of the Company to the Trust, the beneficiaries of which are Juan Guillermo’s children. The Reviewable Transactions and the BDT Judgement all occurred at a time when Juan Guillermo was litigating with Margarita. The Receiver has concerns that, *inter alia*, EAI received inadequate consideration for the shares of BDT and Arven.
7. The First Report further details the Receiver’s concerns with respect to nature and terms of the Reviewable Transactions.
8. As previously noted in the First Report, the Receiver advised the Court that it required further information in order to come to final conclusions concerning the Reviewable Transactions. The Receiver has made numerous information requests from Juan Guillermo that remain outstanding as at the date of this Report. As set out below, many information requests have been refused or frustrated by individuals and entities taking direction from Juan Guillermo.
9. As a result of the Receiver’s inability to obtain information, on October 29, 2019, the Receiver sought an order from the Court requiring Lisa, BDT, Arven, the Trust and ATC to deliver information to the Receiver concerning the Reviewable Transactions. On October 29, 2019, the Court issued the order (the “Disclosure Order”). A copy of the Disclosure Order is attached as Appendix “D”.

³ The BDT Judgement was issued in the amount of \$19,184,680 Balboas, being the currency in Panama. The exchange rate as at January 31, 2020 for Balboas into Canadian currency was C\$1.32/B\$1.

1.3 Purposes of this Report

1. The purposes of the Report are to:
 - a) provide an update to the Court on the status of the receivership proceedings since the First Report, including the responses, or lack thereof, received from Lisa, BDT, Arven, the Trust and ATC to the Receiver's information requests pursuant to the Disclosure Order;
 - b) provide a summary of the actions taken by the Receiver to protect the Company's interest in Lisa;
 - c) advise the Court that Juan Guillermo is not respecting the orders and directions of this Court, and if such conduct continues that he should be found in contempt of such orders; and
 - d) recommend that the Court issue an order:
 - i. approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP ("A&B"), arising for the periods referenced in the attached fee affidavits;
 - ii. approving this Report and the Receiver's activities, as described herein; and
 - iii. finding Juan Guillermo in contempt of the Court's orders issued in these proceedings if he continues to frustrate the Receiver's efforts and these proceedings.

1.4 Currency

1. All references to currency in this Report are in Canadian dollars unless otherwise stated.

1.5 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the books and records of the Company, materials filed in the Avicola Litigation, discussions with representatives of the Company and discussions with Margarita and Juan Guillermo.
2. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
3. The Receiver expresses no opinion or assurance with respect to the financial and other information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the financial information should perform its own diligence.

1.6 Receivership Materials

1. All materials filed in the receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

2.0 Disclosure Order

2.1 BDT, Arven and the Trust

1. On October 31, 2019, the Receiver sent letters, enclosing a copy of the Disclosure Order, to each of BDT, Arven, the Trust, Debbie McDonald, a representative of ATC, the Trustee of the Trust, and to Patrick Doig ("Doig"), a director of BDT and Arven, requesting all information in their possession concerning the Reviewable Transactions (the "Transaction Records") be provided to the Receiver by November 8, 2019. Copies of the October 31st letters are attached as Appendix "E".
2. On November 8, 2019, McDonald responded to the Receiver advising, *inter alia*, that the Transaction Records are confidential, and that ATC required until November 20, 2019 to obtain the consent of the Trust to provide the Transaction Records. A copy of ATC's November 8th letter is attached as Appendix "F".
3. On November 8, 2019, Doig emailed the Receiver advising that he required until November 20, 2019 to consult with the Trust regarding the Receiver's request. A copy of Mr. Doig's email is attached as Appendix "G".
4. On November 8, 2019, the Receiver sent emails to ATC and Mr. Doig agreeing to the extension requests.
5. On November 20, 2019, McDonald sent a letter to the Receiver advising, *inter alia*, that:
 - a) ATC is responding on behalf of both the Trust and BDT;
 - b) the Trust and BDT are not subject to the jurisdiction of the Court or the receivership;
 - c) the Trust and BDT are not necessarily adverse to cooperating with the information request provided they understand its purpose and scope. ATC requested a detailed, specific list of documents required by the Receiver; and
 - d) BDT is prepared to subordinate to Margarita in respect of the full amount of the Judgement Debt to any recovery by BDT under the BDT Judgement.

A copy of ATC's November 20th letter is attached as Appendix "H".

6. On November 20, 2019, Mr. Doig sent a letter to the Receiver advising that BDT concurs with ACT's November 20th letter and that Arven also needs to understand the purpose and scope of the Receiver's request. A copy of Mr. Doig's letter is attached as Appendix "I".

7. On December 3, 2019, the Receiver responded to McDonald and Doig:
 - a) advising that the Receiver requires the Transaction Records so it can determine the validity and lawfulness of the Reviewable Transactions;
 - b) providing a detailed list of the Transaction Records required and requesting that they be provided by December 6, 2019; and
 - c) requesting that until the Receiver completes its investigation that BDT set aside a further \$15 million for all stakeholders and creditors of the Company, if BDT recovers any funds under the BDT Judgement.

A copy of the Receiver's December 3rd letter is attached as Appendix "J".

8. On December 6, 2019, McDonald sent a letter to the Receiver asking that ATC have until December 13, 2019 to respond to the Receiver's request. On December 6, 2019, the Receiver agreed to the extension request.
9. On December 13, 2019, McDonald sent a letter to the Receiver on behalf of the Trust, BDT and Arven advising, *inter alia*, that:
 - a) as it relates to the EAI Transaction, any attempt by the Receiver to invalidate the transaction would be time barred under Barbados legislation⁴ and that ATC would not be providing any of the information required under the Disclosure Order;
 - b) as it related to the Assignment Transaction, BDT has made significant advances to Lisa and that evidence of the advances may be provided at some future time as part of a claims process in the receivership; and
 - c) BDT is prepared to subordinate the BDT Judgement to the Judgement Debt, provided the Receiver consents to an extension of the operation of Paragraph 4 of the Receivership Order and that the Court approves such extension.

A copy of ATC's December 13th letter is attached as Appendix "K".

10. On December 14, 2019, the Receiver emailed McDonald to advise that it would file a copy of her letter with the Court at the Receiver's next Court appearance.
11. As of the date of this Report, BDT, Arven and the Trust have not provided any of the information required by the Receiver under the Disclosure Order.

⁴ EAI is a Barbados domiciled company.

2.2 Lisa

1. On October 31, 2019, the Receiver attended a conference call with Amsterdam & Partners LLP (“Amsterdam”), counsel to Lisa, Torys LLP (“Torys”), legal counsel to the Company until December 2019, Aird & Berlis LLP (“A&B”), the Receiver’s Canadian legal counsel, and Juan Guillermo. During this call, Amsterdam advised the Receiver as follows:
 - a) *that Juan Guillermo is the person directing and representing Lisa, despite not being an officer or director of Lisa;*
 - b) to contact Lisa’s Board of Directors to obtain the information required under the Disclosure Order; and
 - c) that (i) Lisa obtained a judgement in 2012 in Panama against Villamorey in the amount of US\$18 million, representing a portion of unpaid dividends owing by Villamorey to Lisa (the “Alleged Panamanian Judgement”) and (ii) that the Alleged Panamanian Judgement now totals approximately US\$25 million with interest and would be paid out imminently and that this judgment was backstopped by a bond issued by Villamorey to the Panamanian Court.
2. During the October 31st call, the Receiver requested that Amsterdam provide it with a copy of the Alleged Panamanian Judgement; however, Amsterdam has not done so.
3. On November 5, 2019, the Receiver retained the Hatstone Group (“Hatstone”) as its Panamanian counsel. Hatstone’s searches of Panamanian court proceedings involving Lisa revealed three proceedings where Villamorey or BDT are the opposing litigants, but did not reveal the Alleged Panamanian Judgement or any proceeding connected therewith.
4. On November 5, 2019, A&B sent a letter to Lisa’s Board of Directors (the “Lisa Board”) (Harald Johannessen Hals, Lester Hess Jr. and Calvin Kenneth Shield) requesting that the Lisa Board provide to the Receiver by no later than November 11, 2019 copies of all records related to the Assignment Transaction. The Receiver was mainly interested in obtaining proof of advances from BDT to Lisa totalling approximately US\$47 million as of June 30, 2018. The Receiver also requested that the Lisa Board confirm by November 8, 2019 that if the final payment order in respect of the Alleged Panamanian Judgement is issued by the Panamanian Court, none of the funds be paid to BDT until the Receiver completes its investigation of the EAI Transaction and Assignment Transaction or further order of the Court. A copy of the November 5th letter is attached as Appendix “L”.

5. On November 8, 2019, Amsterdam sent a letter to A&B attaching a copy of the assignment agreement⁵, but no other records relating to the Assignment Transaction. The letter further advised that Amsterdam would consult with BDT regarding potentially subordinating its rights to the Alleged Panamanian Judgement to the “reasonable requirements of the receivership”. A copy of the November 8 Letter is attached as Appendix “M”.
6. On December 17, 2019, Amsterdam sent a further letter to the Receiver advising that Lisa was in the process of obtaining a loan to repay the Judgment Debt and requesting a summary of the amounts owing under the Judgment Debt. Amsterdam further advised that the Company intended to bring a motion to request an extension of the operation of Paragraph 4 of the Receivership Order (which was set to expire on December 31st) and requesting that the Receiver take no action until the Court hears the extension request. A copy of Amsterdam’s December 17th letter is attached as Appendix “N”.
7. On December 17, 2019, the Receiver emailed Amsterdam a summary of the amounts owing under the Judgment Debt. It also advised that it will continue to exercise its authority and powers under the Receivership Order. A copy of the Receiver’s email is attached as Appendix “O”.
8. On December 17, 2019, Torys sent a letter to Bennett Jones LLP (“Bennett Jones”), counsel to Margarita, requesting Margarita’s consent to extend the operation of Paragraph 4 to April 30, 2020. A copy of Torys’ December 17th Letter is attached as Appendix “P”. On December 17, 2019, Bennett Jones emailed Torys that it would not consent to an extension.
9. On December 30, 2019, Cambridge LLP (“Cambridge”) served a notice of change of lawyers advising that it was replacing Torys as the Company’s counsel.
10. On December 31, 2019, Cambridge served a motion advising that the Company intends to fully satisfy the Judgment Debt during the week of January 13, 2020 and that the Company was seeking an extension of the operation of Paragraph 4 of the Receivership Order until that time (the “Extension Motion”).
11. On January 7, 2020, Cambridge served the Affidavit of Mr. Hals sworn December 30, 2019 (the “Hals Affidavit”) advising that Lisa had procured a third-party loan sufficient to repay the Judgment Debt (the “Loan”). However, the terms of the Loan were not provided. A copy of the Hals Affidavit is attached as Appendix “Q”.
12. On January 8, 2020, A&B sent a letter to Cambridge advising, *inter alia*, that the Receiver needs to understand the terms of the Loan so that it can consider its effect on the Company’s stakeholders. A copy of A&B’s January 8th letter is attached as Appendix “R”.

⁵ A copy of this document was already provided to the Receiver and filed with the Court as Appendix E of the Receiver’s First Report.

13. On January 9, 2020, the Receiver, Cambridge and Bennett Jones attended a Chambers' appointment before Justice McEwan in respect of the Extension Motion. The Receiver advised that:
 - a) it has no information regarding the terms of the Loan notwithstanding its requests for this information;
 - b) it has serious concerns regarding the conduct of Juan Guillermo, BDT, Arven and the Trust, including their refusal to provide any information as required under the Disclosure Order; and
 - c) it did not believe that it was appropriate to extend the operation of Paragraph 4 of the Receivership Order.
14. Pursuant to an endorsement dated January 9, 2020, Justice McEwan advised the parties that the Court was not prepared to schedule the Extension Motion at that time but provided Cambridge with the ability to reschedule a 9:30 chambers appointment in respect of the Extension Motion on two days' notice. His Honour also refused to make any changes to the Receivership Order and, accordingly, Paragraph 4 of the Receivership Order expired and is no longer operative.
15. On January 9, 2020, A&B emailed Cambridge requesting that they and their client, Juan Guillermo, deliver to the Receiver any and all documentation relating to the Loan by January 10, 2020. A&B further advised that if the Receiver is not satisfied with the terms of the Loan, taking into account the interest of all stakeholders, the Receiver would take the steps it considers necessary, as permitted by the Receivership Order, to protect the Company's assets and business. A copy of A&B's email is attached as Appendix "S".
16. On January 10, 2020, Cambridge requested an extension until January 13, 2020 to provide the Loan documentation.
17. On January 13, 2020, Cambridge sent a letter to the Receiver which provided the following limited information:
 - a) the Loan is from a third party;
 - b) the amount of the Loan is adequate to satisfy the Judgement Debt; and
 - c) Lisa intends to pledge some of its shares in Villamorey to obtain the Loan.A copy of the January 13th letter is attached as Appendix "T".
18. On January 14, 2020, A&B sent a further letter to Cambridge advising them that the information in the letter was insufficient for the Receiver to evaluate the terms of the Loan. The Receiver again requested a copy of the loan documentation. A copy of A&B's response is attached as Appendix "U".

19. On January 16, 2020, Amsterdam responded by alleging, without evidence, that Margarita is conspiring with the Cousins. Amsterdam further advised that it could not provide details of the Loan because Lisa had purportedly signed a confidentiality agreement with its third-party lender. A copy of Amsterdam's email is attached as Appendix "V".
20. On January 17, 2020, A&B sent a letter to Amsterdam advising:
 - a) that the refusal to provide the documentation relating to the Loan is contrary to the spirit of the Chambers appointment before Justice McEwan on January 9, 2020;
 - b) the Receivership Order requires Lisa to provide all information and records related to the Company and the terms of the Receivership Order trump the confidentiality agreement;
 - c) the Receiver's duties are to the Court and it is not solely accountable to any one stakeholder, including Margarita, but that its duty is to all stakeholders; and
 - d) if Juan Guillermo continues to refuse to comply with the Receiver's information request, the Receiver will take such steps as it deems appropriate to protect the integrity of the receivership and the interest of all of the Company's stakeholders. Such steps may include a motion to hold Juan Guillermo in contempt of the Court's orders.

A copy of the January 17th letter is attached as Appendix "W".

21. No response has been received to A&B's January 17th letter.
22. As of the date of the Report, the Receiver has not received any additional information concerning the Loan. The Receiver has no information regarding the status of the Loan or whether the Loan has been advanced to Lisa.

3.0 Board of Directors of Lisa and Gabinvest

1. The Company is the sole shareholder of Gabinvest S.A. ("Gabinvest"), which in turn owns the shares of Lisa. Both Gabinvest and Lisa are incorporated under the laws of Panama. This information has been previously provided to the Court in the First Report and is also set out in Juan Guillermo's sworn affidavit filed by the Company in respect of its CCAA application, which was ultimately dismissed by the Court.
2. On January 16, 2020, at the direction of the Receiver, using its authority under the Receivership Order, the Company passed a resolution to remove Gabinvest's directors, namely Mr. Hals, Jose Eduardo San Juan and David Harry, and replace them with three members of Hatstone's law firm, namely Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos. The Minutes of the shareholder's meeting were registered with the Public Registry of Panama on January 17, 2020.

3. On January 22 and January 27, 2020, respectively, Gabinvest (as the sole shareholder of Lisa) resolved by way of a shareholder meeting to increase the number of Lisa directors from five to six, and to add three members of Hatstone to the Lisa Board, namely Mr. Almengor, Mr. Carrasquilla and Ms. Ramos. None of the three directors previously named to the Lisa Board (Mr. Hals, Mr. Hess Jr. and Mr. Shields) were removed. The minutes of the shareholder meetings were duly registered with the Public Registry of Panama.
4. Lisa's prior Board members have objected to the changes to the new Board on the basis that: (a) the current directors were not notified prior to the meetings; (b) Lisa's articles state that there can be no more than five board members; and (c) the meetings were not appropriately convened, as the shareholder was not present. The Receiver understands from Hatstone that there was no requirement to give notice of the shareholder meetings to the existing directors, that the articles of Lisa were duly amended at one of the shareholder meetings to allow for Lisa to have six directors and that the shareholder meetings were correctly convened provided Gabinvest is the shareholder of Lisa.
5. The first step that is intended to be taken by Lisa's new directors is to obtain copies of Lisa's books and records, including bank statements so that the amount advanced from each of BDT, Arven and/or PAICA to Lisa can be determined. (This would not have been necessary had Juan Guillermo instructed Lisa to cooperate with the Receiver.)
6. On January 30 and February 7, 2020, respectively, Hatstone advised the Receiver that the non-Hatstone directors of Lisa and the removed directors of Gabinvest threatened to commence criminal and civil litigation against the new members of the boards of each of Lisa and Gabinvest in relation to the recent changes to the boards.
7. The non-Hatstone directors of Lisa and the removed directors of Gabinvest have instructed a Panamanian lawyer, Joao Quiroz ("Quiroz"), to assist with their objections. On January 28, 2020, Quiroz submitted to the Public Registry of Panama (the "Public Registry") a letter of objection to the addition of the three new directors to the Lisa Board and included threats of criminal and civil action against them (the "Objection Letter").
8. On January 30, 2020, Quiroz submitted to the Public Registry separate minutes of a shareholder meeting purporting to remove the Hatstone directors from the Lisa Board. These minutes could not be recorded in the Public Registry because of the Objection Letter. A copy of these alleged minutes is attached as Appendix "X".
9. On January 31, 2020, by a handwritten letter, Quiroz withdrew the claims being made in the Objection Letter. A copy of this letter is attached as Appendix "Y".
10. Withdrawing the Objection Letter allowed the Public Registry to record Quiroz' alleged shareholder minutes. As a result, the number of the board members of Lisa has returned to the original three members with the Hatstone directors now being removed.

11. On February 4, 2020, Quiroz submitted another letter of objection in respect of the addition of the three new directors to the Lisa Board again threatening criminal and civil proceedings against them. This letter is attached as Appendix “Z”.
12. On February 5, 2020, Quiroz submitted a further letter of objection to the Public Registry in relation to the changes made to the board of Gabinvest and again made threats of criminal and civil litigation against each of Gabinvest’s new board members. This letter is attached as Appendix “AA”.
13. On February 11, 2020, Quiroz submitted to the Public Registry further minutes of a shareholder meeting seeking to remove the Hatstone directors from the Gabinvest Board and reinstating two of the previously removed directors and appointing one new director. So far, the Public Registry has not allowed Quiroz to submit the resolution due to errors and inconsistencies.
14. Hatstone has made various attempts by email and telephone to contact Quiroz to discuss this matter, but he has refused to respond or engage. Hatstone has also been seeking to liaise with the other members of the Lisa Board and the current registered agent of Gabinvest and Lisa. The current registered agent for both companies is the Panama law firm, Alfaro, Ferrer y Ramirez (“AFRA”).
15. Hatstone has arranged a meeting with Mr. Hals, a current director and officer of Lisa, which is currently scheduled to take place in Bogota, Colombia on February 21, 2020. In addition, Hatstone has been liaising with AFRA to obtain copies of all corporate documentation held by AFRA as the registered agent. To date, obtaining information from AFRA has been frustrated by steps taken by Lisa and Gabinvest.
16. On February 12, 2020, A&B provided a detailed letter to AFRA together with a copy of the certified Court Order dated July 5, 2019 and the corporate group structure chart in order to help AFRA update their records and, accordingly, release the corporate documentation it is holding in relation to each of Gabinvest and Lisa. To date, the information requested has not yet been delivered by AFRA. A copy of the A&B letter to AFRA is attached as Appendix “BB”. The Receiver understands that AFRA recently filed letters of resignation as registered agent in the Public Registry in respect of Gabinvest and Lisa.

4.0 Legal Counsel for Xela

1. As discussed above, Cambridge replaced Torys as the legal counsel for the Company in December 2019. Cambridge further advised the Receiver that it is taking instructions from Juan Guillermo. Juan Guillermo has no authority over the Company as a result of the Receivership Order. Pursuant to the terms of the Receivership Order, where the Receiver takes actions on behalf of the Company it does so to the exclusion of any other person. The Receiver’s Canadian counsel is A&B. Accordingly, the Receiver refutes that Cambridge is actively engaged by the Company.

2. Furthermore, the Company has significant unpaid legal fees, including, as set out below:
 - a. on January 8, 2020, Torys sent a letter to the Receiver advising that the Company has a material debt owing to it on account of legal services rendered by it to the Company;
 - b. on January 9, 2020, Juan Rodriguez, the Company's former Florida counsel, advised the Receiver that his current law firm and his prior firm are owed approximately US\$870,000 for legal services provided to the Company; and
 - c. the Company's creditor list also reflects that Groia & Company Professional Corporation is owed \$170,000.
3. The Receiver has advised Cambridge that it has not authorized the Company to engage Cambridge and that it is not prepared to pay Cambridge's legal fees.

5.0 Juan Guillermo's Efforts to Frustrate the Receivership Proceedings

1. As of the date of this Report, Juan Guillermo, Lisa, BDT, Arven and the Trust have not provided any of the information requested by the Receiver or required to be disclosed to the Receiver under the Disclosure Order. As referenced in Section 2.2 (1)(a), according to Amsterdam, Juan Guillermo is the person directing and representing Lisa, notwithstanding that he is not an officer or director of Lisa. Juan Guillermo is also the person directing Cambridge and who was previously directing Torys when it was legal counsel to the Company.
2. It is clear that Juan Guillermo is conflicted and that he has been acting, or acted, on both sides of the Reviewable Transactions. His children are the beneficiaries of the Reviewable Transactions.
3. It is the Receiver's view and opinion that Juan Guillermo does not appear to be respecting the orders issued by the Court in these proceedings (including the Disclosure Order) or the directions given by the Court (including providing full information concerning the Loan). Juan Guillermo is taking actions or causing the Company's subsidiaries to take actions that undermine and frustrate the purpose of these proceedings, including the actions initiated by the Receiver to cause the changes to the Lisa and Gabinvest boards of directors.
4. Juan Guillermo also appears to be using the foreign jurisdictions of each of BDT, Arven, the Trust, Lisa and Gabinvest to frustrate the purposes of the receivership.

- Juan Guillermo resides in Toronto. He is an active participant in the receivership proceedings, as he was in the legal proceedings that gave rise to the Receivership Order. The Receiver recommends that the Court issue an order directing Juan Guillermo to cause each of BDT, Arven, the Trust and, in particular, Lisa to cooperate with the Receiver and to respect the issued Orders and directions of this Court. Given the foreign jurisdiction of the business in these proceedings, should Juan Guillermo continue to frustrate the advancement of the receivership, the Receiver is at a loss as to relief other than finding Juan Guillermo in contempt, and that the Court should impose restrictions and/or punitive terms against Mr. Guillermo personally, including the potential for imprisonment, until he is prepared to respect these proceedings and act in accordance with the orders issued by this Court.

6.0 Professional Fees

- The fees of the Receiver and A&B are summarized in the table below:

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Sept 1/19 – Dec 31/19	106,725.00	901.81	107,626.81	601.95
A&B	Sept 12/19 – Jan 28/19	107,889.50	893.59	108,783.09	478.70
Total		214,614.50	1,795.40	216,409.90	

- Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices “CC” and “DD”, respectively.
- The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

7.0 Conclusion and Recommendation

- Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.3(1)(d) of this Report.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”

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DATED AT TORONTO THIS 6th DAY OF February 20
FAIT À TORONTO LE 6^e JOUR DE Février 20

REGISTRAR *C. Irwin* REGISTRAR GREFFIER

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

ONTARIO

SUPERIOR COURT OF JUSTICE

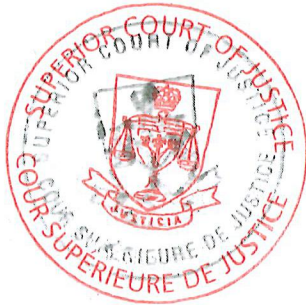
(COMMERCIAL LIST)

THE HONOURABLE)

JUSTICE MCEWEN)

FRIDAY, THE 5th

DAY OF July, 2019



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

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Xela Enterprises Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Margarita Castillo sworn January 14, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Margarita Castillo and Xela Enterprises Ltd., and on reading the consent of KSV Kofman Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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DATED AT TORONTO THIS 6th DAY OF February 2020
FAIT A TORONTO LE 6 JOUR DE February 2020

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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DATED AT TORONTO THIS 6 DAY OF February 20 20
FAIT À TORONTO LE 6 JOUR DE C. IRWIN

C. Irwin
Registrar

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

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DATED AT TORONTO THIS 15th DAY OF February 20
FAIT A TORONTO LE 15^{eme} JOUR DE

February 20
C. H. Wirt
Registrar

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, notwithstanding any other provision in this Order, the Receiver shall not take any steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Debtor and its subsidiaries and/or affiliates and any third party, including the litigation involving or related to the Avicola companies (as defined and further set out in the affidavit of Juan Guillermo Gutierrez ("Juan"), sworn June 17, 2019). Such steps shall include but not be limited to:

- a) selling or publicly marketing the shares of Lisa S.A., Gabinvest S.A., or any shares owned by these entities;
- b) publicly disclosing any information about the above-mentioned litigation and/or the Receiver's conclusions or intentions, provided that the Receiver may disclose such information to Juan and Margarita Castillo ("Margarita") and their counsel upon Juan and Margarita each executing a non-disclosure agreement in a form reasonably acceptable to the Receiver, and if the Receiver does disclose such information, conclusions or intentions, the Receiver shall disclose equally to Juan and Margarita;

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- c) replacing counsel in the above mentioned litigations; and
- d) engaging in settlement negotiations or contacting opposing parties in the above-mentioned litigation.

This paragraph applies only until December 31, 2019 or such other date as this Court may order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. The Receiver shall treat as confidential all information received relating to litigation involving or related to the Avicola companies.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

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DATED AT TORONTO THIS 16th DAY OF February 20

FAIT À TORONTO LE 16th JOUR DE Février 20

Registrar

provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as

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<p><i>C. Irwin</i> Registrar</p>	

amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be

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DATED AT TORONTO THIS 10 DAY OF February, 2020
FAIT A TORONTO LE 10 JOUR DE Février 2020

Registrar

opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

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collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory

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DATED AT TORONTO THIS 6th DAY OF February 2020
FAIT A TORONTO LE 6th JOUR DE February 2020

DAY OF February
JOUR DE February

C. Irwin

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or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The amount of such borrowing shall not, subject to further order of this Court, exceed \$500,000 before December 31, 2019. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

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23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

TERMINATION OF RECEIVERSHIP

25. THIS COURT ORDERS that the Debtor may make a motion to this Court for the termination of the receivership upon receipt by Margarita of the judgment debt owing to her by the Debtor, plus receivership fees and expenses, and that upon such motion the burden shall be on Margarita to justify that it remains just and equitable to continue the receivership.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises'.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

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FAIT A TORONTO LE	JOUR DE Registrar

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama, Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, in the amount of \$40,000, all inclusive, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ON / BOOK NO:
I.E / DANS LE REGISTRE NO:

JUL 05 2019

PER / PAR:



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February 20 20

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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "Receiver") of the assets, undertakings and properties Xela Enterprises Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number CV-11-9062-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Kofman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

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FAIT A TORONTO LE 6 JOUR DE Feb. 20 20


Registrar

REGISTRAR

GREFFIER

MARGARITA CASTILLO
Moving Party

-and-

XELA ENTERPRISES LTD. et al.
Respondents
Superior Court File No.: CV-11-9062-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

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Lawyers for the moving party, Margarita Castillo

Appendix “B”



**First Report of
KSV Kofman Inc.
as Receiver and Manager of Xela Enterprises Ltd.**

October 17, 2019

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COURT FILE NO.: CV-11-9062-00CL

**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

**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.
FIRST REPORT OF KSV KOFMAN INC.**

OCTOBER 17, 2019

1.0 Introduction

1. On January 18, 2011, Margarita Castillo (“Margarita”) commenced an application in the Ontario Superior Court of Justice (the “Court”) seeking, among other things, relief against her now-deceased father, Juan Arturo Gutierrez (“Juan Arturo”), and her brother, Juan Guillermo Gutierrez (“Juan Guillermo”), in her capacity as a director of Tropic International Limited (“Tropic”), a wholly-owned subsidiary of Xela Enterprises Ltd. (the “Company”).
2. Pursuant to a judgement issued by the Court on October 28, 2015, the Company, Juan Guillermo and Juan Arturo, became jointly obligated to pay Margarita approximately \$5 million, plus interest and costs (the “Judgment Debt”).
3. Margarita, through an Alberta company, also owns preference shares in the Company with a face amount of approximately \$14 million. The Alberta company continues to own these shares.
4. On January 15, 2019, Margarita made an application to the Court for, among other things, the appointment of KSV Kofman Inc. (“KSV”) as receiver and manager of the Company (the “Receiver”) pursuant to Section 101 of the *Court of Justices Act* (Ontario). The Receiver understands that the present balance owing under the Judgment Debt is approximately \$4.1 million, plus interest and costs which continue to accrue.

5. In response to Margarita's application, the Company filed an application for protection under the *Companies' Creditors Arrangement Act* ("CCAA") on June 17, 2019.
6. On July 5, 2019, the Court dismissed the CCAA application and appointed KSV as Receiver. A copy of the receivership order is attached as Appendix "A" (the "Receivership Order").
7. The Company is the parent company of more than two dozen subsidiaries, located predominantly in Central America, that carry or carried on business in the food and agricultural sectors. Most of these businesses have been discontinued, are no longer operating or, as discussed in this report ("Report"), were conveyed to the ARTCARM Trust (the "Trust"), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo's children. The Trustee of the Trust is Alexandria Trust Corporation ("ATC").
8. Presently, the Company's most significant asset is its indirect one-third interest in a group of successful family-owned vertically integrated poultry businesses operating in Central America referred to as the "Avicola Group". The Company's interest in the Avicola Group is held as follows:
 - a) 25% through its wholly owned indirect subsidiary, Lisa, S.A. ("Lisa"), a Panamanian holding company; and
 - b) 8.3% through Villamorey S.A. ("Villamorey"), a Panamanian holding company¹.

Attached as Appendix "B" is the Company's present corporate organizational chart.²

9. Dionisio Gutierrez Sr., Isabel Gutierrez de Bosch and their children (collectively, the "Cousins") are believed to own the remaining two-thirds of the Avicola Group through entities they own, including the remaining two-thirds of Villamorey.
10. Margarita, Juan Guillermo and the Cousins have been litigating for decades, primarily related to shareholder disputes involving the Avicola Group (the "Avicola Litigation").
11. As of mid-2018, the Company and Lisa had received approximately \$43 million and US\$57 million, respectively, from BDT, Arven and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA ("PAICA"), to assist them to fund the Avicola Litigation.
12. The Receiver understands that prior to April 2016, Empress Arturo International ("EAI"), a Barbados company and a wholly owned subsidiary of the Company, directly and indirectly owned and operated the "Arturos" restaurant business in Venezuela through BDT and Arven. The Receiver has been advised by Juan Guillermo that the Arturos restaurant chain is still operating and that BDT and Arven are now owned by the Trust.

¹ Villamorey owns 25% of the Avicola Group, of which the Company has an indirect one-third ownership interest.

² The Company's corporate organizational chart does not show the Villamorey interest in the Avicola Group; however, the Receiver understands based on court pleadings and its conversations with Juan Guillermo that Villamorey owns a 25% interest in the Avicola Group.

13. The effect of the transactions discussed in this Report (the transactions are defined below as the EAI Transaction and the Assignment Transaction) was to transfer from the Company to the Trust all or the majority of the potential value of the Avicola Litigation and the Arturo business (owned by BDT and Arven) to Juan Guillermo's children as beneficiaries of the Trust.

1.1 Purposes of this Report

1. The purposes of the Report are to:
 - a) provide background information concerning the Company;
 - b) discuss the Receiver's concerns regarding:
 - i. the sale, conveyance or transfer in early 2016 by EAI of the shares of BDT and Arven to Juan Arturo, and then from Juan Arturo to the Trust (the "EAI Transaction"); and
 - ii. the assignment in January 2018 by Lisa of the proceeds from the Avicola Litigation to BDT (the "Assignment Transaction");
 - c) recommend that the Court issue an order:
 - i. requiring each of BDT, Arven, the Trust and ATC, the directors of EAI and any other person with information concerning the EAI Transaction, to deliver such information to the Receiver, including any and all documentation related to the EAI Transaction;
 - ii. requiring each of Lisa, BDT, the Trust and ATC and any other person with information concerning the Assignment Transaction to deliver such information to the Receiver, including any and all documentation related to the Assignment Transaction;
 - iii. sealing Confidential Appendices "1" and "2" pending the issuance of a further order of the Court unsealing the Confidential Appendices;
 - iv. approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP ("A&B"), arising for the periods referenced in the attached fee affidavits; and
 - v. approving this Report and the Receiver's activities, as described herein.

1.2 Currency

1. All references to currency in this Report are in Canadian dollars unless otherwise stated.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the books and records of the Company, materials filed in the Avicola Litigation, discussions with representatives of the Company and discussions with Margarita. The Receiver has also relied upon answers to questions it submitted to Juan Guillermo and on the information provided by Juan Guillermo during meetings between him and the Receiver and their respective legal counsel.
2. The Receiver has also relied upon the Examination of Juan Guillermo held on June 26, 2019 (the "Examination") and the related Answers to Undertakings, Advisements and Refusals from the Examination (the "Examination Undertakings"). Copies of the Examination and Examination Undertakings are attached hereto as Appendices "C" and "D", respectively.
3. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
4. This Report provides an update relating to these receivership proceedings and support for the relief to be sought by the Receiver at its motion returnable October 29, 2019. This Report should not be relied upon for any other purpose. The Receiver expresses no opinion or other form of assurance with respect to the financial and other information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the financial information should perform its own diligence.

1.4 Receivership Materials

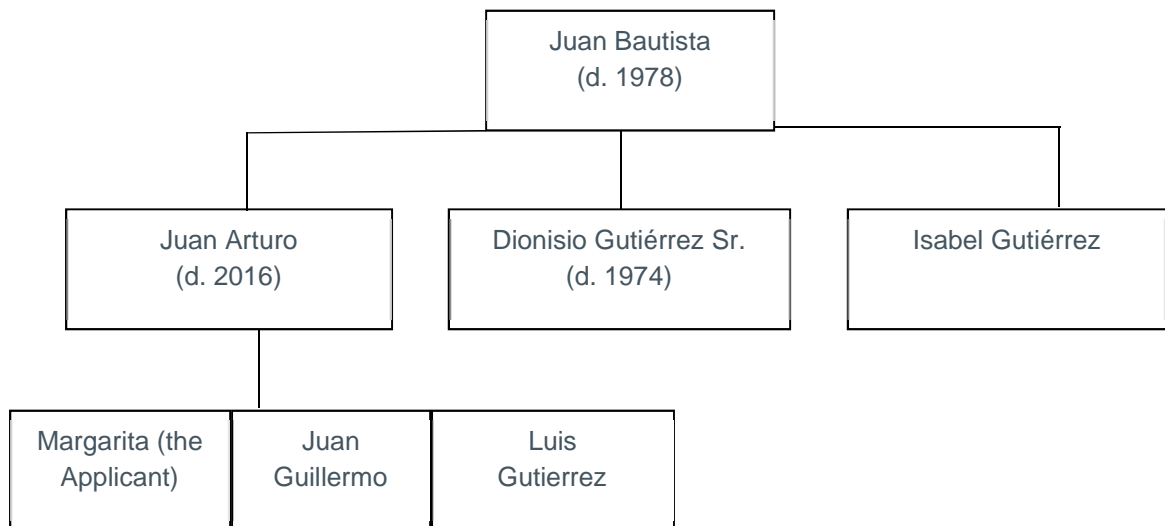
1. All materials filed in the receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

2.0 Executive Summary

1. As a result of the EAI Transaction (i.e. the sale, transfer or conveyance of the shares of each of BDT and Arven to the Trust) and the Assignment Transaction, the majority of the economic interest in the Company has been transferred from the Company to the Trust, the beneficiaries of which are Juan Guillermo's children. The EAI Transaction and the Assignment Transaction were completed at a time when Juan Guillermo was litigating with Margarita. While the Receiver has not completed its review of the EAI Transaction and the Assignment Transaction because several information requests made of Juan Guillermo and others remain outstanding, it is apparent that Juan Guillermo had (and has) several conflicts of interest related to these transactions, including that his children will benefit from them if there is a recovery by Lisa on the Avicola Litigation. Juan Guillermo appears to be leading the Avicola Litigation on behalf of Lisa, notwithstanding he is not an officer or director of that company.
2. As the Receiver is continuing to review the EAI Transaction, the Assignment Transaction and other matters related to these proceedings, the Receiver is of the view that any settlement of the Avicola Litigation and/or the sale of the Company's interests in Avicola Group should require consultation with the Receiver and approval of the Court.

3.0 Background

1. Juan Bautista Gutierrez ("Juan Bautista") was the patriarch of the Gutierrez family and the founder of the Avicola Group. A condensed family tree is provided below:



2. The Avicola Group is based in Guatemala. The Avicola Group carries on a large and successful poultry business in Central America.
3. The Receiver understands that in 1978, Juan Bautista conveyed his interest in the Avicola Group equally to his three children, Juan Arturo, Dionisio Gutierrez Sr. and Isabel Gutierrez. Juan Arturo's interest in the Avicola Group was indirectly held by the Company through Lisa.
4. A dispute arose in 1998 as to whether the Cousins were concealing the Avicola Group's financial results from Lisa. The Avicola Group has not paid dividends to Lisa since that time. The Receiver understands that Lisa is presently involved in over 100 lawsuits with the Cousins in multiple jurisdictions, including Canada, the State of Florida, Panama and Guatemala with respect to, among other things, dividends totalling approximately US\$360 million³ owing to Lisa and Villamorey from the Avicola Group.

3.1 The Company

1. The Company is a holding company incorporated in Canada. The Company's major shareholders include members of Juan Arturo's family.⁴ Juan Guillermo is a director and the President of the Company.
2. The Company has six wholly owned subsidiaries, as detailed below.

Subsidiary	Jurisdiction	Status
Gabinvest, S.A.	Panama	Owns Lisa, which holds the Avicola Group Interest
Xela International Inc.	Canada	Inactive
Tropic International Ltd.	Canada	Inactive
Empress Arturo International	Barbados	See Section 4
Xela Global Resources	Canada	Inactive
Boucheron Universal Corp.	Panama	Inactive

³ Paragraph 121 of the Examination.

⁴ As reflected in the Affidavit of Juan Guillermo sworn June 17, 2019 in support of the CCAA application (the "Guillermo Affidavit").

3. The Company's most recent financial statements were prepared as of May 31, 2018. A summary of the Company's unaudited and unconsolidated⁵ balance sheet as of that date is provided below⁶:

(unaudited; \$000s)	
Assets	
Investments	270
Advances to related parties	22,485
Total assets	<u>22,755</u>
Liabilities	
Accounts payable and other current liabilities	9,459
Due to shareholders	671
Due to related parties	72,944
Total liabilities	83,075
Equity	<u>(60,319)</u>
Total liabilities and equity	<u>22,755</u>

4. As reflected above, as at May 31, 2018, the Company had significant liabilities owing to related parties. A summary of these balances as at May 31, 2018 is provided below:

(unaudited; \$000s)	Amount	Status
BDT	24,194	See Section 4 below
Badatop Holdings Inc.	21,884	Inactive
PAICA	11,835	See Section 4 below
Arven	6,508	See Section 4 below
Other	8,523	Inactive
Total due	<u>72,944</u>	

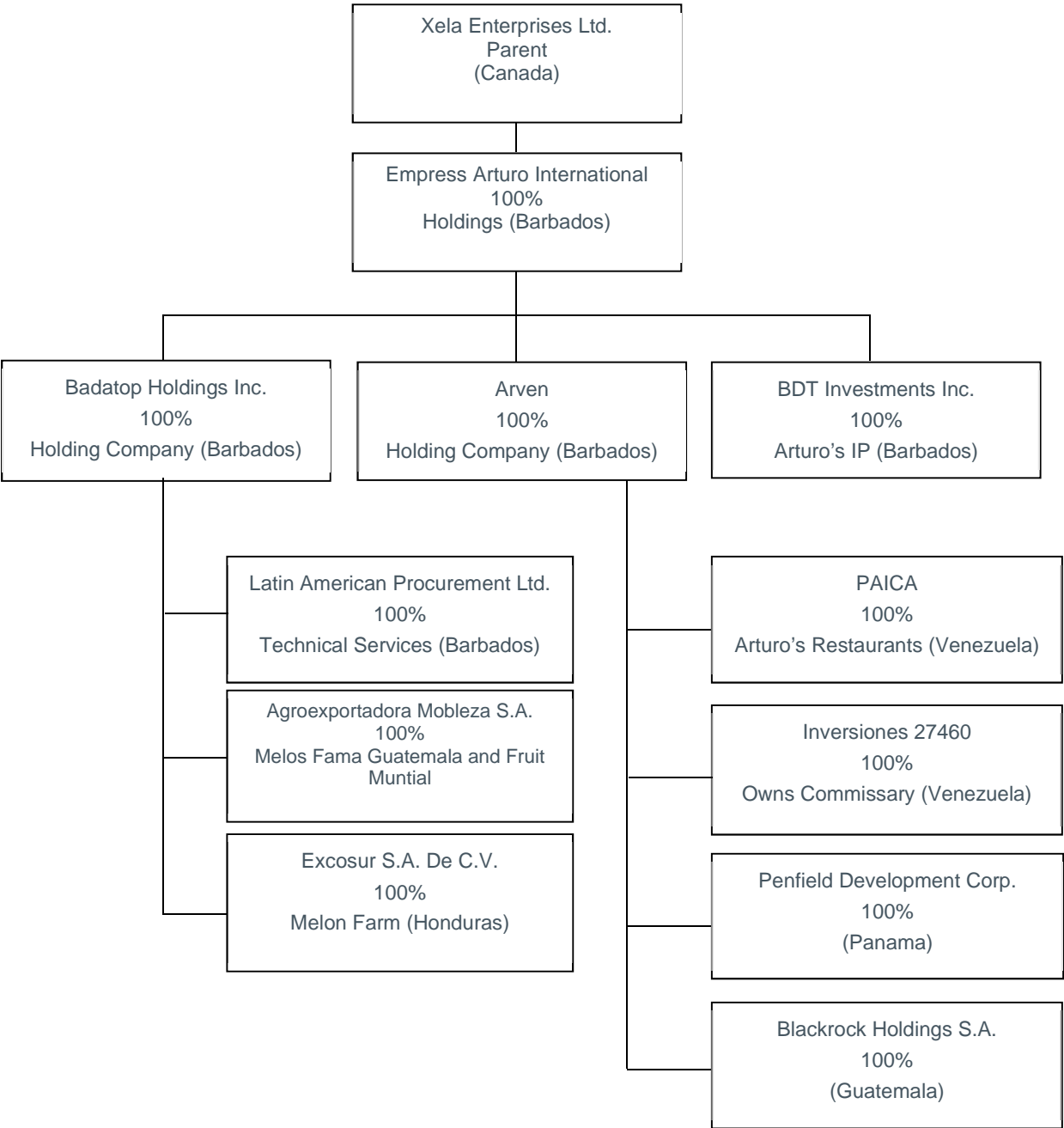
⁵ The Company has not provided consolidated financial statements.

⁶ The Company's financial statements exclude the debt owing to Margarita.

4.0 EAI Transaction and Assignment Transaction

4.1 EAI Transaction

1. The Company is the sole shareholder of EAI. At the time of the EAI Transaction, Juan Guillermo was a Director of EAI and its President.
2. BDT and Arven were subsidiaries of EAI prior to April 2016. The corporate chart for EAI prior to the EAI Transaction is reflected below.



3. The Receiver understands that BDT owns the intellectual property used by “Arturos”, a chain of 90 fast food chicken restaurants operating in Venezuela. The Arturos restaurants are owned by PAICA, a Venezuelan entity which is wholly owned by Arven. PAICA pays royalties and service fees to BDT.
4. The Receiver understands that BDT, Arven and PAICA have a history of profitability. Juan Guillermo has advised that the Arturos business has suffered in recent years due to the political and economic situation in Venezuela. The Receiver understands that BDT, Arven and PAICA have collectively advanced a total of approximately USD\$57 million to Lisa and \$43 million to the Company to fund the Avicola Litigation as of the dates reflected in the table below.

(unaudited; \$000s)	Company (CAD) (as at May 31, 2018)	Lisa (USD) (as at June 30, 2018)	Total
BDT	24,194	47,076	71,270
Arven	6,508	12,727	19,235
PAICA	11,835	(2,913)	8,922
	42,537	56,890	99,427

5. According to information provided to the Receiver by Juan Guillermo, at the time of the EAI transaction (around April 2016), EAI owed Juan Arturo approximately US\$9 million on account of loans purportedly advanced by Juan Arturo to EAI. To date, the Receiver has not been provided with any evidence of advances by Juan Arturo to EAI despite the Receiver’s requests for this evidence.
6. The Receiver has been advised by Juan Guillermo that EAI was unable to repay the amounts owing to Juan Arturo and, as a result, EAI conveyed the shares of BDT and Arven to Juan Arturo for US\$6.5 million⁷ in partial satisfaction of EAI’s obligation to him. The Receiver understands from Juan Guillermo that the balance of the debt remains outstanding.
7. The Receiver has been further advised by Juan Guillermo that Juan Arturo subsequently transferred the BDT and Arven shares he acquired from EAI to the Trust. The effect of the EAI Transaction was to remove the shares of BDT and Arven from the Company’s organization and to transfer them to the Trust. The Receiver is concerned that the consideration paid by Arturo for the shares of BDT and Arven may not have reflected the value of the Arturos’ business, nor that sufficient value was attributed to the receivables owing by Lisa and the Company to BDT, Arven and PAICA.
8. Juan Arturo died in June 2016. Juan Guillermo advises that: (a) he only learned of the sale, transfer or conveyance of the shares in BDT and Arven to the Trust from his father just prior to father’s death; (b) he has no information concerning the Trust or the details of the EAI Transaction; and (c) he is not presently involved in the business and operations of either of BDT and/or Arven.

⁷ Comprised of US\$3.75 million for the shares of BDT and US\$2.75 million for the shares of Arven.

9. Juan Guillermo provided the Receiver with valuations of BDT and PAICA⁸ (the “Valuations”) in the context of the EAI Transaction. Copies of the Valuations are attached hereto as Confidential Appendix “1”. The Receiver’s concerns with the Valuations are provided in Confidential Appendix “2”.
10. The Receiver has the following additional concerns with respect to the EAI Transaction:
 - a) BDT, Arven and PAICA have advanced tens of millions of dollars to Lisa to fund its costs (and the Receiver understands that they continue to fund, or are prepared to continue to fund, Lisa’s litigation); however, it is unclear to the Receiver why EAI decided not to use the cash flow generated by these entities to repay the amounts EAI owed to Juan Arturo. This could have been done through payment of a dividend from some or all EAI’s subsidiaries to EAI; and
 - b) it is unclear how the Boards of Directors of each of the Company and EAI satisfied themselves as to the value of BDT and Arven, including the receivables owing from Lisa. It is also unclear whether the Boards of the Company and EAI had separate legal counsel when completing the EAI Transaction, and the extent of Juan Guillermo’s participation in the EAI Transaction.
11. Based on the foregoing, the Receiver requires additional information from each of BDT, Arven, and ATC to further investigate the EAI Transaction⁹. The Receiver recommends that the Court issue an order requiring these and any other party with information concerning the EAI Transaction to provide all such information to the Receiver forthwith, so that the Receiver can complete its review of the transaction.
12. In the interim, as EAI is incorporated in Barbados, the Receiver has engaged local counsel in Barbados.

4.2 Assignment Transaction

1. In January 2018, BDT sought additional consideration from Lisa for amounts advanced, or to be advanced, by BDT to Lisa to fund the Avicola Litigation. Pursuant to the Assignment Agreement, BDT agreed to fund Lisa’s costs in the Avicola Litigation, provided Lisa assign its interest in the Avicola Litigation to BDT. BDT agreed to pay Lisa 30% of the net litigation proceeds, after deducting costs and the repayment by Lisa of any amounts owing to BDT. A copy of the Assignment Agreement is attached as Appendix “E”.

⁸ The BDT valuation was prepared by Deloitte LLP. The PAICA valuation was prepared by Lara Marambio & Asociados, which is a subsidiary of or related to Deloitte LLP.

⁹ The Receiver has requested details regarding the Trust, including a copy of the Trust Agreement and the names of the law firms that represent the Trust. Juan Guillermo has advised the Receiver that ATC will not provide any information concerning the Trust.

2. The effect of the Assignment Transaction is to transfer further recoveries from the Avicola Litigation to BDT. At the time of the Assignment Transaction, Lisa owed BDT approximately \$47 million. The Receiver understands that the amounts advanced from BDT to Lisa since the date of the Assignment Agreement are insignificant¹⁰. Accordingly, it is unclear whether Lisa received any consideration for entering into the Assignment Agreement. If the litigation is settled in the near term, BDT will receive a windfall despite making no material additional advances to Lisa to fund the Avicola Litigation since the date of the Assignment Agreement.
3. The Receiver is concerned, again, that Juan Guillermo is conflicted as President of the Company, a director of the Company and the father of the beneficiaries of the Trust (who stand to benefit from the Assignment Transaction).

4.3 Confidential Appendices

1. Torys LLP (“Torys”), which is acting as counsel to the Company (but not to the Receiver) required that the Receiver sign a Non-Disclosure Agreement in order to be provided with a copy of the Valuations. Accordingly, the Receiver respectfully requests that the Valuations be filed with the Court on a confidential basis and be sealed as the documents contain confidential information and are currently subject to confidentiality restrictions as ordered by the Court under the Receivership Order. In the circumstances, the Receiver is of the view its concerns with the Valuations should also be subject to the confidentiality provisions as they reference the Valuations. The Receiver is not aware of any party that will be prejudiced if the information in the Confidential Appendices is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

5.0 Receivership Order – Clarification re Paragraph 4

1. Pursuant to paragraph 4 of the Receivership Order, the Receiver is not permitted to, among other things, take steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Company and its subsidiaries and/or affiliates and any third party until December 31, 2019 or such other date as the Court may order.
2. The Avicola Group presently represents substantially all the Company’s value and currently is the only potential source of recoveries for the Company’s stakeholders. In the circumstances, the Receiver is of the view that it should be consulted with respect to any settlement or transaction negotiated by Juan Guillermo, and that any such settlement or transaction must be approved by the Court given Juan Guillermo’s conflicts of interest. The Receiver also believes that Court approval of any settlement or transaction involving the Avicola Group is required until the Receiver can fully investigate the transactions discussed in this Report. The Receiver is of the view that this requirement is not inconsistent with paragraph 4 of the Receivership Order.

¹⁰ According to answer 15 to the undertakings at the Examination, the debt owing by Lisa to BDT is less than \$50 million. An exact amount was not provided in the answers.

3. The Receiver has been advised by Juan Guillermo that he disagrees with the Receiver's position that Court approval is required of any settlement. Despite efforts to bridge the gap between the parties, and to avoid involving the Court, the parties were required to attend before Justice McEwen to request advice and direction in this regard. The Court requested that the Receiver, Margarita and Juan Guillermo provide written submissions by no later than October 25, 2019 outlining their respective interpretations of paragraph 4 of the Receivership Order. This matter is to be determined by the Court at a case conference on October 29, 2019, following the Receiver's motion.

6.0 Professional Fees

1. The fees of the Receiver and A&B are summarized in the table below:

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Jan 7/19 – Aug 31/19	36,763.75	65.92	36,829.67	620.49
A&B	Jan 10/19 – Sept 11/19	42,636.50	852.15	43,488.65	549.44
Total		79,400.25	918.07	80,318.32	

2. Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices "F" and "G", respectively.
3. The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.
4. Funding for these proceedings has been provided by Margarita pursuant to Receiver Certificates. There is presently no source of liquidity in the Company to fund the costs of these proceedings.

7.0 Overview of Receiver's Activities

1. The Receiver's activities in respect of these proceedings include the following:
 - a) familiarizing itself with the status and history of the litigation involving the Company;
 - b) corresponding with A&B concerning all matters in connection with the receivership proceedings;
 - c) preparing the Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
 - d) attending two meetings with Margarita and Bennett Jones;
 - e) attending two meetings with Torys and Juan Guillermo;
 - f) preparing questions for Juan Guillermo, reviewing his responses and sending follow-up questions;

- g) reviewing financial information concerning the Company;
- h) reviewing the EAI Transaction and the Assignment Transaction;
- i) dealing with Torys regarding various matters in these proceedings, including several information requests and the dispute as to whether Court approval is required of any settlement of the Avicola Litigation;
- j) engaging with Barbados and Panamanian counsel to assist the Receiver with a review of the subsidiaries, the Avicola Litigation and the EAI Transaction;
- k) reviewing, commenting and executing a confidentiality agreement between the Receiver and Juan Guillermo; and
- l) corresponding with Stikeman Elliot LLP, Canadian counsel to the Cousins.

8.0 Conclusion and Recommendation

1. As a result of the transactions discussed in this Report, the Receiver is concerned that EAI may have received inadequate consideration when it sold, conveyed or transferred the shares of BDT and Arven to Juan Arturo. In addition to further investigating the EAI Transaction and the Assignment Transaction, further investigation is required into the Valuations of BDT, Arven and PAICA to assess the reasonableness of the consideration paid by Juan Arturo to EAI for the shares of BDT and Arven.
2. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.1(1)(c) of this Report.

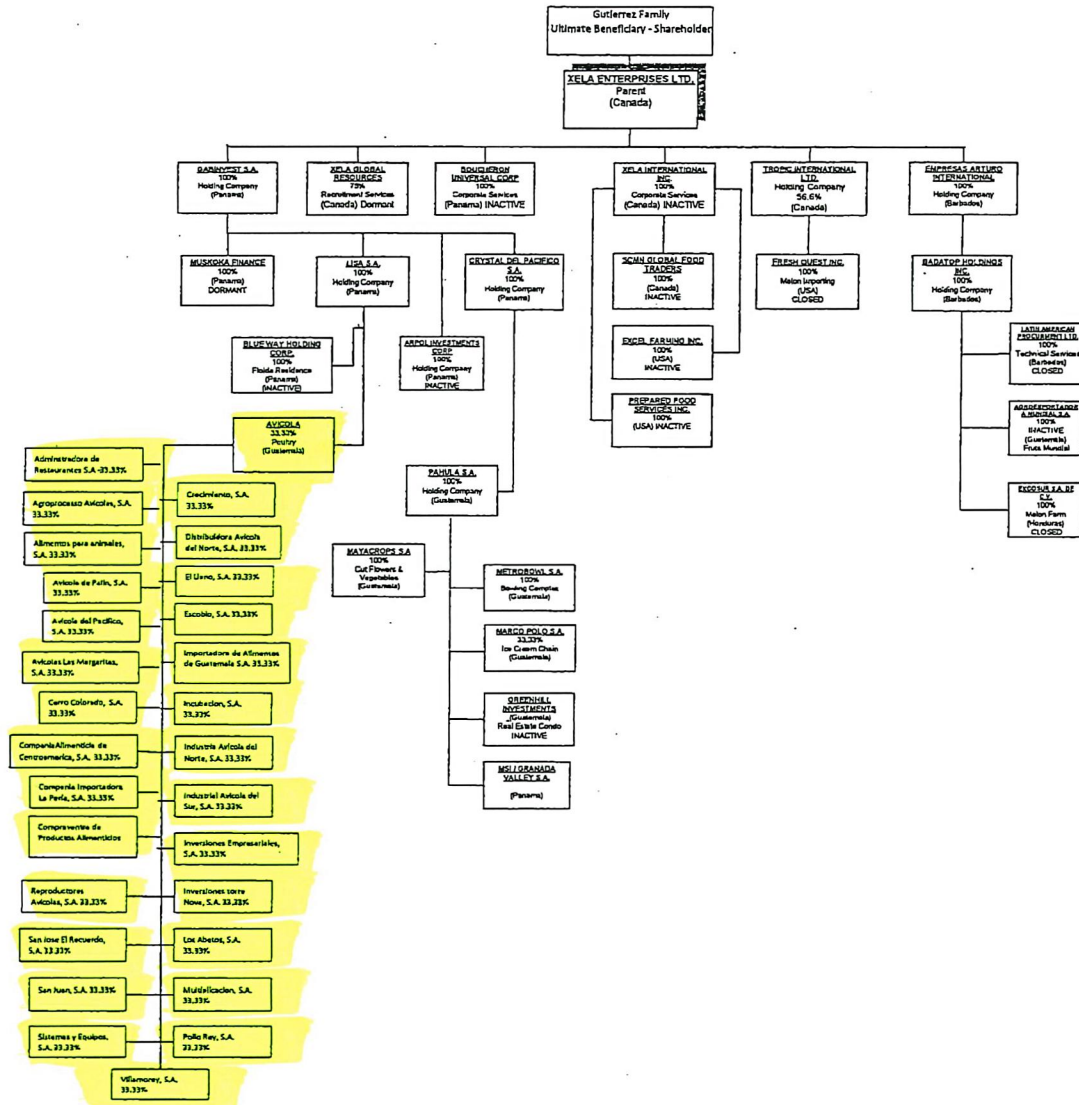
* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “C”



Appendix “D”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR

)

TUESDAY, THE 29th

JUSTICE MCEWEN

)

DAY OF OCTOBER, 2019

)



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

ORDER

THIS MOTION, made by KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the first report of the Receiver dated October 17, 2019 (the “**First Report**”) and the activities of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its legal counsel; (iii) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the sale, conveyance or transfer of the shares and/or assets of each Corporacion Arven, Limited

(“**Arven**”) and BTD Investments Inc. (“**BDT**”) to Juan Arturo Gutierrez (“**Juan Arturo**”), as purchaser or transferee, and Empresas Arturo International (“**EAI**”), as vendor or transferor, which were ultimately sold, conveyed or transferred by Juan Arturo to The ARTCARM Trust, in and around early 2016 (the “**EAI Transaction**”) deliver all such information and/or documentation to the Receiver; (iv) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the assignment by Lisa S.A. (“**Lisa**”) of the proceeds from the Avicola Litigation to BDT in January 2018 (the “**Assignment Transaction**”) deliver all such information and/or documentation to the Receiver; and (v) sealing the Confidential Appendices 1 and 2 of the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the First Report and the appendices thereto, the fee affidavit of Steven Graff sworn October 10, 2019 and the fee affidavit of Noah Goldstein sworn October 17, 2019, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by the affidavit of Kyle Plunkett sworn October 18, 2019, and the affidavit of Michael Anderson Beckles sworn October 25, 2019, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FIRST REPORT

2. **THIS COURT ORDERS** that First Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$36,763.75 (excluding HST) as set out in Appendix "F" to the First Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$43,520.07 plus HST of \$6,393.10, totalling \$49,177.68 as set out in Appendix "G" to the First Report, are hereby approved.

PRODUCTION OF RECORDS RE EAI TRANSACTION AND ASSIGNMENT TRANSACTION

5. **THIS COURT ORDERS** that (i) EAI and (ii) all of its current and former directors and officers, employees, agents, accountants and all other persons acting on their instructions or behalf, be and are hereby directed to produce forthwith to the Receiver any and all information and records, including its minute books and any board resolutions, in their possession or control of in relation to the EAI Transaction.

6. **THIS COURT ORDERS** that (i) The ARTCARM Trust and (ii) all of its current and former trustees, including Alexandria Trust Corporation, and employees, agents, accountants and beneficiaries, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

7. **THIS COURT ORDERS** that (i) Arven and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction.

8. **THIS COURT ORDERS** that (i) BDT and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

9. **THIS COURT ORDERS** that (i) Lisa and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the Assignment Transaction.

10. **THIS COURT ORDERS** that any party having notice of this Order be and is hereby directed to produce forthwith to the Receiver any and all information and records in their possession or control of in relation to the EAI Transaction and the Assignment Transaction.

SEALING OF CONFIDENTIAL INFORMATION


11. **THIS COURT ORDERS** that the Confidential Appendices 1 and 2 of the First Report be and are hereby sealed until further Order of this Court.

RECOGNITION BY FOREIGN JURISDICTIONS

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Republic of Panama, Republic of Guatemala, Barbados or Bolivarian Republic of Venezuela to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 29 2019

PER / PAR: 



MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD. *et al.*

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto**

ORDER

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, 181 Bay Street
Toronto, ON M5J 2T9

Steve Graff (LSO # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Kyle Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
Receiver of Xela Enterprises Ltd.*

IM Schedule A IM

In the Receivership of Xela Enterprises Ltd.

The following terms were ^{determined} ~~agreed~~ at the Case Conference: October 29, 2019

- ① Xela Enterprises Ltd. agrees to provide the Receiver with timely disclosure of any ^{negotiations and} offers of settlement related to the Avicola Litigation; ^{and advised}
- ② The Receiver shall be consulted ^{with respect to} ~~any offers of settlement relating to the Avicola Litigation;~~ provided that the Receiver shall not have any veto right with respect to any offer of settlement; and
- ③ Any settlement accepted by the parties involved in the Avicola Litigation shall be subject to Court approval

* ~~All Capitalized~~ All capitalized terms shall have the meaning ascribed in the Receiver's First Report to Court

* Such terms shall be read in conjunction with the Appointment Order and be effective until December 31, 2019 unless otherwise extended by the Court.

IM

Appendix “E”



Noah Goldstein
ksv advisory inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6207
F +1 416 932 6266
ngoldstein@ksvadvisory.com

October 31, 2019

DELIVERED BY COURIER AND REGULAR MAIL

Corporacion Arven, Limited
First Floor
Hastings House
Balmoral Gap
Hastings, Christ Church
Barbados

Attention: Patrick A. Doig

Dear Mr. Doig:

**Re: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)**

On July 5, 2019, KSV Kofman Inc. was appointed as receiver and manager of the Debtor (in such capacity, the "**Receiver**") pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

On October 29, 2019, the Receiver brought a motion requesting certain relief from the Court. This motion proceeded unopposed and the Court granted an Order (enclosed herewith) requiring, *inter alia*, the disclosure by Corporacion Arven, Limited ("**Arven**") of all information and/or documentation in Arven's control relating to and evidencing the sale, conveyance or transfer of the shares and/or assets of each Arven and BDT Investments Inc. ("**BDT**") to Juan Arturo Gutierrez ("**Juan Arturo**"), as purchaser or transferee, and Empresas Arturo International ("**EAI**"), as vendor or transferor, in or around April 2016 (the "**EAI Transaction**").

The Receiver understands that you are a director of Arven. In such capacity, the Receiver requires your cooperation in ensuring the delivery to the Receiver of any information and/or documentation evidencing the EAI Transaction, including all transaction documents, valuations, agreements, and other records evidencing the transfers (such information and documentation being, collectively, the "**Transaction Records**"). We ask that you deliver the Transaction Records to the Receiver by no later than November 8, 2019, failing which, the Receiver will be forced to take further legal steps to compel production of the Transaction Records from Arven, including initiating proceedings in Barbados. The Receiver will seek to recover any costs incurred by it as against Arven in connection with any such additional steps.

In the interim, we welcome the opportunity for a telephone conversation so that we can provide you with further context and clarity regarding the attached Order and the scope of the requested Transaction Records.

We look forward to your cooperation and appreciate your immediate attention to this matter. Should you have any questions, please contact me at ngoldstein@ksvadvisory.com or (416)-932 6207.

Yours very truly,

**KSV KOFMAN INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
XELA ENTERPRISES LTD.
AND NOT IN ITS PERSONAL CAPACITY**

Per: Noah Goldstein

NG:rk

cc: Steven Graff and Kyle Plunkett, Aird & Berlis LLP
Kevin Boyce and Matthew Goodin, Clarke Gittens Farmer





October 31, 2019

DELIVERED BY COURIER AND EMAIL

BDT Investments Inc.
#2 Rendezvous Road
Worthing, Christ Church
Barbados

Attention: Patrick A. Doig

Dear Mr. Doig:

Re: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)

On July 5, 2019, KSV Kofman Inc. was appointed as receiver and manager of the Debtor (in such capacity, the "**Receiver**") pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

On October 29, 2019, the Receiver brought a motion requesting certain relief from the Court. This motion proceeded unopposed and the Court granted an Order (enclosed herewith) requiring, *inter alia*, the disclosure by BDT Investments Inc. ("**BDT**") of all information and/or documentation in BDT's control relating to and evidencing the following transactions:

1. the sale, conveyance or transfer of the shares and/or assets of each Corporacion Arven, Limited ("**Arven**") and BDT to Juan Arturo Gutierrez ("**Juan Arturo**"), as purchaser or transferee, and Empresas Arturo International ("**EAI**"), as vendor or transferor, in or around early 2016 (the "**EAI Transaction**"); and
2. the assignment by Lisa S.A. ("**Lisa**") of the proceeds from litigation relating to the Avicola group of companies to BDT in or around January 2018 (the "**Assignment Transaction**").

The Receiver understands that you are a director of BDT, and have been served with the Court materials filed to date relating to the receivership proceedings of the Debtor. In such capacity, the Receiver requires your cooperation in ensuring the delivery to the Receiver of any information and/or documentation evidencing the EAI Transaction and the Assignment Transaction, including all transaction documents, valuations, agreements, and other records evidencing the transfers (such information and documentation being, collectively, the "**Transaction Records**"). We ask that you deliver the Transaction Records to the Receiver by no later than November 8, 2019, failing which, the Receiver will be forced to take further legal steps to compel production of the Transaction Records from BDT, including initiating proceedings in Barbados. The Receiver will seek to recover any costs incurred by it as against BDT in connection with any such additional steps.

In the interim, we welcome the opportunity for a telephone conversation so that we can provide you with further context and clarity regarding the attached Order and the scope of the requested Transaction Records.

We look forward to your cooperation and appreciate your immediate attention to this matter. Should you have any questions, please contact me at ngoldstein@ksvadvisory.com or (416)- 932 6207.

Yours very truly,

**KSV KOFMAN INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
XELA ENTERPRISES LTD.
AND NOT IN ITS PERSONAL CAPACITY**



Per: Noah Goldstein

NG:rk

cc: Steven Graff and Kyle Plunkett, Aird & Berlis LLP
Kevin Boyce and Matthew Goodin, Clarke Gittens Farmer
Reginald M. McLean



Noah Goldstein
ksv advisory inc.

150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6207
F +1 416 932 6266
ngoldstein@ksvadvisory.com

October 31, 2019

DELIVERED BY COURIER AND EMAIL

THE ARTCARM TRUST
c/o Alexandria Trust Corporation
Suite 3
Courtyard Building
The Courtyard
Hastings Main Road
Christ Church
Barbados, BB15156

Attention: Robert Madden

Dear Mr. Madden:

Re: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)

On July 5, 2019, KSV Kofman Inc. was appointed as receiver and manager of the Debtor (in such capacity, the "**Receiver**") pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

On October 29, 2019, the Receiver brought a motion requesting certain relief from the Ontario Court. Copies of the Court materials filed by the Receiver in support of its motion were served upon you on October 17, 2019 (electronically) and October 18, 2019 (personally) by the Receiver's counsel. We can advise that the motion proceeded unopposed and the Court granted the Order enclosed herewith requiring, *inter alia*, the disclosure by The ARTCARM Trust (the "**Trust**") of all information and/or documentation in the Trust's control relating to and evidencing the acquisition of the shares of each Corporacion Arven, Limited ("**Arven**") and BDT Investments Inc. ("**BDT**") by the Trust, as purchaser or transferee, from Juan Arturo Gutierrez, as vendor or transferor, in or around April 2016 (the "**EAI Transaction**").

The Receiver understands that you are a principal of Alexandria Trust Corporation, the trustee and administrator of the Trust. In such capacity, the Receiver requires your full cooperation in ensuring the delivery to the Receiver of any information and/or documentation evidencing the EAI Transaction, including all transaction documents, valuations, agreements, and other records evidencing the transfer of the shares of BDT and Arven to the Trust (such information and documentation being, collectively, the "**Transaction Records**"). We ask that you contact the Receiver and/or deliver the Transaction Records to the Receiver by no later than close of business on November 8, 2019, failing which, the Receiver will be forced to further legal steps to compel production of the Transaction Records from the Trust, including initiating proceedings in Barbados. The Receiver will seek to recover any costs incurred by it as against the Trust and your office in connection with any such additional steps.

In the interim, we would welcome the opportunity to discuss any of the foregoing with you in an effort to provide you with further context and clarity regarding the attached Order and the scope of the requested Transaction Records.

We look forward to your cooperation and appreciate your immediate attention to this matter. Should you have any questions, please contact me at ngoldstein@ksvadvisory.com or (416)-932 6207.

Yours truly,

**KSV KOFMAN INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
XELA ENTERPRISES LTD.
AND NOT IN ITS PERSONAL CAPACITY**



Per: Noah Goldstein

NG:rk

cc. Steven Graff and Kyle Plunkett, Aird & Berlis LLP
Kevin Boyce and Matthew Goodin, Clarke Gittens Farmer

Appendix “F”



November 8, 2019

Reply To: Debbie McDonald
Direct Line: 246.228.8402
E-Mail: Debbie.mcdonald@alexandriatrust.com

BY EMAIL & REGISTERED POST

Mr. Noah Goldstein
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

Dear Mr. Goldstein:

**RE: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)**

We write in response to your correspondence of October 31, 2019 in connection with the captioned matter.

We note the timeline given of November 8, 2019 to either contact your office or produce certain transaction records, as described therein. As the information requested contains the private and confidential information of third parties we are required to obtain consents in order to disclose. Given the short time period we ask that you provide us with more time to seek these consents. Please confirm if we may have until Wednesday, November 20, 2019 to do so.

We further note and appreciate your willingness to provide us with further context and clarity regarding the Order of the Ontario Superior Court of Justice (Commercial List) and the scope of the transaction records requested. Grateful if you could provide same for our understanding and record.

We look forward to hearing from you.

Regards,

**Alexandria Trust Corporation
in its capacity as Trustee of the Artcarm Trust**


Per: Debbie McDonald

ALEXANDRIA TRUST CORPORATION

*Suite 3, Courtyard Building, The Courtyard, Hastings Main Road, Christ Church BB15156, Barbados
Tel (246) 228-8402 Fax (246) 228-3847*

Appendix “G”

From: Patrick Doig <PDoig@bdtinvestments.com>

Sent: November 8, 2019 10:51 AM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Steve Graff <sgraff@airdberlis.com>; Kyle Plunkett <kplunkett@airdberlis.com>; matthew.goodin@clarkes.com.bb; Debbie McDonald <Debbie.McDonald@alexandriatrust.com>; Robert Madden <robert.madden@alexandriabancorp.com>; Gilles Gosselin <GG@sggc.bb>

Subject: RE: Receivership of Xela Enterprises Ltd.

Sensitivity: Confidential

Dear Noah,

You requested by email and letter certain information be produced from BDT and EAI. Both companies are owned by The Artcarm Trust.

We were awaiting guidance from our shareholder prior to responding to your request.

As such, we would respectfully request an extension of time to the 20th of November to prepare our responses to your request in consultation with our shareholder.

Thank you for your consideration.

Yours truly,

Patrick Doig

Appendix “H”



November 20, 2019

Reply To: Debbie McDonald
Direct Line: 246.228.8402
E-Mail: Debbie.mcdonald@alexandriatrust.com

BY EMAIL & REGISTERED POST

Mr. Noah Goldstein
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

Dear Mr. Goldstein:

**RE: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)**

With reference to our correspondence of November, 8, 2019 we wish to thank you for granting an extension of time until today's date to obtain the requisite consents to disclose. We hereby respond to your correspondence to the Artcarm trust (the "Trust") and to your related correspondence to BDT Investment Inc. ("BDT") of the same date.

As a preliminary matter, the Trust and BDT (which is owned by the Trust) are both entities formed under the laws of Barbados and operating in Barbados. Accordingly, neither the Trust nor BDT is subject to the jurisdiction of the Canadian courts or to the receivership. The Trust and BDT are not necessarily averse to cooperating with your request for information, so long as what is being requested and the purposes behind same are precisely understood.

In that regard, we previously asked that you provide further context and clarity regarding the Order of the Ontario Superior Court of Justice (Commercial List) ("Receivership Order") and the scope of the transaction records requested. We would be grateful if you could advise and also if you could provide a detailed, specific list of documents, you require. The Trust and BDT will thereupon consider whether to provide the requested information.

Separately, as you are aware, BDT and LISA S.A. ("LISA") have secured judgments in Panama, which predate the Receivership Order. It is our view that BDT has rights in the funds to be paid by Villamorey, S.A. in Panama (the "Panama Funds") that take priority over the Margarita Castillo judgment in Canada. Nevertheless, from our discussions with LISA, we understand that LISA is committed to settling the Margarita Castillo judgment in full, and that BDT is willing to loan a portion of the Panama Funds to LISA for that purpose. In that regard, we understand that the consent of BDT has been obtained to partially subordinate its priority rights in the Panama Funds to address this matter.

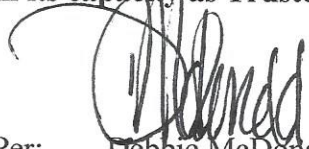
ALEXANDRIA TRUST CORPORATION

*Suite 3, Courtyard Building, The Courtyard, Hastings Main Road, Christ Church BB15156, Barbados
Tel (246) 228-8402 Fax (246) 228-3847*

We look forward to receipt of the afore-requested information and feedback regarding the foregoing proposal for settlement.

Regards,

Alexandria Trust Corporation
in its capacity as Trustee of the Artcarm Trust

A handwritten signature in black ink, appearing to read 'Debbie McDonald', is written over the typed name below.

Per: Debbie McDonald

cc: Mr. Patrick Doig, BDT Investments Inc.

Appendix “I”



BDT INVESTMENTS INC

1st Floor, Hastings House, Balmoral Gap • Hastings • Christ Church
• Barbados • WI • Tel: (246)434 -2691 • Fax: (246) 435 -0230

November 20, 2019

Mr. Noah Goldstein
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

Dear Mr. Goldstein:

**RE: Receivership of Xela Enterprises Ltd. (the “Debtor”)
(Ontario Court File No. CV-11-9062-00CL)**

I attach a letter from our shareholder sent to you this afternoon.

BDT concurs with the contents of the attached letter.

With respect to your letter dated October 31, 2019 to Corporacion Arven, Limited (Arven) for information, I respectfully request a detailed, specific list of documents required from Arven along with the purpose behind the request in order to consider providing the information.

Thank you in advance for your consideration. I look forward to your reply.

Yours truly,

Patrick Doig
President
BDT Investments Inc.



November 20, 2019

Reply To: Debbie McDonald
Direct Line: 246.228.8402
E-Mail: Debbie.mcdonald@alexandriatrust.com

BY EMAIL & REGISTERED POST

Mr. Noah Goldstein
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

Dear Mr. Goldstein:

**RE: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)**

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In that regard, we previously asked that you provide further context and clarity regarding the Order of the Ontario Superior Court of Justice (Commercial List) ("Receivership Order") and the scope of the transaction records requested. We would be grateful if you could advise and also if you could provide a detailed, specific list of documents, you require. The Trust and BDT will thereupon consider whether to provide the requested information.

Separately, as you are aware, BDT and LISA S.A. ("LISA") have secured judgments in Panama, which predate the Receivership Order. It is our view that BDT has rights in the funds to be paid by Villamorey, S.A. in Panama (the "Panama Funds") that take priority over the Margarita Castillo judgment in Canada. Nevertheless, from our discussions with LISA, we understand that LISA is committed to settling the Margarita Castillo judgment in full, and that BDT is willing to loan a portion of the Panama Funds to LISA for that purpose. In that regard, we understand that the consent of BDT has been obtained to partially subordinate its priority rights in the Panama Funds to address this matter.

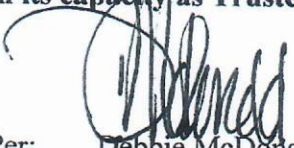
ALEXANDRIA TRUST CORPORATION

*Suite 3, Courtyard Building, The Courtyard, Hastings Main Road, Christ Church BB15156, Barbados
Tel (246) 228-8402 Fax (246) 228-3847*

We look forward to receipt of the afore-requested information and feedback regarding the foregoing proposal for settlement.

Regards,

Alexandria Trust Corporation
in its capacity as Trustee of the Artcarm Trust


Per: Debbie McDonald

cc: Mr. Patrick Doig, BDT Investments Inc.

Appendix “J”



Noah Goldstein
ksv advisory inc.

150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6207
F +1 416 932 6266
ksvadvisory.com

ngoldstein@ksvadvisory.com

December 2, 2019

VIA EMAIL AND COURIER

THE ARTCARM TRUST
c/o Alexandria Trust Corporation
Suite 3, Courtyard Building
The Courtyard, Hastings Main Road
Christ Church
Barbados, BB15156

Attn: Debbie McDonald and Robert Madden

- and -

BDT INVESTMENTS INC.
#2 Rendezvous Road
Worthing, Christ Church
Barbados

Attn: Patrick A. Doig

- and -

CORPORACION ARVEN, LIMITED
First Floor
Hastings House, Balmoral Gap
Hastings, Christ Church
Barbados

Attn: Patrick A. Doig

Dear Sirs and Madams:

**Re: Receivership of Xela Enterprises Ltd. (the "Debtor")
(Ontario Court File No. CV-11-9062-00CL)**

We confirm receipt of each of your letters dated November 20, 2019, wherein you confirm receipt of the Ontario Court issued disclosure order and the Receiver's request for information pertaining to certain transactions. We also note and appreciate your willingness to cooperate with the Receiver's investigations into the EAI Transactions. Capitalized terms used in this letter which are not otherwise defined shall have the meaning ascribed to them in our letters to each of BDT, Arven and Artcarm (collectively, the "**Artcarm Entities**") dated October 31, 2019 (collectively, the "**October 31st Letters**"), as applicable.

In the October 31st Letters, the Receiver indicated to the Artcarm Entities that it was aware of and had reviewed a limited set of documents relating to each of the EAI Transaction and the Assignment Transaction. Both of these transactions are currently being investigated by the Receiver, and the Receiver requires further information from the Artcarm Entities and their principal in order to complete its

review and make a determination as to the lawfulness and validity of such transactions. In particular, the Receiver requested any and all information and/or documentation evidencing the EAI Transaction and the Assignment Transaction, including all transaction documents, valuations, agreements, including, but not limited to, (A) records evidencing the transfer of the shares of BDT and Arven to Mr. Juan Arturo Gutierrez, and (B) records evidencing the subsequent transfer of the shares of BDT and Arven from Mr. Gutierrez to the Trust. The Receiver's expectation is that the Artcarm Entities will make full disclosure of such documentation. To date, the Receiver has received little information pertaining to these transactions. However, in light of your request for a list of documents, the Receiver has put together a preliminary list of items it requires from the Artcarm Entities as set out in Schedule A hereto. The attached list is non-exhaustive and the Receiver may add additional items as it continues its assessment.

Please provide us with the Transaction Records listed in Schedule A by no later than December 6, 2019.

With respect to your second point regarding the priority of BDT's judgment as against Lisa, the Receiver is not prepared to concede this point and reserves all of its rights and remedies to challenge this position.

We also note that BDT has indicated that it is prepared to segregate and subordinate in favour of Margarita Castillo a portion of any recovery by BDT under its Panama judgment against Lisa solely for the purpose of satisfying Margarita's judgment in Canada. In addition, until the Receiver has completed its investigation, it requires a commitment from the Trust and BDT that they will set aside a further \$15.0 million received from any recovery under the Panama judgment for the stakeholders of the Debtor. The Receiver would be prepared to enter into a written agreement to this effect on the understanding that any final agreement will require the endorsement by the Ontario Court.

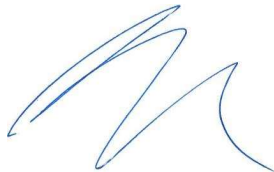
If BDT and the Trust are agreeable to this proposal, which the Receiver believes represents a fair resolution, we will instruct our legal counsel to prepare the necessary documentation to finalize and move swiftly to obtain the necessary court approvals in Ontario and, if necessary, Barbados, to effect this settlement in the context of the Receivership proceedings.

In the interim, we are working with our Barbados counsel, Clarke Gittens Farmer (copied), to take the necessary steps in Barbados to have both the receivership proceedings recognized as well as obtain an order from the Barbados court requiring disclosure by the Trust, BDT and Arven.

We look forward to your cooperation and appreciate your immediate attention to this matter. Should you have any questions, please contact me at ngoldstein@ksvadvisory.com or (416) 932-6207.

Yours very truly,

**KSV KOFMAN INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
XELA ENTERPRISES LTD.
AND NOT IN ITS PERSONAL CAPACITY**



Noah Goldstein

NG:rk

Encls.

cc. *Steven Graff, Kyle Plunkett and Sam Babe, Aird & Berlis LLP
Kevin Boyce and Shena-Ann Ince, Clarke Gittens Farmer*

SCHEDULE A
List of Transaction Records

1. ***EAI Transaction:***

- a. The definitive agreements reflecting the sale, conveyance or transfer in early 2016 by EAI of the shares of BDT and Arven to Juan Arturo Gutierrez. Copies of all EAI corporate documents, such as Board of Director resolutions, authorizing the sale transaction to Mr. Gutierrez.
- b. The definitive agreements reflecting the sale, conveyance or transfer in 2016 by Juan Arturo Gutierrez of the shares of BDT and Arven to the Trust. Copies of the Trust documents authorizing the transaction.
- c. Proof of advances from Juan Arturo Gutierrez to EAI and Xela leading up to and advanced prior to the EAI Transaction, including EAI bank statements evidencing such advances.
- d. All documents evidencing the indebtedness of EAI to Juan Arturo Gutierrez prior to the sale or transfer of the shares of BDT and Arven to Juan Arturo Gutierrez, including EAI's internally prepared financial statements from the date of the first advance to the date of the sale or transfer of shares.
- e. Copies of all public registrations and filings in Barbados evidencing the transfer of shares, and, if applicable, evidence of any stamping fees payable with respect to the share transfers.
- f. A copy of any valuation(s) prepared in respect of Arven at the time of the EAI Transaction.
- g. A summary of the steps taken by the Board of Directors of EAI to satisfy itself that it received appropriate value for the shares of each of BDT and Arven, including in respect of the receivable owed to it by Lisa S.A.
- h. An explanation as to why the cash flows from EAI were not used to satisfy the amounts owing to Juan Arturo Gutierrez.
- i. An explanation as to how the Board of Directors of EAI relied on the Deloitte valuation when it was prepared in May 2016, a month following the completion of EAI Transaction. In light of the foregoing, on what basis did the Board of Directors determine that fair value was paid to EAI for its shares in Arven and BDT?

2. ***Assignment Transaction:***

- a. Proof of advances from BDT to Lisa S.A. totalling approximately US\$47 million as of June 30, 2018, including cancelled cheques payable to Lisa S.A., wire transfers from BDT to Lisa S.A. and bank statements.
- b. A schedule providing a detailed summary of the amounts advanced by BDT to Lisa S.A. since the date of the Assignment Transaction, with supporting documentary evidence (copies of all cheque numbers, wire transfers or other evidence)
- c. Copies of all agreements between Lisa S.A. and BDT as to the terms of repayment.
- d. Copy of promissory note or other consideration provided by Lisa S.A. to BDT as evidence of its obligation to BDT.
- e. A copy of all authorizing resolutions passed by BDT concerning the terms of advances from BDT to Lisa S.A.
- f. Copies of the financial statements for BDT for the years of 2006 through to 2018 evidencing that its operations generated sufficient cash flow, or otherwise had access to sufficient cash, to fund the amounts paid to Lisa S.A.

Appendix “K”



December 13, 2019

Reply To: Debbie McDonald
Direct Line: 246.228.8402
E-Mail: Debbie.mcdonald@alexandriatrust.com

BY EMAIL & POST

Mr. Noah Goldstein
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

Dear Mr. Goldstein:

**RE: Receivership of Xela Enterprises Ltd. (the “Debtor”)
(Ontario Court File No. CV-11-9062-00CL)**

We refer to your correspondence of December 2, 2019 (the “Letter”), directed to the Artcarm trust (the “Trust”), BDT Investments Inc. (“BDT”) and Corporacion Arven Limited (“Arven”). As the Trustee for the Trust – which owns both BDT and Arven – we hereby respond to the Letter jointly on behalf of all three entities.

First, concerning the Receiver’s request for documents relating to what you refer to as the “EAI Transaction,” we thank you for your clarification that the purpose of the request is to assess the “lawfulness and validity” of the transfer of Arven’s and BDT’s shares to the Trust by the late Juan Arturo Gutierrez in April 2016. In this regard, we note that the Trust is a Barbados Trust previously settled under the International Trusts Act of 1995 but now governed by the Trust (Miscellaneous Provisions) Act of 2018, which contains a three-year statute of limitations against any challenge to transfers to the Trust. Consequently, any attempt by the Receiver to invalidate transfers to the Trust made in April 2016 would be time-barred, even if said transfers were otherwise unlawful or invalid, which they were not.

Therefore, in light of the acknowledged purpose of the Receiver’s request, we respectfully decline to provide any information concerning the transfer of BDT and Arven shares to the Trust in April 2016. For the same reason, any legal process undertaken by the Receiver in Barbados to challenge the validity of the Trust and/or its assets would be unfounded, and we reserve the right to seek appropriate remedies against both the Receiver and its lawyers should we be required to defend against such claims, including remedies based on gross negligence and/or willful misconduct.

ALEXANDRIA TRUST CORPORATION

*Suite 3, Courtyard Building, The Courtyard, Hastings Main Road, Christ Church BB15156, Barbados
Tel (246) 228-8402 Fax (246) 228-3847*

Second, concerning your request for documents relating to what you refer to as the "Assignment Transaction," we confirm that BDT has loaned more than US\$50 million to LISA since 2005 to enable LISA to pursue recovery of unpaid dividends owed to LISA by Villamorey, S.A. and its related poultry conglomerate in Guatemala (collectively the "Poultry Conglomerate"), all of which are 1/3 owned by LISA. In due course, we anticipate that BDT may file its own creditor's claim in the Receivership, at which time BDT would submit the necessary and appropriate documentation to support such a claim, which might include some or all of the documents set out in Attachment B to your letter.

Third, in response to BDT's expression of willingness to loan additional funds to LISA from any recovery under the Panama judgment in order to satisfy the Margarita Castillo judgment in Canada (the "Castillo Judgment"), your letter purports to require a commitment from BDT to set aside a further US\$15 million from those funds, without offering any rationale for that demand. We understand that the Receivership was sought and obtained solely on the basis of the Castillo Judgment, and that the Receivership is terminable upon its satisfaction. We therefore respectfully request that you articulate a valid basis for the Receiver's demand for an additional commitment from BDT, which we will be pleased to consider.

Lastly, as indicated above, BDT has loaned sums to LISA well in excess of the \$19,184,680 of indebtedness BDT reduced to judgment in Panama in 2012. In light of the document entitled "Assignment of Causative Action," and considering that LISA never assigned any of its claims against the Poultry Conglomerate to BDT, BDT is a secured creditor of LISA for the balance of that indebtedness, which exceeds US\$30 million. However, we understand that Xela will be asking the Receiver for a voluntary extension of the limitations set out in Paragraph 4 of the Receivership Order, to enable LISA to conclude its efforts to collect the Panama judgment. Notwithstanding its status as secured creditor, BDT will enter into a written agreement with the Receiver to subordinate to the Receivership its rights in the proceeds of the Panama judgment and any potential claims BDT may have in the Receivership itself, to the extent necessary to satisfy the Castillo Judgment (and other necessary and reasonable costs of the Receivership, but not including the cost of any proceedings by or on behalf of the Receiver against the Trust, BDT and/or Arven), if the Receiver consents to Xela's extension request and the extension is approved by the Court.

We look forward to your prompt response to these items, and we appreciate your courtesy and cooperation.

Regards,

Alexandria Trust Corporation
in its capacity as Trustee of the Artcarm Trust


Per: Debbie McDonald

cc: Mr. Patrick Doig, BDT Investments Inc.
Mr. Patrick Doug, Corporacion Arven Limited

Appendix “L”

AIRD BERLIS

Kyle B. Plunkett
Direct: 416.865.3406
Email: kplunkett@airdberlis.com

November 5, 2019

BY COURIER

Mr. Harald Johannessen Hals

6 Avenida "A" 8-00, Zona 9
Edificio Centro Operativo
Penthouse "B"
Ciudad de Guatemala
Guatemala

Mr. Lester C. Hess Jr.

1234 Deerbrook Drive
Sugar Land
Texas, 77479-4283
United States of America

Mr. Calvin Kenneth Shields

4118 Oakmount Court
Vero Beach
Florida, 32967
United States of America

Attention: Board of Directors of Lisa S.A.

Dear Sirs:

**Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)**

And Re: Notice to Board of Directors and Officers of Lisa S.A. ("Lisa")

We are the lawyers for KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela. KSV was appointed Receiver pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") issued and entered on July 5, 2019 (the "**Appointment Order**"). A copy of the Appointment Order is attached. All court materials filed in the receivership proceedings can be found on the Receiver's website: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

Based upon information provided to us by Mr. Juan Guillermo Gutierrez ("**Mr. Gutierrez**") and his Ontario legal counsel, Torys LLP ("**Torys**"), and Lisa's Florida counsel, Andrew Durkovic of Amsterdam & Partners LLP, as well as the public records filed in the Republic of Panama (Notario Público Primero del Circuito de Panamá), we understand that each of you is a director of the Lisa, and that each of Mr. Hals and Mr. Hess Jr. is an officer of Lisa.

As you know, Lisa is a subsidiary of Xela and, as such, the Receiver has an interest in the management and operations of Lisa, as a shareholder and the ultimate parent company of the Xela group.

Assignment Transaction re Litigation Proceeds

On October 29, 2019, the Receiver brought a motion requesting certain relief from the Ontario Court. This motion proceeded unopposed and the Court granted an Order (the “**Disclosure Order**”) requiring, *inter alia*, the disclosure by Lisa of all information and/or documentation in Lisa’s control relating to and evidencing the assignment by Lisa of the proceeds from litigation (the “**Avicola Litigation**”) relating to the Avicola group of companies to BDT in or around January 2018 (the “**Assignment Transaction**”). A copy of the Disclosure Order is also attached for review. We trust that the Board of Directors of Lisa will comply with the terms of the Disclosure Order and provide all information relating to the Assignment Transaction by no later than **November 11, 2019**. A copy of the Receiver’s Report filed in connection with the motion can be found at the above-referenced link.

Judgement against Villamorey S.A.

On October 31, 2019, the Receiver attended a conference call on Thursday, October 31, 2019, with Mr. Durkovic, Mr. Gutierrez and Torys LLP. Mr. Durkovic confirmed on the call that Mr. Gutierrez is the person representing and directing Lisa in the Avicola Litigation. Mr. Durkovic also advised the Receiver that there is an imminent order to be released in favour of Lisa by the Panamanian Court ordering Villamorey S.A. to pay Lisa approximately USD\$24.0 to USD\$26.0 million dollars (the “**Judgment Funds**”). We understand that the payment of the Judgment Funds is to be made directly to Lisa by the Panama Court and that Lisa intends to pay such amounts to BDT. The Receiver has not yet been provided with a copy of the order and requests that a copy be delivered by Lisa to the Receiver as soon as it is available.

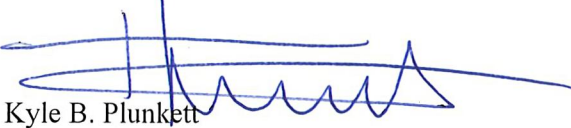
In light of the concerns expressed by the Receiver in its court materials filed with the Ontario Court in connection with the Receiver’s motion on October 29th, the Receiver requires that the Judgment Funds not be paid to BDT or anywhere else until the Receiver can complete its review of the Assignment Transaction. As such, the Receiver is of the view that these funds remain in the possession of the Lisa until such time as the Receiver can complete its review of the Assignment Transaction. We have copied Mr. Gutierrez as well given his active role in managing Lisa’s business and the Avicola Litigation.

The Receiver hereby requests that you confirm in writing by no later than **November 8, 2019** that Lisa agrees to hold the Judgment Funds and to not distribute same until the Receiver can complete its review of the Assignment Transaction or until further order of the courts. If the Receiver does not hear from you by end of day on November 8th, the Receiver will be forced to take immediate steps in the Ontario receivership proceedings and in Panama so that the Judgment Funds do not leave Lisa’s account until the matter can be properly determined. With that in mind, the Receiver has also engaged Mr. Carl O’Shea and Mr. Alvaro Almengor from Hatstone as its Panamanian counsel, both of whom are copied on this letter.

We look forward to your cooperation and appreciate your immediate attention to this matter. Should you have any questions, please contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Kyle B. Plunkett
KP/ph

*cc by Email: Juan Guillermo Gutierrez
Adam Slavens, Jeremy Opolsky and Stefan Case, Torys LLP
Andrew Durkovic, Amsterdam & Partners LLP
Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Steven Graff, Aird & Berlis LLP
Carl O'Shea and Alvaro Almengor, Hatstone*

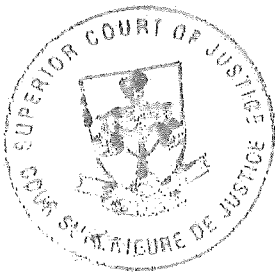
Encls.

37754953.5

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE MCEWEN)

FRIDAY , THE 5th
DAY OF July , 2019



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

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Xela Enterprises Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Margarita Castillo sworn January 14, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Margarita Castillo and Xela Enterprises Ltd., and on reading the consent of KSV Kofman Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, notwithstanding any other provision in this Order, the Receiver shall not take any steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Debtor and its subsidiaries and/or affiliates and any third party, including the litigation involving or related to the Avicola companies (as defined and further set out in the affidavit of Juan Guillermo Gutierrez ("Juan"), sworn June 17, 2019). Such steps shall include but not be limited to:

- a) selling or publicly marketing the shares of Lisa S.A., Gabinvest S.A., or any shares owned by these entities;
- b) publicly disclosing any information about the above-mentioned litigation and/or the Receiver's conclusions or intentions, provided that the Receiver may disclose such information to Juan and Margarita Castillo ("Margarita") and their counsel upon Juan and Margarita each executing a non-disclosure agreement in a form reasonably acceptable to the Receiver, and if the Receiver does disclose such information, conclusions or intentions, the Receiver shall disclose equally to Juan and Margarita;

- c) replacing counsel in the above mentioned litigations; and
- d) engaging in settlement negotiations or contacting opposing parties in the above-mentioned litigation.

This paragraph applies only until December 31, 2019 or such other date as this Court may order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. The Receiver shall treat as confidential all information received relating to litigation involving or related to the Avicola companies.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as

amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be

opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory

or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The amount of such borrowing shall not, subject to further order of this Court, exceed \$500,000 before December 31, 2019. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

TERMINATION OF RECEIVERSHIP

25. THIS COURT ORDERS that the Debtor may make a motion to this Court for the termination of the receivership upon receipt by Margarita of the judgment debt owing to her by the Debtor, plus receivership fees and expenses, and that upon such motion the burden shall be on Margarita to justify that it remains just and equitable to continue the receivership.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises'.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, in the amount of \$40,000, all inclusive, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.


33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to be 'M. J. T.', written over a horizontal line.

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LE / DANS LE REGISTRE NO:

JUL 05 2019

PER / PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "Receiver") of the assets, undertakings and properties Xela Enterprises Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number CV-11-9062-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Kofman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARGARITA CASTILLO
Moving Party

-and-

XELA ENTERPRISES LTD. et al.
Respondents
Superior Court File No.: CV-11-9062-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

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Lawyers for the moving party, Margarita Castillo

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR
JUSTICE MCEWEN

)
)
)

TUESDAY, THE 29th
DAY OF OCTOBER, 2019



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

ORDER

THIS MOTION, made by KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the first report of the Receiver dated October 17, 2019 (the “**First Report**”) and the activities of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its legal counsel; (iii) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the sale, conveyance or transfer of the shares and/or assets of each Corporacion Arven, Limited

(“**Arven**”) and BTD Investments Inc. (“**BDT**”) to Juan Arturo Gutierrez (“**Juan Arturo**”), as purchaser or transferee, and Empresas Arturo International (“**EAI**”), as vendor or transferor, which were ultimately sold, conveyed or transferred by Juan Arturo to The ARTCARM Trust, in and around early 2016 (the “**EAI Transaction**”) deliver all such information and/or documentation to the Receiver; (iv) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the assignment by Lisa S.A. (“**Lisa**”) of the proceeds from the Avicola Litigation to BDT in January 2018 (the “**Assignment Transaction**”) deliver all such information and/or documentation to the Receiver; and (v) sealing the Confidential Appendices 1 and 2 of the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the First Report and the appendices thereto, the fee affidavit of Steven Graff sworn October 10, 2019 and the fee affidavit of Noah Goldstein sworn October 17, 2019, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by the affidavit of Kyle Plunkett sworn October 18, 2019, and the affidavit of Michael Anderson Beckles sworn October 25, 2019, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FIRST REPORT

2. **THIS COURT ORDERS** that First Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$36,763.75 (excluding HST) as set out in Appendix "F" to the First Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$43,520.07 plus HST of \$6,393.10, totalling \$49,177.68 as set out in Appendix "G" to the First Report, are hereby approved.

PRODUCTION OF RECORDS RE EAI TRANSACTION AND ASSIGNMENT TRANSACTION

5. **THIS COURT ORDERS** that (i) EAI and (ii) all of its current and former directors and officers, employees, agents, accountants and all other persons acting on their instructions or behalf, be and are hereby directed to produce forthwith to the Receiver any and all information and records, including its minute books and any board resolutions, in their possession or control of in relation to the EAI Transaction.

6. **THIS COURT ORDERS** that (i) The ARTCARM Trust and (ii) all of its current and former trustees, including Alexandria Trust Corporation, and employees, agents, accountants and beneficiaries, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

7. **THIS COURT ORDERS** that (i) Arven and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction.

8. **THIS COURT ORDERS** that (i) BDT and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

9. **THIS COURT ORDERS** that (i) Lisa and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the Assignment Transaction.

10. **THIS COURT ORDERS** that any party having notice of this Order be and is hereby directed to produce forthwith to the Receiver any and all information and records in their possession or control of in relation to the EAI Transaction and the Assignment Transaction.

SEALING OF CONFIDENTIAL INFORMATION

11. **THIS COURT ORDERS** that the Confidential Appendices 1 and 2 of the First Report be and are hereby sealed until further Order of this Court.

RECOGNITION BY FOREIGN JURISDICTIONS

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Republic of Panama, Republic of Guatemala, Barbados or Bolivarian Republic of Venezuela to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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LE / DANS LE REGISTRE NO:

OCT 29 2019

PER / PAR:

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MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD. et al.

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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Email: kplunkett@airdberlis.com

*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
Receiver of Xela Enterprises Ltd.*

COUNSEL SLIP

COURT FILE

NO. CV-11-00009062-COCL

DATE: October 29 2019

NO. ON LIST

(6)

TITLE OF PROCEEDING

Castillo, M v. Xela Enterprises Ltd et al

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

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COUNSEL FOR:

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- RESPONDENT(S)

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Counsel for the "Co-surety" (on non-attornment basis)

~~Jeffrey Leon~~
M. Castillo

T: 416 777 0291
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19 Oct 2019

order shall go as per Schedule A attached. Counsel with email me a typed version for signature.

McInt

SCHEDULE "A"

In the Matter of the Receivership of Xela Enterprises Ltd.

The following terms were determined at the Case Conference returnable October 29, 2019:

1. Xela Enterprises Ltd. agrees to provide the Receiver with timely disclosure of any negotiations and offers of settlement related to the Avicola Litigation;
2. The Receiver shall be consulted and advised with respect to settlement negotiations relating to the Avicola Litigation; provided that the Receiver shall not have any veto right with respect to any offer of settlement; and
3. Any settlement accepted by the parties involved in the Avicola Litigation shall be subject to the approval of this Court.

*All capitalized terms used herein shall have the meaning ascribed to them in the Receiver's First Report to Court dated October 17, 2019.

*Such terms shall be read in conjunction with the Appointment Order and be effective until December 31, 2019 unless otherwise extended by the Court.

A handwritten signature in black ink, appearing to be "M. J. S.", written over a horizontal line.

October 29, 2019

Appendix “M”

AMSTERDAM & PARTNERS LLP
LONDON WASHINGTON

1054 31ST STREET, N.W.
SUITE 110
WASHINGTON, DC 20007

WRITER'S CONTACT:
A.DURKOVIC@AMSTERDAMANDPARTNERS.COM
+1-202-669-2974

November 8, 2019

Mr. Kyle B. Plunkett
Aird & Berlis LLP
Toronto, Ontario
Canada

VIA EMAIL
kplunkett@airdberlis.com

Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)

Dear Mr. Plunkett:

We are international legal counsel to LISA, S.A., a Panama corporation ("LISA"), an indirect subsidiary of Xela. We are in receipt of your letter dated November 5, 2019 (the "Letter"), and can report that LISA is under instruction to cooperate fully with the referenced Receiver in the performance of its court-authorized duties. Accordingly, we hereby respond to the Letter on behalf of LISA.

Regarding your request for disclosure of documents and information relating to what the Letter describes as the "Assignment Transaction," we are happy to comply. Attached as Annex A is a copy of the document entitled "Assignment of Causative Action" dated January 24, 2018, which is the only document representing the transaction. The purpose of the transaction was to provide BDT Investments Inc. ("BDT") with security for a mounting debt (currently in excess of US\$50 million) owed by LISA to BDT (the "Debt"), the proceeds of which have enabled LISA to pursue a 20-year-old dispute over the nonpayment of LISA's share of the dividends of Villamorey, S.A., a Panama corporation ("Villamorey"), which are currently estimated to approach US\$400 million with interest.

Although we believe that Annex A speaks for itself, our interpretation of it is that – notwithstanding the title of the document – it does not assign LISA's claims against Villamorey or anyone else to BDT, but rather gives BDT entitlement to the first fruits of any recovery against Villamorey in satisfaction of the principal amount of the Debt, with any remaining recovery to be shared between BDT and LISA in the stated proportion. In

Mr. Kyle B. Plunkett

November 8, 2019

Page 2

exchange, the document obligates BDT to continue to fund LISA's efforts to recover its unpaid Villamorey dividends. We further believe that it is implied in Annex A that BDT's obligation to continue funding LISA's side of the Villamorey dispute is limited to BDT's reasonable ability to provide resources to LISA.

Our understanding is that the foregoing is the full extent of documents and information LISA has concerning the transaction. However, should the Receiver need additional clarification, we will do our best to respond to specific questions.

Separately, as we discussed by phone on October 31, LISA has a judgment in Panama (the "LISA Judgment") in excess of US\$18 million against Villamorey for a small fraction of the unpaid dividends owed by Villamorey to LISA. With accrued interest, the amount due under the LISA Judgment now approaches US\$25 million, and we anticipate receiving a final payment order from the Panama court imminently. At the same time, BDT has a judgment lien in Panama against all of LISA's assets in the amount of \$19,184,680 (the "BDT Judgment Lien"), dating from December 12, 2012, relating to a portion of the Debt (*i.e.*, disbursements made on LISA's behalf during the period 2005-09). A copy of the BDT Judgment Lien is attached as Annex B. LISA is therefore under a Panamanian court order to satisfy the BDT Judgment Lien with the first proceeds of any payment LISA may receive under the LISA Judgment (the "Judgment Funds").

As a consequence of these circumstances, the Receiver's demand that the Judgment Funds not be paid to BDT until the Receiver completes its review of what you refer to as the "assignment transaction" potentially places LISA in the position of being forced to violate an order of the court in Panama – where LISA is located – that pre-dates both the Receivership and the Margarita Castillo judgment on which the Receivership is based. Nevertheless, although the BDT Judgment Lien would appear to have first priority over the Judgment Funds, it is in BDT's own interest to help Xela satisfy its creditors. For that reason, we are in the process of consulting with BDT to determine the extent of its willingness to subordinate its rights in the Judgment Funds to the reasonable requirements of the Receivership. We respectfully request some additional time to evaluate those possibilities.

In any case, as noted, we expect the amount of the final payment order under the LISA Judgment to exceed the amount of the BDT Judgment Lien by approximately US\$5 million, which LISA commits not to transfer until such time as any other Receivership claims to those funds are resolved.

Mr. Kyle B. Plunkett

November 8, 2019

Page 3

We appreciate your courtesy and cooperation, and we stand available to discuss these and any other pertinent matters at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Durkovic', with a long horizontal flourish extending to the right.

Andrew J. Durkovic
AMSTERDAM & PARTNERS LLP

cc: Via Email
Mr. Adam Slavens
Mr. Bobby Kofman
Mr. Noah Goldstein
Mr. Steven Graff
Mr. Carl O'Shea
Mr. Alvaro Almengor
Mr. Robert A. Amsterdam

ANNEX “A”

January 24, 2018

ASSIGNMENT OF CAUSATIVE ACTION

This Agreement is between the parties: BDT Investments LTD., domiciled in Barbados, referred to as (BDT) and Lisa S.A., referred to as (LISA), Xela Enterprises and Lisa S.A. are related parties.

BDT has monies outstanding from LISA of \$46,786,171 and from Xela Enterprises Ltd. of \$18,507,140.

Due to financial circumstances, BDT is concerned that LISA and Xela Enterprises Ltd. do not have the wherewithal to repay BDT amounts owed unless litigation involving the AVICOLA holdings, owned by LISA, is continued and funded.

As a result of negotiations between the parties, BDT agrees to fund the litigation going forward which could result in millions of dollars of expenses. In return, LISA will assign all causative actions of all current and future lawsuits involving the AVICOLA holdings.

Furthermore, BDT agrees to pay LISA 30% net of expenses of any settlement and/or collection of funds directly or indirectly relating to any related litigation. Expenses shall be comprised of all current monies owed by LISA, plus any statutory withholding taxes, plus any related contingency fees, bonuses, and commissions if applicable.

LISA agrees to fully co-operate with BDT on a reasonable basis.

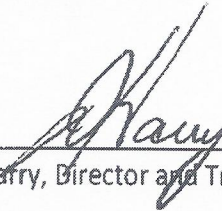
For further clarity, BDT shall be reimbursed for past debts from both LISA and XELA and related future debts plus 70% of the net proceeds arising from an AVICOLA settlement or judgement that is successfully collected.

The parties are in agreement as evidenced below:

This Agreement is dated January 24, 2018.



Patrick Doig, President
BDT Investment Inc.



David Harry, Director and Treasurer
Lisa S.A.



Calvin K. Shields, Director
Xela Enterprises Ltd.

ANNEX “B”

AUTO No. 1838

JUZGADO DUODÉCIMO DEL CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO
JUDICIAL DE PANAMÁ. Panamá, doce (12) de diciembre de dos mil doce (2012).

(Exp. 31638/12)

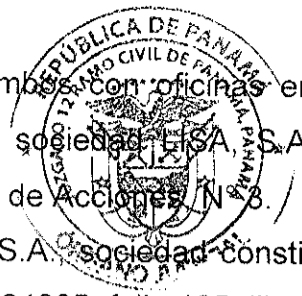


VISTOS:

En atención a lo solicitado por el demandante, se procede a resolver en la forma prevista en nuestro Código Judicial.

En consecuencia, el suscrito JUEZ DUODÉCIMO DEL CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO JUDICIAL DE PANAMÁ, DECRETA EMBARGO a favor de BDT INVESTMENTS INC. y en contra de LISA, S.A., hasta la concurrencia de DIECINUEVE MILLONES CIENTO OCHENTA Y CUATRO MIL SEISCIENTOS OCHENTA BALBOAS CON 00/100 (B/. 19,184,680.00) sobre lo siguiente:

1. Las acciones emitidas a favor de la sociedad LISA, S.A., inscrita a ficha 117512, rollo 11750, imagen 0186, cuyo presidente y representante legal es el señor CALVIN KENNETH SHIELDS, varon, estadounidense, casado mayor de edad, ingeniero, portador del pasaporte N° 158157083, con domicilio en N° 1176, Carolina Circle SW, Vero Beach, Florida, Estados Unidos de América en las siguientes sociedades:
 - a. ALIMENTOS PARA ANIMALES, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 572, folio 81, libro 3 de Sociedades Mercantiles, cuyo Gerente General y representante legal lo es el señor JULIO CESAR RIVERA PELAEZ, ambos con oficina en 42, calle 20-91, Zona 12, ciudad de Guatemala. De esta sociedad LISA, S.A., es la propietaria de 45,000 acciones, según consta en el Certificado de Acciones N° 1.
 - b. AVICOLA LAS MARAGARITAS, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 24735, folio 435, libro 103 de sociedades Mercantiles, cuyo Gerente General y representante legal lo es el señor GUILLERMO ANTONIO RAMIREZ MORALES; ambos con oficinas en Calz. Aguilar Batres 50-52, Colonia Castañas, Zona 11, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 375 acciones, según consta en el Certifiado de Acciones N°3.
 - c. ADMINISTRADORA DE RESTAURANTES, S.A. sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 27794, folio 242, libro 112 de sociedades mercantiles, cuyo Gerente General y Repersentante Legal lo es el señor CARLOS RENE GUZMAN, ambos con oficinas en 24 avenida, 34-05, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 12 acciones según consta en el Certificado de Acciones N° 3.
 - d. COMPAÑIA ALIMENTICIA DE CENTROAMERICA, S.A., sociedad constituida de acuerdo a las leyes de Guatemala en inscrita a número 34068, folio 198, libro 121 de Sociedades Mercantiles, cuyo Gerente General y representante legal lo es el



señor MARCO ANTONIO SANCHEZ CASTAÑEDAS, ambos con oficinas en 46, calle 21-89, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 12 acciones, según consta en el Certificado de Acciones N° 8.

e. IMPORTADORA DE ALIMENTOS DE GUATEMALA, S.A. sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 34065, folio 195, libro 121 de sociedades Mercantiles, cuyo Gerente General y Representante Legal lo es el señor CARLOS RENE GUZMAN, ambos con oficinas en 24 avenida, 34-05, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 12 acciones según consta en el Certificado N° 3.

f. INDUSTRIA FORRAJERA DE MAZATENANGO, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 13585, folio 460, libro 69 de Sociedades Mercantiles, cuyo Gerente General y Representante Legal lo es el señor SERGIO BOSCO PIO SEVILLA NOGUERA, ambos con domicilio en Calz. Aguilar Batres 50-52, Colonia Castañas, zona 11. De esta sociedad LISA, S.A., es propietaria de 125 acciones según consta en el Certificado N° 3.

g. INVERSIONES EMPRESARIALES, S.A. sociedad constituida de acuerdo a las leyes de Guatemala e incrita a número 10772, folio 30, libro 59 de sociedades Mercantiles, cuyo Gerente General y Representante legal lo es el señor GUILLERMO ANTONIO RAMIREZ MORALES, ambos con domicilio en 42, calle 20-91, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 125 acciones según consta en el Certificado N° 3.

h. VILLAMOREY, S.A., sociedad constituida de acuerdo a las leyes de la República de Panamá, inscrita a ficha 9142, rollo 367, imagen 303 de la Sección de Micropelículas Mercantil del Registro Público, cuyo presidente y representante legal lo es el señor JUAN LUIS BOSCH GUTIERREZ, ambos con oficinas ubicadas en el Edificio Empresarial Torre I, quinta avenida, 15-45, zona 10, de la Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 3,333 acciones según consta en el Certificado N° 1

2. Sobre las sumas de dinero que en concepto de dividendos declarados tenga derecho a recibir la sociedad LISA, S.A., incluyendo los que a la fecha se hayan generado y no han sido entregados y los que se sigan generando hasta la concurrencia de lo adeudado, en su condición de accionista en las mencionadas sociedades.
3. Cualquier suma de dinero, derechos o créditos que resulten a favor de la sociedad LISA, S.A., dentro del proceso Ordinario de mayor cuantía con acción de secuestro que promueve LISA, S.A., contra VILLAMOREY, S.A., el cual se lleva a cabo ante los estrados del Juzgado Undécimo de Circuito Civil del Primer Circuito Judicial de Panamá, registrado bajo el número de demanda 556-99 y acción de secuestro número 7081-08.

- 54-
4. Los dineros de propiedad LISA, S.A. que mantiene la sociedad VILLAMOREY, S.A., en depósito en sus cuentas de banco GTC BANK INC.
5. Las sumas de dinero propiedad de LISA, S.A., que mantiene la sociedad VILLAMOREY, S.A., y que son objeto de medida de secuestro decretado mediante Auto N° 1624-08 del 27 de octubre de 2008, dictado dentro de la demanda de reconvencción del Proceso Ordinario de Mayor Cuantía con Acción de Secuestro que promueve LISA, S.A., contra VILLAMOREY, S.A., el cual se lleva a cabo ante los estrados del Juzgado Undécimo de Circuito Civil, del Primer Circuito Judicial de Panamá, registrado bajo el número de demanda 556-99 y acción de secuestro número 7081-08.
6. Las sumas de dinero que mantenga la sociedad LISA, S.A., en los bancos de la localidad.

Comuníquese lo resuelto a quien corresponda para los fines legales correspondientes.

Fundamento de Derecho: Artículo 1643 del Código Judicial.

NOTIFIQUESE,
EL JUEZ,


LICDO. JUAN CARLOS TATIS


LICDA. ANA M. GALLARDO H.
SECRETARIA

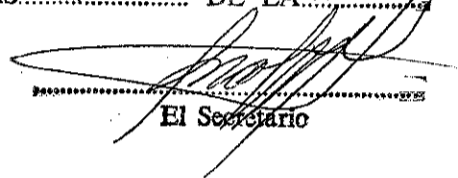


CERTIFICO: QUE PARA NOTIFICAR A LAS PARTES LA RESOLUCION QUE PRECEDE, SE HA FIJADO EDICTO N° 1687

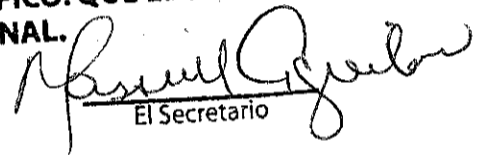
EN LUGAR PUBLICO DE LA SECRETARIA HOY... 13...

DE... DICIEMBRE... DEL AÑO... 2012...

A LAS... 4:00... DE LA TARDE...


El Secretario

CERTIFICO: QUE ES FIEL COPIA DE SU ORIGINAL.


El Secretario

Appendix “N”

AMSTERDAM & PARTNERS LLP
LONDON WASHINGTON

1054 31ST STREET, N.W.
SUITE 110
WASHINGTON, DC 20007

WRITER'S CONTACT:
A.DURKOVIC@AMSTERDAMANDPARTNERS.COM
+1-202-669-2974

December 17, 2019

Mr. Bobby Kofman
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario
M5H 1J9
Canada

VIA EMAIL
bkofman@ksvadvisory.com

Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)

Dear Mr. Kofman:

As you probably would anticipate, as a supplement to our efforts to collect unpaid dividends in Panama and Miami, we have been working to find alternatives to satisfy the Margarita Castillo judgment. We are now reasonably optimistic that we have identified a third party willing to advance the required sums. The expected transaction calls for payment directly to the Receivership, and we therefore ask that you provide us on an expedited basis the following details: (1) the total amount required to satisfy the Castillo judgment on or before December 31, 2019; (2) the total amount of current Receivership costs; (3) an estimate of any additional Receivership costs that you calculate will be incurred through December 31, 2019; and (3) wire instruction details for the appropriate bank account.

Separately, we understand that Xela has asked for your consent to an extension of the limitation on Receiver powers (Paragraph 4 in the Receivership Order), to enable us to bring our collection efforts in Panama and/or Miami to fruition. Given that the Court's calendar probably precludes consideration of this issue before year's end, and noting the possibility that Xela could satisfy the Castillo judgment within the next two weeks, as referenced above, we ask that you kindly consider giving us your assurance that you will take no action under Paragraph 4 of the Receivership Order until the Court rules on Xela's extension request, which we expect would be submitted to the Court, if still necessary at that time, during the

Mr. Bobby Kofman
December 17, 2019
Page 2

first half of January or as soon thereafter as appropriate to accommodate the Court's schedule.

We appreciate your courtesy and cooperation. We are available at your convenience should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Durkovic', with a long horizontal flourish extending to the right.

Andrew J. Durkovic
AMSTERDAM & PARTNERS LLP

cc: Via Email
Adam Slavens
Noah Goldstein
Kyle Plunkett
Steve Graff
Bob Amsterdam

Appendix “O”

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: December 17, 2019 5:40 PM
To: Andrew J. Durkovic <a.durkovic@amsterdamandpartners.com>
Cc: Kyle Plunkett <kplunkett@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>; Slavens, Adam <aslavens@torys.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Robert Amsterdam <R.Amsterdam@amsterdamandpartners.com>
Subject: RE: Correspondence

Andrew,

Thank you for your letter.

As a court-appointed receiver, KSV will continue to exercise its authority and powers pursuant to the terms of the receivership order.

The amount owing under Margarita's judgement, including enforcement costs is \$4,278,417.93.

The total expenses under the receivership are estimated to be \$371,252. Those continue to accrue.

The per diem is \$223.63.

Bobby

Bobby Kofman
KSV Advisory Inc.
(o) 416 932 6228
(c) 647 282 6228
bkofman@ksvadvisory.com

From: Andrew J. Durkovic <a.durkovic@amsterdamandpartners.com>
Sent: December 17, 2019 2:05 PM
To: Bobby Kofman <bkofman@ksvadvisory.com>
Cc: Kyle Plunkett <kplunkett@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>; Slavens, Adam <aslavens@torys.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Robert Amsterdam <R.Amsterdam@amsterdamandpartners.com>
Subject: Correspondence

Dear Bobby,

Please see our attached correspondence.

Best regards, -Andy

Andrew J. Durkovic
Managing Partner

Amsterdam & Partners LLP

Mobile: +1-202-669-2974

Office: +1-202-534-1804

CONFIDENTIALITY: This e-mail and any attachments are confidential and may also contain privileged information. If you are not the named recipient, please notify the sender immediately, and delete the e-mail and its contents. Do not disclose the contents to any other person, or use it for any purpose, or store or copy the information in any medium.

Appendix “P”

December 17, 2019

**EMAIL leonj@bennettjones.com; woycheshynj@bennettjones.com;
bortolinw@bennettjones.com;**

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Attention: Jeffrey S. Leon, Jason W.J. Woycheshyn and William Bortolin

Dear Counsel:

Re: Receivership of Xela Enterprises Ltd. - Court File No. CV-11-9062-00CL

We are writing with respect to the Order of Justice McEwen, dated July 5, 2019 (the “**Appointment Order**”). Paragraph 4 of the Appointment Order puts certain limits on the Receiver’s ability to deal with litigation involving Xela’s subsidiaries/affiliates and the shares to which that litigation relates. The Appointment Order currently provides for paragraph 4 to remain in effect until December 31, 2019. We are writing to request your consent to an extension of this date until April 30, 2020, the date by which Xela expects to be in a position to satisfy Ms. Castillo’s judgment debt in full.

Xela understands that its wholly-owned subsidiary, Lisa, is engaged in efforts to receive funds from litigation in both Panama and Florida that are expected to be more than sufficient to pay Ms. Castillo’s judgment debt, and Xela understands that these funds will be made available to it for that purpose. While Xela expected that such efforts would yield payment prior to December 2019, payment has been delayed for reasons beyond Xela’s and Lisa’s control. In Florida, a trial that was initially scheduled to commence in November 2019 has been postponed by the court until February 18, 2020, because of the court’s delay in deciding potentially dispositive motions. In Panama, Lisa is seeking payment pursuant to an order of the Panamanian court, but that order was under challenge until recently and has now been fully and finally resolved in Xela’s favor, with no further available route for appeal or other revue. Consequently, Lisa simply needs time to enforce payment.

Yours truly,


Adam Slavens

cc: Bobby Kofman and Noah Goldstein, KSV
Advisory Inc., by email only.

cc: Kyle Plunkett, Aird & Berlis, by email only.

Appendix “Q”

**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:**

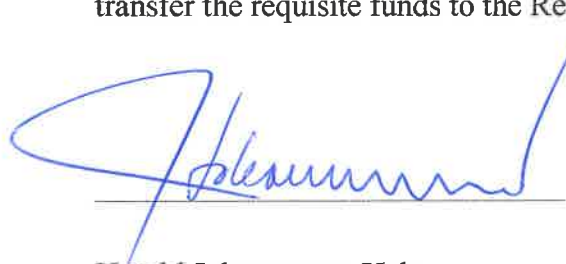
1. ~~I am the President of Lisa, S.A., a Panama corporation ("Lisa"). I make this Affidavit in support of the Debtor's Motion to Vary and/or Amend the Order of Justice McEwen dated July 5, 2019, for a short extension of the limitations placed on the receiver's powers under Paragraph 4 of that Order.~~

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

CAMBRIDGE LLP
333 Adelaide Street West
4th Floor
Toronto, Ontario
M5V 1R5

Chris Macleod (LSUC# 45723M)
cmacleod@cambridgellp.com
N. Joan Kasozi (LSUC# 70332Q)
jkasozi@cambridgellp.com

Tel: 416.477.7007
Fax: 289.812.7385

Appendix “R”

AIRD BERLIS

Kyle B. Plunkett
Direct: 416.865.3406
Email: kplunkett@airdberlis.com

January 8, 2020

BY EMAIL

Cambridge LLP
331-333 Adelaide St. West
Suite 400
Toronto, Ontario M5V 1R5

Attention: Chris Macleod and Joan Kasozi

Dear Sirs/Mesdames:

**Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)**

And Re: Motion Record of Xela dated January 7, 2020

As you are aware, we are the lawyers for KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued and entered on July 5, 2019 (the "**Appointment Order**").

On behalf of Xela, you have served a notice of motion purportedly returnable January 9, 2020 for, among other things, an order suspending the operation of the receivership of Xela (the "**Receivership**") on the grounds that Xela's subsidiary, Lisa, S.A., has arranged for financing to satisfy the judgment in favour of the applicant in the Receivership, Margarita Castillo (the "**Applicant**"), together with all costs of the Receivership. The Receiver will oppose the motion tomorrow for the reasons below.

The motion is not properly returnable January 9, 2020, as only a 9:30 a.m chambers appointment has been booked on that date. Pursuant to Part X of the *Consolidated Practice Direction Concerning the Commercial List*, only *ex parte*, urgent, scheduling or consent matters are to be dealt with at Commercial List chambers appointments. In any case, Xela's Motion Record was only served on the Service List on January 7, 2020, which two-days' notice is insufficient for the Receiver or other stakeholders to prepare appropriate responses.

It is also inappropriate to move to "suspend" the Receivership before Xela has paid off its obligations to the Applicant and the Receiver, at very least. In his affidavit sworn December 30, 2019 in support of Xela's motion, Harald Johannessen Hals (the "**Hals Affidavit**") states that the loan proceeds will be available next week. There is therefore no apparent reason for Xela's motion to be heard earlier than that.

If Xela wishes the loan agreement, or the existence thereof, to be considered as evidence before the Court, it should be provided in a further sworn affidavit by Mr. Hals or some other appropriate individual with knowledge of the transaction. In the absence of receipt of actual loan proceeds, there is no other way for the Receiver, as the officer of the Court, to assess and advise the Court on the validity or commercial

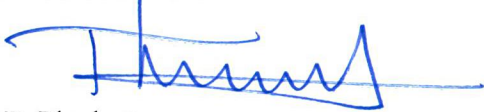
reasonableness of the loan transaction and thus no way for the Court to properly consider the merits of Xela's motion.

The above is without prejudice to any arguments the Receiver may make in respect of Xela's motion even if the motion's hearing is scheduled on a date after Xela has paid its obligations to Xela and the Receiver. As a Court-appointed receiver and manager, the Receiver's duties run to the Court and to all stakeholders of Xela, as their interests may appear, not just to the Applicant. The Receiver therefor does not concede that the making of such payments would, on its own, be sufficient grounds to terminate the Receivership.

Even apart from Xela's motion, the Receiver needs to be able to determine how the economics of the proposed Lisa, S.A. loan affect the interests of other stakeholders of Xela or its subsidiaries. For that reason, on behalf of the Receiver, we formally request of Xela and of any officer, director or shareholder of Xela giving instructions to your firm, a copy of the Lisa, S.A. loan agreement described in the Hals Affidavit along with a copy of any closing agenda prepared in connection with contemplated loan transaction. Our authority for this request lies in paragraph 6 of the Appointment Order, which requires all persons to provide to the Receiver, among other things, any documents, contracts and information of any kind relating to Xela. Our authority for the request also lies in paragraph 3(p) of the Appointment Order, by which the Receiver is now authorized and empowered to exercise any shareholder rights that Xela might have, including Xela's 100% indirect ownership of Lisa, S.A. (through Gabinvest S.A.), to the exclusion of all other persons, including Xela itself. The limitations placed on this power by paragraph 4 of the Appointment Order only concerned exercise of the power in connection with litigation proceedings and, in any case, only applied until December 31, 3019.

Yours truly,

AIRD & BERLIS LLP



Kyle B. Plunkett

*cc by Email: Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Same Babe and Steve Graff, Aird & Berlis LLP*

38459978.2

Appendix “S”

From: Kyle Plunkett <kplunkett@airdberlis.com>

Sent: January 9, 2020 12:58 PM

To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: Re: Receivership of Xela Enterprises Ltd

Chris, Joan,

Further to our attendance before Justice McEwen this morning, please find attached a copy of the Disclosure Order we referred to during our discussions this morning, which order issued by His Honour on October 29, 2019. We also refer to paragraphs 5 and 6 of the Appointment Order, which also requires cooperation and disclosure of all Persons with knowledge of the Company and production of any books and records. To date, the Receiver has either (i) not received a response to its numerous requests for copies of the underlying agreements relating to the reviewable transactions referred to in the Receiver's First Report; or (ii) been advised by the parties that they are not prepared to comply with the Order and/or have denied access to the Receiver.

In addition, and per our discussions following our attendance before His Honour, the Receiver hereby requests that your client provide to the Receiver any and all documentation and details relating to the proposed loan arrangement to be entered into by the Company's subsidiary, Lisa S.A., which is referenced in the Affidavit of Harald Johannessen Hals dated December 30, 2019 by no later than **12:00 pm tomorrow, January 10, 2020**, so that the Receiver may review and consider the terms of such arrangement. If by noon tomorrow the Receiver is not provided with the full details of the loan arrangement or if the Receiver is not satisfied with the proposed terms of the loan, taking into account the interest of all stakeholders, the Receiver will take whatever steps it deems necessary (and that are in the best interest of Xela and its stakeholders), as permitted by the Receivership Order, to protect the assets and business.

Kind regards,

Kyle

Kyle Plunkett

T 416.865.3406

F 416.863.1515

E kplunkett@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

Appendix “T”

SENT VIA EMAIL TO KPLUNKETT@AIRDBERLIS.COM

January 13, 2020

Chris Macleod
416.477.7007 ext. 303
cmacleod@cambridgellp.com

Mr. Kyle Plunkett
Mr. Steve Graff
AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Plunkett:

Re: MARGARITA CASTILLO and XELA ENTERPRISES LTD. et al.

I write in response to your email of January 9, 2020. We appreciate your courtesy as we come fresh to the matter on behalf of Xela Enterprises Ltd. ("Xela"), and we acknowledge your communication below.

First, Xela respectfully disagrees that it has in any way resisted or failed to comply with its disclosure obligations, or that its conduct has been anything other than appropriate in the circumstances. We take specific issue with the notion that Xela has "copies of the underlying agreements relating to the reviewable transactions referred to in the Receiver's First Report" that have not been provided to you. Having said that, we invite you to be specific about anything you believe is still missing, and we will do our best to make sure Xela provides everything it has.

Second, we acknowledge your request for information to evaluate the loan arrangement through which Xela proposes to satisfy the Margarita Castillo judgment and all other creditors, fees and expenses of the receivership (the "Loan"). Xela's knowledge of the Loan is as follows: (1) it is being procured by LISA, S.A., a Panama corporation ("LISA"), from a third party that is unrelated to any Xela entity or any entity owned by The ArtCarm Trust; (2) the Loan is adequate to satisfy the monetary threshold for a motion to discharge the receivership, according to the totals provided by the Receiver when he learned of the Loan in December 2019; and (3) LISA will pledge some of its common shares of Villamorey, S.A. as collateral for the Loan, and nothing more.

We think this information is enough for a finding that the Loan is in the best interest of Xela and its stakeholders. However, in case the Receiver should disagree, we have instructed LISA to cooperate, and we respectfully invite the Receiver to direct any further questions directly to LISA.

Yours very truly,

CAMBRIDGE LLP

Per:

A handwritten signature in black ink, appearing to read 'CM', is positioned below the 'Per:' label.

CHRIS MACLEOD

Signed electronically on behalf of N. Joan Kasozi

Copy: Bobbie Kofman, email: bkofman@ksvadvisory.com

Steve Graff, email: sgraff@airdberlis.com

Andrew Durkovic, email: a.durkovic@amsterdampartners.com

Appendix “U”

Sam Babe

Direct: 416.865.7718

Email: sbabe@airdberlis.com

January 14, 2020

BY EMAIL

Cambridge LLP

331-333 Adelaide St. West

Suite 400

Toronto, Ontario M5V 1R5

Attention: Chris Macleod and Joan Kasozi

Dear Sirs/Mesdames:

**Re: Receivership of Xela Enterprises Ltd. (“Xela”)
(Ontario Court File No. CV-11-9062-00CL)**

As you are aware, we are the lawyers for KSV Kofman Inc. (“**KSV**”), in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued and entered on July 5, 2019 (the “**Appointment Order**”).

I am writing in response to your letter dated January 13, 2020 wherein you provide certain information about the proposed loan (the “**Loan**”) to LISA, S.A. (“**LISA**”), the proceeds of which are to be used to pay debts of Xela to the Receiver and to the applicant (the “**Applicant**”) in the above-referenced receivership proceedings (the “**Receivership**”). You have indicated that it is Xela’s intention to bring back its motion for termination of the Receivership (the “**Motion**”) based on the satisfaction of such debts.

In your letter you state that Xela has the following knowledge of the Loan: (a) it is to be made by a party that is not owned by LISA or by The ArtCarm Trust; (b) the Loan proceeds will be adequate to repay the debts to the Receiver and the Applicant; and (c) the only security to be granted is a pledge of shares in Villamorey, S.A. This limited information is not sufficient for the Receiver to evaluate whether the Loan is in the best interests of the stakeholders of Xela. Without limitation, you have not informed us whether the Loan will be sufficient or purposed to pay debts of Xela to other creditors, a number of whom have requested that the Receivership not be terminated.

The following facts lead us to believe that the principal of Xela giving your firm directions has the draft loan documentation: (a) the Loan is being procured for Xela’s ultimate benefit by one of its indirect 100% subsidiaries; (b) Xela’s principal knows the identity of the lender and the terms of the Loan; and (c) Xela’s principal had confidence enough in the Loan to cause Xela to bring the Motion. To repeat the request made in Kyle Plunkett’s letter of January 8, 2020, please provide a copy of the Loan agreement and any closing agenda. We refer you again to paragraph 6 of the Appointment Order which imposes obligations on Xela’s principal which cannot be shed simply through your suggestion that we seek any further information from LISA directly.

Until the Receiver receives and has evaluated the requested Loan documentation, it will not be in a position to approve of the Loan transaction and, until such time, the Receiver explicitly objects to LISA completing the Loan transaction.

Yours truly,

AIRD & BERLIS LLP



Sam Babe

*cc by Email: Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Kyle Plunkett and Steve Graff, Aird & Berlis LLP*

38528800.2

Appendix “V”

From: Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Sent: January 16, 2020 4:55 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Joan Kasozi <jkasoz@cambridgellp.com>; cmacleod@cambridgellp.com

Subject: RE: Receivership of Xela Enterprises Ltd

Dear Kyle:

As you know, we are international lawyers for LISA, S.A., a Panama corporation ("LISA"), and counsel of record for LISA in the garnishment case in Miami. We understand that the receiver is demanding documents and other details about the loan LISA is procuring to seek to discharge the receivership (the "Loan"). Xela has instructed LISA to cooperate as much as it can.

As you can appreciate, this is a unique receivership. It was created at the behest of Margarita Castillo, who – if allegations in pending litigation in Toronto are true – is acting in conspiracy with the majority stakeholders (*i.e.*, the so-called "Cousins") of the poultry conglomerate in Guatemala that has been trying for decades to avoid paying LISA its due share of dividends (approaching US\$400 million) while paying themselves in full. At the same time, LISA's stake in the poultry conglomerate is Xela's biggest asset. Thus, the Cousins have a special interest in the outcome of the receivership, as underscored by the presence of lawyers from Stikeman Elliott LLP at the case conference earlier this week. Make no mistake; the Cousins are using this receivership to try to achieve an inexpensive win in a high-stakes, 20-year-old multijurisdictional contest.

Therefore, in order to discharge the receivership, LISA's Board of Directors gave its President, on or about December 30, 2019, the authority to procure the Loan. As you might anticipate in these circumstances, LISA did not share the details of the Loan with Xela beyond confirming that it was not a loan from any of the ArtCarm Trust entities, it was adequate to meet the threshold in Paragraph 25 of the receivership Order, and that some of LISA's shares of Villamorey were being pledged as security, but nothing more. All of the details of the Loan, including loan documents, were and are held exclusively by LISA. More importantly – owing to past conduct of the Cousins and the unique circumstances of the receivership – the lender required LISA to make a confidentiality agreement as a condition for the Loan, barring LISA from disclosing the identity of the lender and any details of the Loan to any third parties, including without limitation Xela. Thus, LISA is under a contractual duty to withhold all information concerning the Loan in all circumstances short of a Panama Court Order compelling disclosure, which we are not certain would issue even if the receiver's powers in Panama were recognized in principle by the Court.

Lastly, we emphasize that LISA considers the Loan to be integral to the preservation of its interest in the poultry conglomerate. LISA will therefore react to any improper interference with the Loan. Having said that, we are confident that the receiver can be relied upon to act appropriately in this regard, and we appreciate your courtesy and professionalism.

With best regards, -Andy

Andrew J. Durkovic

+1-202-669-2974

From: Bobby Kofman [<mailto:bkofman@ksvadvisory.com>]

Sent: Monday, January 13, 2020 4:30 PM

To: Joan Kasozi <jkasozi@cambridgellp.com>; Kyle Plunkett <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Subject: Re: Receivership of Xela Enterprises Ltd

Thank you.

This information is insufficient.

Bobby Kofman
President and Managing Director
KSV Advisory Inc.
(o) 416.932.6228
(c) 647.282.6228
bkofman@ksvadvisory.com

From: Joan Kasozi <jkasozi@cambridgellp.com>

Sent: Monday, January 13, 2020 4:19:39 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Subject: RE: Receivership of Xela Enterprises Ltd

Dear Mr. Plunkett:

Please find attached a letter of today's date from Mr. Macleod.

Best,

N. Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 6th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasozi@cambridgellp.com
Website: www.cambridgellp.com



From: Joan Kasozi
Sent: January 10, 2020 4:26 PM
To: 'Kyle Plunkett' <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>
Cc: 'Steve Graff' <sgraff@airdberlis.com>; 'Sam Babe' <sbabe@airdberlis.com>; 'Alvaro Almengor' <alvaro.almengor@hatstone.com>; 'Carl O'Shea' <carl.oshea@hatstone.com>; 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; 'Bobby Kofman' <bkofman@ksvadvisory.com>
Subject: RE: Receivership of Xela Enterprises Ltd

Mr. Plunkett:

We are not in a position to respond to you yet, but hope to have a response over the weekend or Monday, at the latest.

Best,

N. Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 6th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasozi@cambridgellp.com
Website: www.cambridgellp.com



From: Joan Kasozi
Sent: January 10, 2020 11:45 AM
To: 'Kyle Plunkett' <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>
Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>
Subject: RE: Receivership of Xela Enterprises Ltd

Mr. Plunkett:

It is unreasonable to expect a response within such a short timeframe. However, we are in the process of obtaining some information and will response to your email by end of day.

I trust the foregoing is satisfactory.

Best,

N. Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 6th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasozi@cambridgellp.com
Website: www.cambridgellp.com



From: Kyle Plunkett <kplunkett@airdberlis.com>

Sent: January 9, 2020 12:58 PM

To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: Re: Receivership of Xela Enterprises Ltd

Chris, Joan,

Further to our attendance before Justice McEwen this morning, please find attached a copy of the Disclosure Order we referred to during our discussions this morning, which order issued by His Honour on October 29, 2019. We also refer to paragraphs 5 and 6 of the Appointment Order, which also requires cooperation and disclosure of all Persons with knowledge of the Company and production of any books and records. To date, the Receiver has either (i) not received a response to its numerous requests for copies of the underlying agreements relating to the reviewable transactions referred to in the Receiver's First Report; or (ii) been advised by the parties that they are not prepared to comply with the Order and/or have denied access to the Receiver.

In addition, and per our discussions following our attendance before His Honour, the Receiver hereby requests that your client provide to the Receiver any and all documentation and details relating to the proposed loan arrangement to be entered into by the Company's subsidiary, Lisa S.A., which is referenced in the Affidavit of Harald Johannessen Hals dated December 30, 2019 by no later than **12:00 pm tomorrow, January 10, 2020**, so that the Receiver may review and consider the terms of such arrangement. If by noon tomorrow the Receiver is not provided with the full details of the loan arrangement or if the Receiver is not satisfied with the proposed terms of the loan, taking into account the interest of all stakeholders, the Receiver will take whatever steps it deems necessary (and that are in the best interest of Xela and its stakeholders), as permitted by the Receivership Order, to protect the assets and business.

Kind regards,

Kyle

Kyle Plunkett

T 416.865.3406
F 416.863.1515
E kplunkett@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

Appendix “W”

AIRD BERLIS

Kyle B. Plunkett
Direct: 416.865.3406
Email: kplunkett@airdberlis.com

January 17, 2020

BY EMAIL

Amsterdam and Partners LLP
1054 31st St NW, STE 110
Washington, DC 20007
USA

Attention: Andrew Durkovic

Dear Sirs:

**Re: Receivership of Xela Enterprises Ltd. (“Xela”)
(Ontario Court File No. CV-11-9062-00CL)**

As you are aware, we are the lawyers for KSV Kofman Inc. (“KSV”), in its capacity as the court-appointed receiver and manager (in such capacity, the “Receiver”) of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued and entered on July 5, 2019 (the “Appointment Order”).

I am writing in response to your email of January 16 and further to our letter to Canadian counsel for Mr. Juan Guillermo Gutierrez (“Juan Guillermo”), Cambridge LLP, dated January 14, a copy of which is enclosed as **Schedule A** hereto.

In your email you refuse, on behalf of LISA, S.A. (“LISA”), to comply with the Receiver’s repeated request for information and documentation relating the proposed loan (the “Loan”) to LISA (“LISA”), the proceeds of which are to be used to pay debts of Xela to the Receiver and to the applicant in the above-referenced receivership proceedings (the “Receivership”). As you note, LISA is a subsidiary of Xela and a significant asset and source of recovery for Xela’s stakeholders. Such refusal by LISA and Juan Guillermo is contrary to the spirit of our chambers appointment before Justice McEwen on January 9, 2020. As counsel for Juan Guillermo can attest, Justice McEwen was very clear that full disclosure of the loan documentation by Juan Guillermo and LISA was to be provided to the Receiver prior to LISA entering into the Loan.

Your email is not an answer to our January 14 letter. In particular, your email does not relieve Juan Guillermo or any other principal of Xela from the Court-imposed obligation to comply with the Receiver’s repeated request for information and documentation relating the Loan. By copying Cambridge LLP on this letter, I put them on notice that we still expect an appropriate, timely response from them to our January 14 letter. It is the Receiver’s position that the terms of the Appointment Order regarding disclosure trump any confidentiality provisions contained in purported loan agreement. The Receiver will respect an appropriate confidentiality provision. The fact that the potential lender insisted on keeping its identity confidential is a significant concern to the Receiver regarding the propriety and nature of the Loan. The Receiver will be bringing these concerns, among others, to the attention of the Court.

Furthermore, Mr. Gutierrez and LISA have to date failed to comply with the Order of Justice McEwen dated October 29, 2019 (the “**Disclosure Order**”), pursuant to which various parties, including LISA, were ordered to produce all information pertaining to certain transactions, including the Assignment Transaction (as defined in the Disclosure Order, a copy of which was delivered to you previously).

Although the Receiver was appointed by the Court upon application of the applicant judgement creditor, Margarita Castillo (the “**Applicant**”), the Receiver’s duties are to the Court and to all the stakeholders of Xela. The Receiver is not directed by nor specifically accountable to the Applicant, nor does it inappropriately disclose information to the Applicant or otherwise. Juan Guillermo has, at all times, had competent Canadian counsel acting for Xela to challenge any impropriety in the appointment of the Receiver or the conduct of the Receivership.

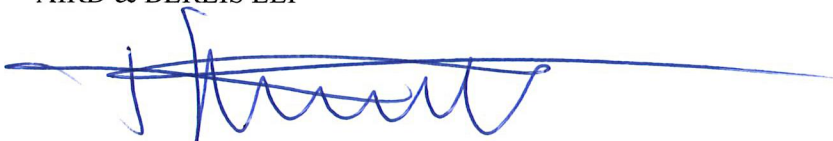
As requested by the Receiver’s representative, Bobby Kofman, in his reply to your email, please advise immediately if the Loan transaction has closed and if it the Loan has been advanced. If either has not occurred, please advise immediately when that is scheduled to occur.

To repeat what was said in our January 14 letter, the Receiver will not be in a position to approve of the procurement of the Loan or any loan for that matter until the Receiver receives and has evaluated the requested Loan documentation in full and, until such time, the Receiver explicitly objects to LISA completing the Loan transaction. As you are aware, any limitation imposed on the Receiver under the Appointment Order have automatically expired as of December 31, 2019. The Receiver will take any and all steps it deems necessary to protect and preserve the debtor’s property, including its ownership interest in its various subsidiaries, which steps may include pursuing all recoveries and remedies available to the Receiver with respect improper transactions carried out by Xela and its subsidiaries prior to its appointment.

If Juan Guillermo continues to refuse to comply with the Receiver’s information request, the Receiver will take such steps as it deems appropriate to protect the integrity of the Receivership and the interest of all stakeholders of Xela, all of which will be reported to the Court. Such steps may include, without limitation, a motion to hold Mr. Gutierrez in contempt of Court orders, which orders he continues to wilfully disregard.

Yours truly,

AIRD & BERLIS LLP



Kyle Plunkett

*cc by Email: Chris Macleod and Joan Kasozi, Cambridge LLP
Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Sam Babe and Steve Graff, Aird & Berliss LLP*

38572522.3



Appendix “X”

[Coat of Arms]

Republic of Panama
Province of Panama

ELEVENTH NOTARY PUBLIC'S OFFICE

Notarial Circuit of Panama

Alexander Valencia Moreno

NOTARY

AVENIDA SAMUEL LEWIS, CALLE 55
EDIFICIO PLAZA OBARRIO

OBARRIO TELS: 382-6287 / 382-6288
email: notaria11panama@gamil.com

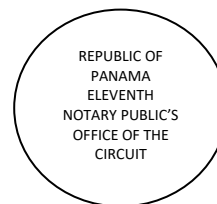
PUBLIC DOCUMENT N^o 1166 OF THE 30TH OF JANUARY OF 2020

BY WHICH:

Minutes of the Extraordinary Meeting of the Board of
Shareholders of the company LISA, S.A.

JOAO QUIROZ GOVEA
LAWYER
Prof. ID: 15450

[Coat of Arms]
ELEVENTH NOTARY PUBLIC'S OFFICE
Notarial Circuit of Panama
REPUBLIC OF PANAMA



PUBLIC DOCUMENT NUMBER: ONE HUNDRED AND SIXTY-SIX -----

------(1166)-----

By which the Minutes of the Extraordinary Meeting of the Board of Shareholders of the company **LISA, S.A.** -----

-----Panama, 30th of January of 2020. -----

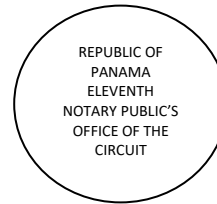
In Panama City, Capital of the Republic and Head of the Notarial Circuit by the same name, on the thirtieth (30th) day of the month of January of the year two thousand and twenty (2020), before me, **Doctor ALEXANDER VALENCIA MORENO**, Eleventh Notary Public of the Notarial Circuit of Panama, holder of personal identity card number five-Seven hundred and three – six hundred and two (5-703-602), personally attended Lic. **JOAO JAVIER QUIROZ GOVEA**, male, Panamanian, of legal age, married, practicing lawyer, residing in this city, with personal identity card number eighth eight hundred – one thousand nine hundred and forty-seven (8-800-1947), acting on behalf of, and representing, the company **LISA, S.A.**, registered on folio one that and seventeen thousand, five hundred and twelve (117512) of the Commercial Section of the Public Registry of the Panama, duly authorized for this act, and he handed to me for its notarization and which I do notarize, the Minutes of the Extraordinary Meeting of the Board of Shareholders of the company **LISA, S.A.** -----

The requested notarization has been done and the copies requested by the interested parties will be issued. -----

I advise the appearing parties that copies of this public document should be registered and read as was done in the presence of instrumental witnesses **SILVIA CRISTEL HERNANDEZ ARAUZ**, with personal identity card number four – seven hundred and sixteen – one hundred and nine (4-716-159), and **MILENYS MASSIEL WALTER BETHANCOURT**, with personal identity card number eight – eight hundred and sixty – two hundred and forty-two (8-860-242), both of legal age and residing in this city, whom I know and are legally able to exercise that position, who are willing to do so, they have given their approval and they sign in witness whereof, before me, the Notary who attests. -----

THIS PUBLIC DOCUMENT IN THE OFFICE OF THIS YEARS HAS THE CONSECUTIVE

[Coat of Arms]
ELEVENTH NOTARY PUBLIC'S OFFICE
Notarial Circuit of Panama
REPUBLIC OF PANAMA



NUMBER: ONE THOUSAND ONE HUNDRED AND SIXTY-SIX. -----

----- (1166)-----

(Signatures) **JOAO JAVIER QUIROZ GOVEA** ---- SILVIA CRISTEL HERNANDEZ ARAUZ –
-- MILENYS MASIEL WALTER BETHANCOURT – **ALEXANDER VALENCIA MORENO**,
Eleventh Notary Public of the Notarial Circuit of Panama. -----

-----**MINUTES OF THE EXTRAORDINARY MEETING OF THE SHAREHOLDERS**-----
-----**OF THE INCORPORATED COMPANY "LISA, S.A."**-----

At eight in the morning (8:00 a.m.) of the twenty-ninth (29th) day of December of two thousand and twenty (2020), in Panama City, an extraordinary meeting of the Board of Shareholders of the incorporated company named: **LISA, S.A.**, registered in the Public Registry of Panama, Commerce section on folio one hundred – seventeen – thousand – five hundred - twelve (117512), of the Commerce Section of the Public Registry of Panama, of the Microfiche (Commerce) Section of the Public Registry of Panama. -----

Acting as President, Mr. **HARALD JOHANNESSEN HALS**, holder of the office and as Secretary, Mr. **LESTER C. HESS JR.** , who is also the holder of the office. The Secretary of the meeting stated that all of the share certificates, paid for and in circulation of the company had been exhibited and represented the totality of its share capital, and, that there being the prescribed quorum, a call to meeting was renounced. -----

With the meeting having been opened, the President stated that the purpose of the meeting was to: -----

First: Nullify the legal effect for the company LISA, S.A., the minutes presented and registered by means of entries 2929/2020 and 36411/2020 at the Commerce section of the Public Registry of Panama. -----

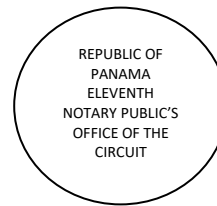
Second: Modify the eighth clause of the articles of incorporation of LISA, S.A., so that it reads as follows: "**EIGHTH**" The Board of Directors will be comprised of only three directors, who are: -----

HARALD JOHANNESSEN HALS --- **DIRECTOR/PRESIDENT** -----

LESTER C. HESS JR. ----- **DIRECTOR/SECRETARY** -----

CALVIN KENNETH SHIELDS ----- **DIRECTOR/TREASURER** -----

[Coat of Arms]
ELEVENTH NOTARY PUBLIC'S OFFICE
Notarial Circuit of Panama
REPUBLIC OF PANAMA



Third: Authorize Lic. **JOAO JAVIER QUIROZ GOVEA**, male, Panamanian, of legal age, married, with identity card No. 8-800-1947, practicing lawyer, with profession ID number 15450, to notarize, attend the notary, to issue the corresponding Public Document of the meeting of the Board of Shareholders which appears herein. On a motion being duly presented, discussed and approved, the following resolution was approved:

FIRST: Nullify the legal effect for the company **LISA, S.A.**, the minutes presented and registered by means of entries 2929/2020 and 36411/2020 at the Commerce section of the Public Registry of Panama. It is advised that these minutes were not duly endorsed by legitimate members of the Board of Directors of the company LISA, S.A., nor persons duly authorized to do this by the Board of Shareholders. Consequently, due legal measures will be taken with reference to what is expressed in said entries. Consequently, the appointments of the directors **alvaro almengor, manuel carrasquilla and lidia ramos** are left null and void. -----

SECOND: Modify the eighth clause of the articles of incorporation of LISA, S.A., so that it reads as follows: "**EIGHTH**" The Board of Directors will be comprised of only three directors, who are: -----

HARALD JOHANNESSEN HALS --- DIRECTOR/PRESIDENT -----

LESTER C. HESS JR. ----- DIRECTOR/SECRETARY -----

CALVIN KENNETH SHIELDS ----- DIRECTOR/TREASURER -----

Consequently, the Board of Directors of the company LISA, S.A., has been structured in the following manner: -----

HARALD JOHANNESSEN HALS --- DIRECTOR/PRESIDENT -----

LESTER C. HESS JR. ----- DIRECTOR/SECRETARY -----

CALVIN KENNETH SHIELDS ----- DIRECTOR/TREASURER -----

THIRD: Authorize Lic. **JOAO JAVIER QUIROZ GOVEA**, male, Panamanian, of legal age, married, with identity card No. 8-800-1947, practicing lawyer, with profession ID number 15450, to notarize, attend the notary, to issue the corresponding Public Document of the meeting of the Board of Shareholders which appears herein.

With no other matter at hand, the meeting was pronounced as concluded at nine in the morning (9:00 a.m.) on the twenty-ninth (29th) of January of two thousand and twenty



REPÚBLICA DE PANAMÁ
PROVINCIA DE PANAMÁ

NOTARIA PÚBLICA UNDÉCIMA
Circuito Notarial de Panamá

Alexander Valencia Moreno
NOTARIO

AVENIDA SAMUEL LEWIS, CALLE 5A OBARRIO
EDIFICIO PLAZA OBARRIO,
PLANTA BAJA, LOCAL 4

TELS: 382-6287 / 382-6288
correo: notaria11panama@gmail.com

ESCRITURA N° 1166 DE 30 DE enero DE 20 20

POR LA CUAL:

Acta de Reunion Extraordinaria de Junta de
Accionistas de la Sociedad Anonima LISA, S.A.

JOAO QUIRÓZ GOVEA

ABOGADO

Céd. Prof.: 8-800-1547, Céd. C.: 15450

Copia para propósitos informativos solamente



NOTARIA PÚBLICA UNDÉCIMA

Circuito Notarial de Panamá

REPÚBLICA DE PANAMÁ

ESCRITURA PÚBLICA NUMERO: MIL CIENTO SESENTA Y SEIS -----

----- (1166) ----- JF-----

Por la cual se protocoliza Acta de Reunion Extraordinaria de Junta de Accionistas de la Sociedad Anónima **LISA, S.A.**-----

-----Panamá, 30 de enero de 2020.-----

En la Ciudad de Panama, Capital de la República y Cabecera del Circuito Notarial del mismo nombre, a los treinta (30) días del mes de enero del año del dos mil veinte (2020), ante mí, Doctor **ALEXANDER VALENCIA MORENO**, Notario Público Undécimo del Circuito Notarial de Panamá, portador de la cédula de identidad personal número cinco - setecientos tres - seiscientos dos (5-703-602), Compareció personalmente el Licenciado **JOAO JAVIER QUIRÓZ GOVEA**, varón, panameño, mayor de edad, casado, abogado en ejercicio, vecino de esta ciudad, con cédula de identidad personal número ocho - ochocientos - mil novecientos cuarenta y siete (8-800-1947), actuando en nombre y representación de la sociedad **LISA, S.A.**, inscrita al folio ciento diecisiete mil quinientos doce (117512), de la sección Mercantil del Registro Público de Panamá, debidamente facultado para este acto, y me entrego para su protocolización, y al efecto protocolizo, Acta de Reunión Extraordinaria de Junta de Accionistas de la Sociedad Anónima **LISA, S.A.**-----

Queda hecha la protocolización solicitada y se expedirán las copias que soliciten los interesados. -----

Advertí a los comparecientes que copia de esta escritura debe registrarse; y leída como les fue la misma en presencia de los testigos instrumentales **SILVIA CRISTEL HERNANDEZ ARAUZ**, con cédula de identidad personal número cuatro - setecientos dieciséis - ciento cincuenta y nueve (4-716-159) y **MILENYS MASSIEL WALTER BETHANCOURT**, con cédula de identidad personal número ocho - ochocientos sesenta - doscientos cuarenta y dos (8-860-242), ambas mayores de edad y vecinas de esta ciudad, a quienes conozco y son hábiles para ejercer el cargo, la encontraron conforme, le impartieron su aprobación y la firman todos para constancia, por ante mí, el Notario, que doy fe. -----

ESTA ESCRITURA EN EL PROTOCOLO DEL PRESENTE AÑO LLEVA EL NUMERO

DE ORDEN: MIL CIENTO SESENTA Y SEIS-----

(1166)-----

(Fdos.) JOAO JAVIER QUIRÓZ GOVEA --- SILVIA CRISTEL HERNANDEZ ARAUZ -
- MILENYS MASSIEL WALTER BETHANCOURT --- ALEXANDER VALENCIA
MORENO, Notario Público Undécimo del Circuito Notarial de Panamá. -----

---ACTA DE REUNIÓN EXTRAORDINARIA DE JUNTA DE ACCIONISTAS---

----- DE LA SOCIEDAD ANÓNIMA "LISA, S.A."-----

Siendo las ocho de la mañana (8:00 a.m.) del día veintinueve (29) de diciembre de dos mil veinte (2020) en la Ciudad de Panamá, tuvo lugar una reunión extraordinaria de la junta de accionistas de la sociedad anónima denominada "LISA, S.A." inscrita en el Registro Público de Panamá, sección Mercantil a folio ciento - diecisiete - mil - quinientos-doce (117512), de la Sección de Mercantil del Registro Público de Panamá, de la Sección de Micropelículas (Mercantil) del Registro Público de Panamá.-----

Actuó como Presidente el señor HARALD JOHANNESSEN HALS titular del cargo y como Secretario el señor LESTER C. HESS JR., quien también es titular para el cargo. El Secretario de la reunión manifestó que se exhibieron la totalidad de los certificados de acciones emitidos, pagados y en circulación de la sociedad que representan la totalidad del capital social de la misma, que habiendo el quórum reglamentario se renunció a la previa convocatoria.-----

Abierto el acto, el Presidente manifestó que el motivo de la reunión es:-----

Primero. Dejar sin ningún efecto legal para la Sociedad LISA, S.A., las actas presentadas e inscritas mediante entradas 29292/2020 y 36411/2020 ante la sección de Mercantil de Registro Público de Panamá.-----

Segundo: reformar la cláusula octava del pacto social de LISA, S.A., con la finalidad de que su redacción quede así: "**OCTAVO:** La Junta Directiva estará compuesta solamente por tres directores, quienes son:-----

HARALD JOHANNESSEN HALS--- DIRECTOR/PRESIDENTE-----

LESTER C. HESS JR.-----DIRECTOR/SECRETARIO-----

CALVIN KENNETH SHIELDS-----DIRECTOR/TESORERO."-----



NOTARÍA PÚBLICA UNDÉCIMA
Circuito Notarial de Panamá
REPÚBLICA DE PANAMÁ

Tercero: Autorizar al Licenciado JOAO JAVIER QUIRÓZ GOVEA, varón, panameño, mayor de edad, con cédula de identidad No. 8-800-1947, abogado en ejercicio, con idoneidad 15450 para que protocolice, comparezca ante notario, otorgue la correspondiente Escritura Pública de la reunión de junta de accionistas que aquí consta. A moción debidamente presentada, discutida y aprobada, se adoptó la siguiente resolución:

PRIMERO: Dejar sin ningún efecto legal para la Sociedad LISA, S.A., las actas presentadas e inscritas mediante entradas 29292/2020 y 36411/2020 ante la sección de Mercantil de Registro Público de Panamá. Se hace la advertencia que dichas actas no fueron debidamente refrendadas por legítimos miembros de la Junta Directiva de la Sociedad de LISA, S.A., ni personas debidamente autorizadas para ello por la Junta de Accionistas, consecuentemente se tomarán las debidas acciones legales con referencia a lo plasmado en dichas entradas. Consecuentemente se deja sin efecto las designaciones de los directores alvaro almengor, manuel carrasquilla y lidia ramos.-----

SEGUNDO: Reformar la clausula octava del pacto social de LISA, S.A., con la finalidad de que su redacción quede así: **OCTAVO:** La Junta Directiva estará compuesta solamente por tres directores, quienes son: -----

HARALD JOHANNESSEN HALS-----DIRECTOR/PRESIDENTE-----

LESTER C. HESS JR.-----DIRECTOR/SECRETARIO -----

CALVIN KENNETH SHIELDS-----DIRECTOR/TESORERO."-----

Consecuentemente, la Junta Directiva de la sociedad LISA, S.A. queda estructurada de la siguiente manera:-----

HARALD JOHANNESSEN HALS-----DIRECTOR/PRESIDENTE-----

LESTER C. HESS JR.-----DIRECTOR/SECRETARIO -----

CALVIN KENNETH SHIELDS-----DIRECTOR/TESORERO.-----

TERCERO: Autorizar al Licenciado JOAO JAVIER QUIRÓZ GOVEA, varón, panameño, mayor de edad, con cédula de identidad No. 8-800-1947, abogado en ejercicio, con idoneidad 15450 para que protocolice, comparezca ante notario, otorgue la correspondiente Escritura Pública de la reunión de junta de accionistas que aquí consta. -- No habiendo otro asunto de que tratar, se dio por terminada la reunión siendo las nueve de la mañana (9:00 a.m.) del veintinueve (29) de enero de dos mil veinte (2020) y para

constancia se firma la presente acta.-----

(Fdo.) HARALD JOHANNESSEN HALS-----Presidente-----

(Fdo.) LESTER C. HESS JR. -----Secretario-----

El suscrito Secretario LESTER C. HESS JR. de la reunión CERTIFICA: Que se encontraban presentes y representadas la totalidad de las acciones, pagadas, emitidas y en circulación, y que lo anterior es fiel copia de su original.-----

Panamá, veintinueve (29) de enero de dos mil veinte (2020).-----

(Fdo.) LESTER C. HESS JR. -----Secretario-----

Esta minuta ha sido refrendada por: Lic. JOAO JAVIER QUIRÓZ MURILLO.---

CÉDULA No. 8-800-1947.-----

Concuerta con su original esta copia que expido, sello y firmo en la ciudad de Panamá, República de Panamá, a los treinta (30) días del mes de enero de dos mil veinte (2020). --

Alexander Valencia Moreno
Notario Público Undécimo





Registro Público de Panamá

ACUERDO DE CALIFICACIÓN CON DEFECTO SUBSANABLE (SUSPENSIÓN DEL SERVICIO REGISTRAL)

Se suspende el servicio reglstral solicitado en la entrada P-43419/2020 (0) de fecha 01/30/2020 05:29:07 p.m. debido a que:

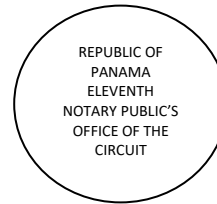
LA SOCIEDAD MANTIENE ENTRADA PENDIENTE 38162/2020 (MEMORIAL EN LA DIRECCION DE ASESORIA LEGAL)

Copia para propositos informativos solamente



Valide su documento electrónico a través del CÓDIGO QR impreso en el pie de página o a través del Identificador Electrónico: 1B6452DF-23FB-41BF-BAE0-3E22C6B6D0C2
Registro Público de Panamá - Vía España, frente al Hospital San Fernando
Apartado Postal 0830 - 1596 Panamá, República de Panamá - (507)501-6000

[Coat of Arms]
ELEVENTH NOTARY PUBLIC'S OFFICE
Notarial Circuit of Panama
REPUBLIC OF PANAMA



(2020) and for the record, this instrument is signed. -----

(Signature) **HARALD JOHANNESSEN HALS** --- PRESIDENT -----

(Signature) **LESTER C. HESS JR.** ----- SECRETARY -----

The undersigned Secretary of the meeting, **LESTER C. HESS JR.** CERTIFIED: That all the shares paid-for, issued and in circulation were present, and that the foregoing is a true copy of its original. -----

Panama, the twenty-ninth (29th) of January of two thousand and twenty (2020). -----

(Signature) **LESTER C. HESS JR.** ----- SECRETARY -----

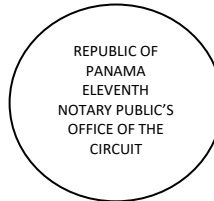
These minutes have been endorsed by: Lic. **JOAO JAVIER QUIROZ MURILLO.** -----

ID Card No. 8-800-1947. -----

Concurring with its original, the copy is issued, sealed and signed in Panama City, Republic of Panama, on the thirtieth (30th) day of the month of January of two thousand and twenty (2020). -----

[Signature]

Alexander Valencia Moreno
Eleventh Notary Public



Appendix “Y”

Panamá 31, Enero, 2020.

Dr. BARNABÉ ORTEGA

Director Registro Público:

E.S.D.

Asunto:

DESISTIMIENTO

Entenda 38162/2020.

Ante todo CORDIAL SALUDO.

SOY JOAO JAVIER QUIRZ GONZALEZ VARON, PANAMENO,
MAYOR DE EDAD, CON COPIA 8-800-1947.

AZO CASO EN EL JUEGO CICO, IDENTIFICADO 15450
CON DOMICILIO EN PANAMA, DISTRITO DE PANAMA.

CORREO CIMITERO BETANIA, CALLE NOMBRE DE DIOS.

CASA 44 D. Y ME DIANTE LA PRESENTE

LO SOLICITO EL **DESISTIMIENTO**

DE LA ENTENDEDA No. 38162/2020.

Atentamente,

JOAO QUIRZ
8-800-1947.



38162/2020 (1)

31/01/2020 04:11:28 PM

Registro Público de Panamá

Appendix “Z”

Panamá, 4 de febrero de 2020

Señor Director de Registro Público de Panamá,

Dr. BAYARDO ORTEGA,

E. S. D.

Por este medio yo **JOAO JAVIER QUIRÓZ GOVEA**, varón, panameño, mayor de edad, con cédula 8-800-1947, abogado en ejercicio con idoneidad otorgada por la Corte Suprema de Justicia No. 15450, con domicilio en Panamá, Distrito de Panamá, Corregimiento de Bethania, calle nombre de Dios, Casa 44 D, solicito sean suspendidas 29292/2020 y 36411/2020 y que sea anotada MARGINAL DE ADVERTENCIA a la Sociedad Anónima LISA, S.A., inscrita en la sección de Mercantil del Registro Público de Panamá, con Folio 117512


La solicitud de basa en que, al haber sostenido comunicación personalmente con el señor HARALD JOHANNESSEN HALS, Presidente y representante legal de LISA, S.A., nos ha expresado lo siguiente:

1. La sociedad Lisa, S.A., en lo que va del año 2020 no ha realizado convocatoria alguna para reunión de junta de accionistas con las formalidades de la ley, por lo cual lo establecido en las escrituras públicas 1159 de 22 de enero de 2020 (entrada 29292/2020) y 1461 de 27 de enero de 2020 (entrada 36411/2020) son escrituras que no cuentan con el sustento legal de la Junta Directiva ni de la Junta de Accionistas y que por el contrario se tratan de actuaciones ilegales que inclusive pueden implicar la comisión de delitos por quienes las suscriben, el Notario Público que las ha amparado apariencia de legalidad e inclusive los funcionarios públicos que las han acogido como legales.
2. Que los señores **ALVARO ALMENGOR, MANUEL CARRASQUILLA y LIDIA RAMOS** quienes son nominados en la en las escrituras públicas 1159 de 22 de enero de 2020 (entrada 29292/2020) y 1461 de 27 de enero de 2020 (entrada 36411/2020) ni siquiera son reconocidos por el representante legal de LISA S.A., ni de ninguno de los miembros legítimos de la Junta Directiva ni de la Junta de Accionistas de la Sociedad Lisa, S.A., por lo cual estas personas están usurpando ilegalmente el nombre de LISA, S.A.
3. En el caso específico de las escrituras públicas 1159 de 22 de enero de 2020 (entrada 29292/2020) la cual se encuentra escrita, la misma es abiertamente violatoria a la cláusula octava (8ª) del Pacto Social de Lisa, S.A., toda vez que originalmente el pacto social acepta un número de tres a cinco (3 a 5) directores, y en la misma se inscriben seis (6) directores, lo que demuestra que no se hizo un debido estudio por el funcionario calificador de la entrada, o peor aún que el mismo posiblemente esté actuando como cómplice de los usurpadores, por lo cual pedimos que se inicie internamente una investigación sobre el responsable de haber calificado positivamente dicha escritura.
4. La sociedad Lisa, S.A. por medio de la entrada 43419/2020 y en legítima manera tuvo que convocar junta de accionistas y presentar una escritura pública subsanando las lesiones cometidas en las anteriores en la prefación.

Se anuncia desde ahora que serán presentadas las acciones civiles, penales y administrativas a las que haya lugar, toda vez que como se ha anunciado en este memorial, al parecer hay una clara usurpación de la Junta Directiva de la Sociedad Lisa, S.A.

Fundamentamos nuestra solicitud en los artículos 7-10 de la Ley 32 de 26 de febrero de 1927.

Atentamente,


JOAO JAVIER QUIRÓZ GOVEA
TEL: 66664225.

cédula 8-800-1947/ abogado com idoneidade 15450



49363/2020 (0)

04/02/2020 04:07:02 PM

Panama, 4th of February of 2020

Mr. Director of the Public Registry of Panama.

Dr. BAYARDO ORTEGA,

SERVED

I, **JOAO JAVIER QUIROZ GOVEA**, male, Panamanian, of legal age, with ID Card 8-800-1947, practicing lawyer with licence granted by the Supreme Court of Justice No. 15450, residing in Panama, District of Panama, Township of Bethania, calle Nombre de Dios, Casa 44 D, request that 29292/2020 and 36411/2020 be suspended and that a MARGINAL NOTE OF WARNING be issued to the Company LISA, S.A., registered in the Commercial Section of the Public Registry, on Folio 117512.

The request has its basis in that, having personally communicated with Mr. HARALD JOHANNESSEN HALS, the President and legal representative of LISA, S.A., he has expressed the following:

1. The company Lisa, S.A., thus far in the year 2020, has not undertaken any notice of meeting for any meeting of the board of shareholders with the formalities of the law, so that, what is set out in public deeds 1159 of the 22nd of January of 2020 (entry 2929/2020) and 1461 of the 27th of January of 2020 (entry 36411/2020) are deeds which do not have the legal sustenance of either the Board of Directors or the Board of Shareholders and that on the contrary, they consist of illegal procedures which may even imply the commission of crimes by those undersigning, the Notary Public who gave them a façade of legality and even public officials who have accepted them as legal.
2. That Messrs **ALVARO ALMENGOR, MANUEL CARRASQUILLA and LIDIA RAMOS**, who are named in public deeds 1159 of January of 2020 (entry 36411/2020), are not even recognized by the legal representative of LISA, S.A., nor by any of the legitimate members of the Board of Directors or the Board Shareholders of the company Lisa, S.A., so that, this people are illegally usurping the name of LISA, S.A.
3. In the specific case of public deed 29292/2020 of the 22nd of January of 2020 (entry 2929/2020), which is registered, it is openly violating the eighth (8th) clause of the Articles of Incorporation of Lisa, S.A., since originally the articles of the incorporation accept a number of three to five (3 to 5) directors, and in it six (6) directors are registered. This demonstrates that a proper study of the entry was not made by the authorizing official; or, even worse, that this person is possibly acting as an accomplice of the usurpers, for which reason we ask that an internal investigation be initiated against the person responsible for having positively authorized this deed.
4. The company Lisa, S.A., by means of entry 43419/2020, in a legitimate manner, had to convene a meeting of the shareholders and present a public deed rectifying the damages committed in the foregoing.

Notice is given that heretofore civil, penal and administrative actions will be accordingly taken, since, as has been announced in this memorandum, apparently a clear usurpation of the Board of Directors of the Company Lisa, S.A. has taken place.

Our request is pursuant to articles 7-10 of Law 32 of the 26th of February of 1927.

Regards,

[Signature]

JOAO JAVIER QUIROZ GOVEA

Tel: 66664225.

Card 8-800-1947 / licenced lawyer 15450

Appendix “AA”

Panama, 05th of February of 2020

Mr. Director of the Public Registry of Panama.

Dr. BAYARDO ORTEGA,

SERVED

I, **JOAO JAVIER QUIROZ GOVEA**, male, Panamanian, of legal age, with ID Card 8-800-1947, practicing lawyer with licence granted by the Supreme Court of Justice No. 15450, residing in Panama, District of Panama, Township of Bethania, calle Nombre de Dios, Casa 44 D, request that 29292/2020 and 2175/2020 be suspended and that a MARGINAL NOTE OF WARNING be issued to the Company GABINVEST, registered in the Commercial Section of the Public Registry, on Folio 117511.

The request has its basis in that, having personally communicated with Mr. DAVID HARRY, the EX-Secretary of the board of shareholders GABINVEST, S.A., he has expressed to us the following:

1. The company GABINVEST, S.A., thus far in the year 2020, has not undertaken any notice of meeting whatsoever of the board of shareholders with the formalities of the law, so that, what is set out in public deed 791 of the 16th of January of 2020 (entry 21575/2020) does not have the legal sustenance of either the Board of Directors or the Board of Shareholders and that on the contrary, they consist of illegal procedures which may even imply the commission of crimes by those undersigning, the Notary Public who gave them a façade of legality and even public officials who have accepted them as legal.
2. That Messrs **ALVARO ALMENGOR, MANUEL CARRASQUILLA and LIDIA RAMOS**, who are named in public deed 791 of the 16th January of 2020 (entry 21575/2020), are not even recognized by the true Board of Shareholders of GABINVEST, S.A., so that, these people are illegally usurping the name of GABINVEST, S.A.
3. That public deed 791 of the 16th of January of 2020 (entry 21575/2020), was done with an *ad hoc* president and secretary which did not have the legal endorsement from the then Board of Directors of the company GABINVEST, S.A. Even so, the document was authorized positively, which implies that there are people in the Public Registry who are illegally collaborating with the usurpation of the director's board to company GABINVEST, S.A. For this reason, an internal investigation should be undertaken as to the reason for this.

Notice is given that heretofore civil, penal and administrative actions will be accordingly taken, since, as has been announced in this petition, apparently a clear usurpation of the Board of Directors of the Company [REDACTED] has taken place. [Initials]

Our request is pursuant to articles 7-10 of Law 32 of the 26th of February of 1927.

Regards,

[Signature]

JOAO JAVIER QUIROZ GOVEA

Card 8-800-1947 / licenced lawyer 15450

Appendix “BB”

February 12, 2020

BY EMAIL

Alfaro, Ferrer & Ramirez
AFRA Building
Samuel Lewis and 54 Street
Panama City
P.O. Box 0816-01085
Panama, Republic of Panama

Attention: Luis R. López Alfaro

Dear Sirs:

Re: Receivership of Xela Enterprises Ltd. (Ontario Court File No. CV-11-9062-00CL)

We are the Canadian lawyers for KSV Kofman Inc. (“**KSV**”), in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Xela Enterprises Ltd. (“**Xela**”), appointed pursuant to the Order of the Ontario Superior Court of Justice (the “**Ontario Court**”) made on July 5, 2019 (the “**Appointment Order**”). A copy of the certified Appointment Order is enclosed with this letter.

I am writing in connection with the request by the Receiver’s Panama counsel, Hatstone, for documentation in your firm’s possession relating to Xela’s Panamanian subsidiaries, Gabinvest S.A (“**Gabinvest**”) and Lisa S.A (“**Lisa**”). You indicated to Hatstone that you would require a Canadian attorney to explain the circumstances and reasons for the Receiver to have legal control of Xela, and in turn, Gabinvest and Lisa. This letter provides that explanation. For ease of reference, a copy of the Xela corporate organizational chart delivered to the Receiver by Xela is enclosed herewith.

The Appointment Order was made upon a motion brought by Margarita Castillo in the above-referenced Ontario Court proceedings. Ms. Castillo had obtained judgment dated October 28, 2015 in the amount of CAD\$4,250,000 plus interest at the rate of 2 percent per annum against Xela and certain of its related parties (the “**Judgement**”). The Receiver’s understanding is that Ms. Castillo brought the motion for the Appointment Order when other efforts to enforce the Judgement and related costs orders had failed.

The Appointment Order was made pursuant to, among other things, section 101 of the Ontario *Courts of Justice Act* (the “**OCJA**”). As an *OBCA* corporation domiciled in Ontario, Xela is subject to the *OCJA*, the *OBCA* and the jurisdiction of the Ontario Court.

The Appointment Order gives the Receiver the power to, among other things, exercise any shareholder rights which Xela may have and to take any steps reasonably incidental to the exercise of such rights. Pursuant to the Appointment Order, where the Receiver chooses to exercise such shareholder rights, as it now does with respect to Gabinvest and Lisa, it is exclusively authorized to do so, to the exclusion of, and

without interference from, any other person, including Xela. The Receiver is therefore exclusively authorized and empowered by the Ontario Court, to whose jurisdiction Xela is subject, to exercise Xela's rights as 100% shareholder of Gabinvest and, in turn, Gabinvest is entitled to exercise its rights as 100% shareholder in Lisa.

To the extent you require any further information pertaining to Xela's receivership proceedings, and the details regarding the Xela group and its various shareholdings, we would direct you to the Receiver's Case Website: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

I trust this letter provides you with the explanation you require from Canadian counsel in order to fulfill Hatstone's document request. We would appreciate your cooperation and timely response to such disclosure.

Please feel free to contact the undersigned should you wish to discuss any of the foregoing.

Yours truly,

AIRD & BERLIS LLP

Kyle Plunkett

Kyle Plunkett

*cc by Email: Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Carl O'Shea and Alvaro Almengor, Hatstone
Sam Babe and Steve Graff, Aird & Berlis LLP*

38856852.2

Appendix “CC”

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

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

AFFIDAVIT OF NOAH GOLDSTEIN
(Sworn February 18, 2020)

I, Noah Goldstein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a Vice President and Managing Director of KSV Kofman Inc. ("KSV").
2. Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 5, 2019 KSV was appointed as the receiver and manager ("Receiver") of Xela Enterprises Limited.
3. I have been integrally involved in this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.

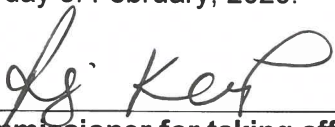
4. On February 18, 2020, the Receiver finalized its Second Report to Court in which it provided a summary of the Receiver's fees for the period commencing September 1, 2019 to December 31, 2019.

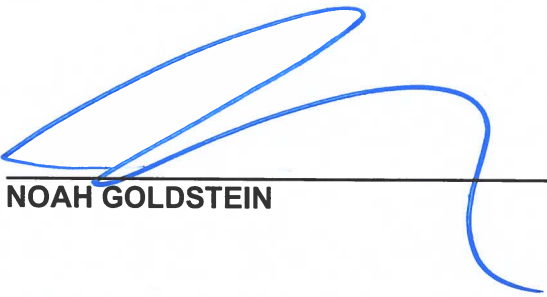
5. I hereby confirm that attached as Exhibit "A" hereto is a true copy of the account of KSV for the period indicated and confirm that this account accurately reflects the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of roles, hours and rates charged by members of KSV who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amounts claimed in the accounts.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this)
18th day of February, 2020.)
)

)
_____)
Commissioner for taking affidavits, etc.)
)


_____)
NOAH GOLDSTEIN

Rajinder Kashyap, a Commissioner, c/o.,
Province of Ontario, for KSV Kofman Inc.
Expires January 22, 2021.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 18th DAY OF FEBRUARY, 2020

A handwritten signature in black ink, appearing to read "Raj Kashyap", is written over a solid horizontal line.

A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Kofman Inc.
Expires January 22, 2021.



ksv advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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INVOICE

Xela Enterprises Ltd.
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

October 21, 2019

Invoice No: 1434
HST #: 818808768 RT0001

Re: Xela Enterprises Ltd. (the “Company”)

For professional services rendered during September 2019 by KSV Kofman Inc., in its capacity as Court-appointed receiver of the Company (“Receiver”), including:

- Reviewing and commenting on a confidentiality agreement (the “CA”) between the Receiver and Margarita Castillo (the “Applicant”);
- Finalizing and executing the CA on September 6, 2019;
- Attending a call on September 10, 2019 with Stikeman Elliot LLP, Canadian counsel to the Avicola Group, and Aird & Berlis LLP (“A&B”), Canadian counsel to the Receiver;
- Reviewing and commenting on a draft cooperation protocol between Juan Gutierrez, the principal of the Company, and the Receiver, and discussing same with Torys LLP (“Torys”), counsel to Mr. Gutierrez, and A&B;
- Attending a call on September 11, 2019 with Bennett Jones and A&B to provide an update on the receivership proceedings;
- Reviewing responses from Torys received on September 17, 2019 to questions asked by the Receiver on August 22, 2019;
- Corresponding with Clarke Gittens Farmer LLP, Barbados counsel to the Receiver;
- Reviewing a letter from Torys dated September 24, 2019 and corresponding with A&B regarding same;
- Attending a meeting on September 25, 2019 with Bennett Jones to provide an update on the receivership proceedings;

- Attending a meeting on September 26, 2019 with Torys and Juan Gutierrez to discuss the Avicola litigation;
- To all other meetings, calls and discussions not specifically referenced above.

Total fees and disbursements per attached time summary	\$	13,052.50
HST		<u>1,696.83</u>
Total Due	\$	<u>14,749.33</u>

KSV Kofman Inc.
Xela Enterprises Ltd.

Time Summary

For the period September 1, 2019 to September 30, 2019

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	725	10.15	7,358.75
Noah Goldstein	575	9.25	5,318.75
Other staff and administration		0.60	100.00
Subtotal		20.00	12,777.50
Out of pocket disbursements			275.00
Total Fees and Disbursements			13,052.50



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INVOICE

Xela Enterprises Ltd.
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

November 13, 2019

Invoice No: 1470
HST #: 818808768 RT0001

Re: Xela Enterprises Ltd. (the “Company”)

For professional services rendered during October 2019 by KSV Kofman Inc., in its capacity as Court-appointed receiver of the Company (“Receiver”), including:

- Attending a meeting on October 2, 2019 with Juan Gutierrez, the former principal of the Company and Torys LLP (“Torys”), counsel to Mr. Gutierrez, to receive an update on the status of the litigation;
- Attending Court on October 2, 2019 for a scheduling motion concerning the meaning of paragraph 4 of the Receivership Order;
- Attending a call on October 3, 2019 with Aird & Berlis LLP (“A&B”), the Receiver’s Canadian counsel, and Clarke Gittens Farmer LLP (“Clarke Gittens”), the Receiver’s Bajan counsel;
- Attending a call on October 7, 2019 with A&B and Hatstone Lawyers, the Receiver’s Panamanian counsel;
- Reviewing information provided on October 10, 16 and 31, 2019 by Torys in response to the Receiver’s information request and discussing same internally;
- Preparing the Receiver’s First Report to Court dated October 17, 2019 in connection with a motion returnable October 29, 2019 seeking an order to obtain information regarding transactions involving the Company’s current and former subsidiaries (the “October 29 Motion”);
- Reviewing a notice of motion and draft order in connection with the October 29 Motion;
- Corresponding extensively throughout the month of October with A&B concerning the October 29 Motion;

- Arranging with Clarke Gittens to serve the October 29 Motion materials on parties in Barbados;
- Reviewing and commenting on the written submissions of the Receiver prepared by A&B in connection with the meaning of paragraph 4 of the Receivership Order;
- Reviewing the written submissions dated October 25, 2019 of Bennett Jones, counsel to Margarita Castillo, the applicant in the receivership proceedings;
- Reviewing the written submissions of Torys dated October 25, 2019;
- Attending a call on October 25, 2019 with A&B and Stikeman Elliot LLP, Canadian counsel to the Avicola Group;
- Attending a call on October 28, 2019 with A&B;
- Attending at Court on October 29, 2019 regarding the October 29 Motion;
- Attending a call on October 31, 2019 with Fuller Landau LLP and Torys to discuss the status of the Company's income tax filings;
- Attending a call on October 31, 2019 with Torys and Mr. Gutierrez to receive an update on the status of the litigation;
- To all other meetings, calls and discussions not specifically referenced above.

Total fees and disbursements per attached time summary	\$	60,305.01
HST		7,839.65
Total Due	\$	<u>68,144.66</u>

KSV Kofman Inc.
Xela Enterprises Ltd.

Time Summary

For the period October 1, 2019 to October 31, 2019

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	725	37.55	27,223.75
Noah Goldstein	575	50.50	29,037.50
Other staff and administration		15.65	3,981.25
Subtotal		103.70	60,242.50
Out of pocket disbursements			62.51
Total Fees and Disbursements			60,305.01



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INVOICE

Xela Enterprises Ltd.
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

December 9, 2019

Invoice No: 1504
HST #: 818808768 RT0001

Re: Xela Enterprises Ltd. (the “Company”)

For professional services rendered during November 2019 by KSV Kofman Inc., in its capacity as Court-appointed receiver of the Company (“Receiver”), including:

- Attending a call on November 1, 2019 with Hatstone Group (“Hatstone”), the Receiver’s Panamanian counsel, and Aird & Berlis LLP (“A&B”), the Receiver’s Canadian counsel, regarding several lawsuits in Panama involving indirect subsidiaries and former subsidiaries of the Company;
- Preparing a letter dated November 5, 2019 to the Board of Directors of Lisa S.A. (“Lisa”), an indirect subsidiary of the Company;
- Corresponding with Clarke Gittens Farmer, the Receiver’s Bajan counsel, including on November 7 and 8, 2019;
- Corresponding with Hatstone and A&B regarding the Panamanian litigation, including emails on November 5, 8, 12, 14, 19, 20 and 22, 2019;
- Corresponding with Torys LLP, counsel to the Company and Juan Gutierrez, to receive information concerning the Company, including emails on November 5, 21 and 25, 2019;
- Reviewing and commenting on a letter prepared by A&B dated November 8, 2019 to BDT Investments Inc. (“BDT”) and the ARTCARM Trust (the “Trust”);
- Reviewing a letter dated November 8, 2019 from the Trust;
- Reviewing a letter dated November 8, 2019 from Amsterdam & Partners LLP, counsel to Lisa;
- Reviewing a letter dated November 20, 2019 from the Trust;

- Reviewing a letter dated November 20, 2019 from BDT;
- Attending a meeting on November 27, 2019 with A&B and Bennett Jones, counsel to Margarita Gutierrez;
- Reviewing a memorandum prepared by A&B dated November 27, 2019 summarizing outstanding litigation;
- Preparing a letter dated December 2, 2019 to BDT and ARTCARM requesting information about certain transactions; and
- To all other meetings, calls and discussions not specifically referenced above.

Total fees and disbursements per attached time summary	\$	21,467.43
HST		2,790.77
Total Due	\$	<u>24,258.20</u>

KSV Kofman Inc.
Xela Enterprises Ltd.

Time Summary

For the period ending November 30, 2019

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	725	16.45	11,926.25
Noah Goldstein	575	13.50	7,762.50
Other staff and administration		4.10	1,487.50
Subtotal		34.05	21,176.25
Out of pocket disbursements			291.18
Total Fees and Disbursements			21,467.43



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INVOICE

Xela Enterprises Ltd.
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

January 13, 2019

Invoice No: 1535
HST #: 818808768 RT0001

Re: Xela Enterprises Ltd. (the “Company”)

For professional services rendered during December 2019 by KSV Kofman Inc., in its capacity as Court-appointed receiver of the Company (“Receiver”), including:

- Reviewing email correspondence on December 1, 2 and 3, 2019 between Hatstone Group (“Hatstone”), the Receiver’s Panamanian counsel, and Aird & Berlis LLP (“A&B”), the Receiver’s Canadian counsel, regarding next steps in the proceedings;
- Preparing a letter dated December 2, 2019 to the ARTCARM Trust (the “Trust”);
- Reviewing a memorandum dated December 3, 2019 prepared by A&B summarizing the global litigation;
- Reviewing a letter dated December 6, 2019 from the Trust;
- Reviewing an engagement letter from Clarke Gittens Farmer, the Receiver’s Bajan counsel;
- Reviewing a letter dated December 17, 2019 from Torys LLP, the Company’s former legal counsel, and discussing same with A&B;
- Reviewing a letter dated December 17, 2019 from Amsterdam & Partners LLP (“A&P”), counsel to Lisa S.A., and corresponding with A&B regarding same;
- Corresponding via email with A&P throughout the month;
- Providing regular updates to Bennett Jones, counsel to Margarita Gutierrez; and

- To all other meetings, calls and discussions not specifically referenced above.

Total fees and disbursements per attached time summary	\$	12,801.87
HST		<u>1,664.24</u>
Total Due	\$	<u><u>14,466.11</u></u>

KSV Kofman Inc.
Xela Enterprises Ltd.

Time Summary

For the period ending December 31, 2019

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	725	11.85	8,591.25
Noah Goldstein	575	6.50	3,737.50
Other staff and administration		1.20	200.00
Subtotal		19.55	12,528.75
Out of pocket disbursements			273.12
Total Fees and Disbursements			12,801.87

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 18th DAY OF FEBRUARY, 2020



A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Kofman Inc.
Expires January 22, 2021.

Xela Enterprises Limited

Schedule of Professionals' Time and Rates

For the Period from September 1, 2019 to December 31, 2019

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Robert Kofman	Managing Director	Overall responsibility	76.00	725	55,100.00
Noah Goldstein	Managing Director	All aspects of mandate	79.75	575	45,856.25
Other staff and administrative			21.55	125-425	5,768.75
Total fees					<u>106,725.00</u>
Total hours					177.30
Average hourly rate					\$ 601.95

Appendix “DD”

**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

AFFIDAVIT OF STEVEN L. GRAFF
(Sworn February 14, 2020)

I, **STEVEN L. GRAFF**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP has acted as counsel for KSV Kofman Inc. (“**KSV**”), in its capacity as Court appointed Receiver and continues to do so.
2. Aird & Berlis LLP has prepared Statements of Account in connection with its mandate as counsel to KSV, namely,
 - (a) an account dated October 25, 2019 in the amount of \$43,557.96 in respect of the period from September 16, 2019 to October 24, 2019. Attached hereto and

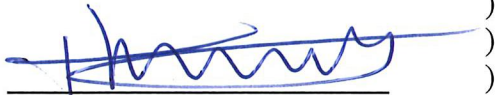
marked as Exhibit "A" to this my affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$478.70.

(b) an account dated November 30, 2019 in the amount of \$34,384.50 in respect of the period from October 21, 2019 to November 30, 2019. Attached hereto and marked as Exhibit "B" to this my affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$481.35.

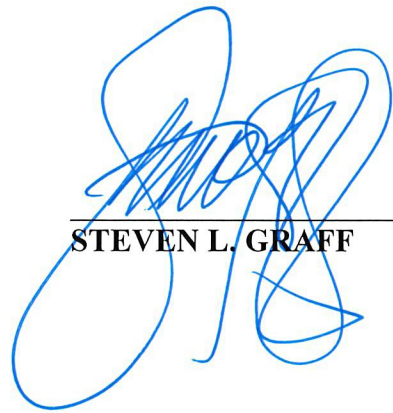
(c) an account dated January 30, 2020 in the amount of \$45,310.43 in respect of the period from December 2, 2019 to January 28, 2020. Attached hereto and marked as Exhibit "B" to this my affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$520.68.

3. This Affidavit is made in support of a motion to, *inter alia*, approve the attached account of Aird & Berlis LLP and the fees and disbursements detailed therein and for no improper purpose.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 14th day of February, 2020)



A Commissioner, etc.)



STEVEN L. GRAFF

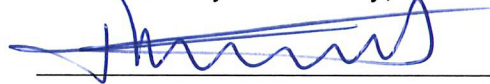
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 649526

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

October 25, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended October 24, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	16/09/19	\$475.00	0.70	\$332.50	Attend call with client team to discuss proposed motion for declaratory relief; review and consider emails from client; attend call with Bennett Jones.
SCB	17/09/19	\$765.00	0.90	\$688.50	Telephone call with S. St. John at Clarke Gittens Farmer to arrange telephone call re Xela litigation; Discuss with K. Plunkett; Prepare and send information for conflict search
SLG	17/09/19	\$825.00	0.20	\$165.00	Letter re motion and court date
KBP	17/09/19	\$475.00	1.60	\$760.00	Review and respond to emails from B. Kofman; attend call with Bennett Jones; review and consider responses from Torys and their client; discuss same with S. Graff.
SCB	18/09/19	\$765.00	0.50	\$382.50	Conference call with K. Plunkett, S. Graff and K. Boyce (Clarke Gittens Farmer) re Xela litigation
SLG	18/09/19	\$825.00	0.60	\$495.00	Conference call with Barbados counsel re possible engagement of counsel and re [REDACTED]

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	18/09/19	\$475.00	1.70	\$807.50	Review and respond to various emails from client team regarding proposed motion for declaratory relief and scope of motion; attend call with Barbados counsel to discuss [REDACTED]; review and compile information regarding BDT spin out; review responses from Torys.
SLG	19/09/19	\$825.00	0.20	\$165.00	Emails re status of Xela receivership and info
KBP	19/09/19	\$475.00	1.20	\$570.00	Attend call with Barbados counsel; Email exchanges with client team regarding same; Review and arrange to book court time for motion re declaratory relief
GG	20/09/19	\$295.00	1.00	\$295.00	Received instruction from K Plunkett; assembled documents for Barbados counsel
SLG	20/09/19	\$825.00	0.50	\$412.50	Discussion with K. Plunkett with respect to email re motion
KBP	20/09/19	\$475.00	1.10	\$522.50	Attend calls with client to discuss next steps; Email to service list regarding upcoming motion; Email exchanges with A. Slavens regarding meeting and disclosure; Review and respond to emails from Barbados counsel
SLG	25/09/19	\$825.00	1.70	\$1,402.50	Attend meeting at Bennett Jones with KSV re [REDACTED] email with K. Kay and with Barbados counsel; review docs in prep for same
SLG	26/09/19	\$825.00	1.00	\$825.00	Attend call with Torys lawyers, KSV and A&B re scheduling and process
SLG	26/09/19	\$825.00	0.50	\$412.50	Emails re [REDACTED] and communications with Barbados counsel
KBP	26/09/19	\$475.00	1.40	\$665.00	Attend call with Torys team; review and consider draft letter; review and respond to various emails from Torys team regarding motion; attend call with Barbados counsel regarding [REDACTED]

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	27/09/19	\$825.00	0.20	\$165.00	Review emails re Schedule and 9:30 appointment
KBP	27/09/19	\$475.00	0.70	\$332.50	Attend calls with client regarding 9:30 chambers appointment; various email exchanges with client team
SLG	30/09/19	\$825.00	0.20	\$165.00	Discussion with K. Plunkett re update and 9:30 am attendance
KBP	30/09/19	\$475.00	0.40	\$190.00	Attend call with S. Graff to discuss letters to stakeholders and chambers appointment; Instruct G. Gopinath regarding letter; Attend call with N. Goldstein
GG	01/10/19	\$295.00	0.90	\$265.50	Call with K Plunkett re: letter to Calvin Shields; drafted letter to Calvin Shields
KBP	01/10/19	\$475.00	1.60	\$760.00	Review and respond to emails from client team regarding chambers appointment; prepare for chambers appointment; review and provide comments on final draft letter to C. Shields.
SCB	02/10/19	\$765.00	1.10	\$841.50	Telephone call with K. Hutchinson (EY) re Cayman local counsel; Obtain further information and contact R. Bell at Walkers and discuss with him
GG	02/10/19	\$295.00	3.70	\$1,091.50	Received instructions from K Plunkett; attended meeting at Torys for note-taking purposes; assembled list of deliverables from Xela/Torys; drafted litigation update summary based on meeting
GG	02/10/19	\$295.00	1.00	\$295.00	Conducted caselaw research for motion record; reviewed precedent documents; began preparing motion record materials
SLG	02/10/19	\$825.00	0.60	\$495.00	Update on Scheduling appointment and meeting on litigation update; review emails re update on litigation
KBP	02/10/19	\$475.00	3.10	\$1,472.50	Attend chambers appointment before Justice McEwen; attend meeting at Torys to discuss litigation updates; review and consider emails from working group regarding materials.
SLG	03/10/19	\$825.00	0.20	\$165.00	Emails with K. Kay

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	03/10/19	\$475.00	1.00	\$475.00	Prepare list of follow-up items from Torys; circulate email to Torys team.
GG	04/10/19	\$295.00	1.00	\$295.00	Drafted materials for motion record
SLG	04/10/19	\$825.00	0.30	\$247.50	Review update on meeting and status
KBP	04/10/19	\$475.00	2.20	\$1,045.00	Attend call with Barbados counsel; review and respond to emails from client team; draft form of order; circulate same to N. Goldstein; meeting with student to discuss materials.
GG	06/10/19	\$295.00	1.10	\$324.50	Drafted materials for motion record
GG	07/10/19	\$295.00	1.50	\$442.50	Drafted materials for motion record returnable Oct 29th for K Plunkett
KBP	07/10/19	\$475.00	2.00	\$950.00	Prepare and attend call with Hatstone team to discuss mandate; review and consider emails from client team; attend call with N. Goldstein regarding court materials; draft and circulate form of Order.
GG	08/10/19	\$295.00	1.50	\$442.50	Drafted materials for motion record returnable Oct 29th for K Plunkett
KBP	08/10/19	\$475.00	1.50	\$712.50	Review and provide comments on draft affidavit of service; review and provide comments on initial draft of written submissions to Court; email exchanges with client team.
KBP	09/10/19	\$475.00	2.00	\$950.00	Review and draft written submissions to Court for motion returnable October 29th; email to Torys; review and consider court materials.
KBP	09/10/19	\$475.00	2.60	\$1,235.00	Draft written submissions; draft court order; review and respond to emails from Barbados counsel; review and consider emails from client team regarding court materials.
KBP	10/10/19	\$475.00	2.70	\$1,282.50	Review and update Notice of Motion; email exchange with Torys team regarding additional disclosure; attend calls with client team to discuss court materials and report.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	11/10/19	\$475.00	3.10	\$1,472.50	Draft court materials for motion returnable October 29, 2019; various email exchanges with client team regarding draft Order and draft Motion Record.
GG	14/10/19	\$295.00	0.90	\$265.50	Conducted caselaw research for motion record returnable Oct 29
KBP	14/10/19	\$475.00	2.80	\$1,330.00	Review comments on order from client; revise and circulate updated copy; review and provide initial comments on draft report; email exchanged with client team regarding draft materials.
GG	15/10/19	\$295.00	0.50	\$147.50	Drafted motion record materials
SLG	15/10/19	\$825.00	1.30	\$1,072.50	Review report and review order and submission; telephone call with K. Plunkett
SLG	15/10/19	\$825.00	1.20	\$990.00	Further review of and comments on Report; further telephone call with K. Plunkett
KBP	15/10/19	\$475.00	2.40	\$1,140.00	Review and provide comments on draft report; revise and circulate updated order; review and update notice of motion to capture comments from client; attend calls with client; review comments on written submissions from S. Graff.
GG	16/10/19	\$295.00	1.00	\$295.00	Review Reviewed motion record materials
KBP	16/10/19	\$475.00	3.20	\$1,520.00	Draft and finalize court materials for motion returnable October 29, 2019; Attend various calls with client team to discuss same; revise and provide comments on report.
GG	17/10/19	\$295.00	4.60	\$1,357.00	Prepared motion record materials
SLG	17/10/19	\$825.00	0.20	\$165.00	Review emails re materials
JTN	17/10/19	\$395.00	0.30	\$118.50	Meeting with G. Gopinath to address service-related questions re motion record; Discussion and email exchanges with K. Plunkett re same
KBP	17/10/19	\$475.00	3.10	\$1,472.50	Revise and finalize materials for service; attend various calls with N. Goldstein to discuss finalizing materials; email exchanges with Barbados counsel regarding same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SCB	18/10/19	\$765.00	0.20	\$153.00	Assist K. Plunkett with notarial certificates
GG	18/10/19	\$295.00	1.20	\$354.00	Compiled physical documents for service to Barbados entities
KBP	18/10/19	\$475.00	2.10	\$997.50	Review and consider additional information from Torys; circulate draft written submissions to client team; review and consider comments on same from client; review and respond to emails from Torys regarding requests for confidential appendices.
KBP	21/10/19	\$475.00	1.90	\$902.50	Revise and incorporate comments from client into written submissions; circulate same to S. Graff; email exchange with Barbados counsel regarding service of motion record.
KBP	22/10/19	\$475.00	1.10	\$522.50	Review and revise written submissions to include additional comments from client team; updated and circulate draft; email exchange with Barbados counsel.
TOTAL:			<u>79.00</u>	<u>\$37,817.00</u>	

Name	Hours	Rate	Value
Kyle B. Plunkett (KBP)	47.20	\$475.00	\$22,420.00
Sam C. Billard (SCB)	2.70	\$765.00	\$2,065.50
Steven L. Graff (SLG)	8.90	\$825.00	\$7,342.50
Gaurav Gopinath (GG)	19.90	\$295.00	\$5,870.50
Jeremy T. Nemers (JTN)	0.30	\$395.00	\$118.50

OUR FEE \$37,817.00
 HST at 13% \$4,916.21

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application \$320.00

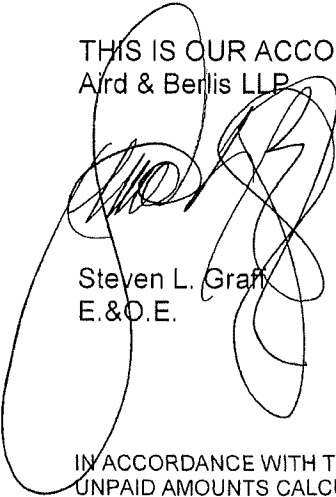
Subject to HST

Photocopies - Local	\$209.75	
Imaging/Scanning	\$5.25	
Binding and Tabs	\$33.00	
Deliveries/Parss	\$191.68	
Photocopies	\$7.00	
Total Disbursements		\$446.68
HST at 13%		\$58.07

AMOUNT NOW DUE

\$43,557.96

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

37660031.1

KSV Kofman Inc.

In its capacity as Receiver

October 25, 2019 Account 649526

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$825.00	8.90	\$7,342.50
Kyle B. Plunkett	2011	\$475.00	47.20	\$22,240.00
Sam Billard	1985	\$765.00	2.70	\$2,065.50
Jeremy Nemers	2014	\$395.00	0.30	\$118.50
Articling Student				
Gaurav Gopinth		\$295.00	19.90	\$5,870.50

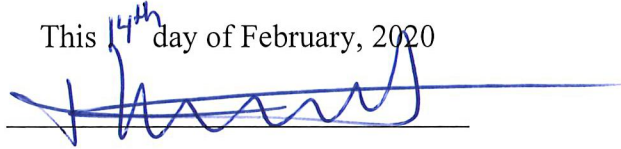
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a name, possibly "Steve Graff".

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 653461

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

November 30, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 30, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	21/10/19	\$825.00	0.50	\$412.50	Review and consider revised report
PLW	21/10/19	\$190.00	0.60	\$114.00	Filed Motion Record and Appendices for October 29, 2019
GG	22/10/19	\$295.00	1.00	\$295.00	Received instructions from K Plunkett; researched cases on inherent jurisdiction of Superior Court of Justice, Commercial List in the context of s. 101 receiverships
SLG	23/10/19	\$825.00	0.30	\$247.50	Review written submissions and amendments
KBP	23/10/19	\$475.00	1.10	\$522.50	Revise and finalize Written Submissions for court filing; email exchange with Torys; email exchange with Barbados counsel.
SAD	24/10/19	\$295.00	0.60	\$177.00	File written submissions at the commercial list for K. Plunkett
KBP	24/10/19	\$475.00	1.10	\$522.50	Finalize and file written submissions to court; attend calls with client to discuss motion returnable October 29, 2019; review and consider emails from Torys.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
GG	25/10/19	\$295.00	0.50	\$147.50	Filed affidavit of service for Barbados entities at Superior Court of Justice, Commercial List
KBP	25/10/19	\$475.00	2.60	\$1,235.00	Review and consider written submissions from Torys; review and consider written submissions from Bennett Jones; attend call with Stikemans team; attend call with N. Goldstein.
KBP	28/10/19	\$475.00	2.50	\$1,187.50	Attend call with client to discuss motion returnable October 29, 2019 and case conference; prepare for same.
SLG	29/10/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re approach to attendance
KBP	29/10/19	\$475.00	4.00	\$1,900.00	Prepare and attend motion and case conference; draft word version of endorsement terms; email to J. McEwen; meeting with G. Gopinath regarding follow up letters.
SLG	30/10/19	\$825.00	0.50	\$412.50	Discussion with K. Plunkett re outcome of attendance and review endorsement and order
KBP	30/10/19	\$475.00	2.20	\$1,045.00	Review and provide comments on draft letters to respondents re order to disclose; review and consider emails from client team; attend calls with Torys; attend call with N. Goldstein to discuss next steps.
SLG	31/10/19	\$825.00	1.30	\$1,072.50	Review emails from Torys re status and info
SLG	31/10/19	\$825.00	0.20	\$165.00	Review emails from Torys re status and info
KBP	31/10/19	\$475.00	3.00	\$1,425.00	Attend conference call with Torys, Mr. Gutierrez and A. Durkovic regarding updates on litigation; email to Hatstone; email exchange with client team regarding next steps; revise and update letters to BDT, Arven and Trust regarding disclosure order.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	01/11/19	\$825.00	0.40	\$330.00	Participate in conference call with Guatemalan counsel re orders and director info
KBP	01/11/19	\$475.00	1.00	\$475.00	Attend call with Hatstone to discuss next steps and engagement; review and respond to emails from client team regarding draft letter to board of directors;
KBP	03/11/19	\$475.00	1.10	\$522.50	Draft letter to board of directors of Lisa; email exchange with client regarding same;
SLG	04/11/19	\$825.00	0.20	\$165.00	Review emails re court file
KBP	04/11/19	\$475.00	0.90	\$427.50	Attend calls with client team to discuss draft letters to various subs and Lisa; review and revise draft letters.
KBP	06/11/19	\$475.00	1.00	\$475.00	Prepare initial draft letters to BDT and Artcarm; attend call with N. Goldstein; review and respond to emails from client.
SLG	07/11/19	\$825.00	0.20	\$165.00	Emails with Panama counsel
KBP	07/11/19	\$475.00	1.20	\$570.00	Review and respond to emails from client regarding draft letters to BDT and Artcarm; email to Barbados counsel to drafts; attend various calls; review and consider letter from Lisa's counsel regarding response.
KBP	08/11/19	\$475.00	1.00	\$475.00	Review and respond to emails from client team; review and consider letters from BDT and Artcarm Trust regarding disclosure; review and consider draft letters from Barbados.
KBP	12/11/19	\$475.00	0.30	\$142.50	Review and consider emails from client and Panamanian counsel.
KBP	13/11/19	\$475.00	0.40	\$190.00	Review and consider translated orders; review and consider emails from N. Goldstein.
KBP	14/11/19	\$475.00	0.40	\$190.00	Review and consider email exchanges with A. Almengor regarding updates on Panama

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					proceedings; email exchange with B. Kofman regarding letter to BDT.
KBP	18/11/19	\$475.00	0.30	\$142.50	Review and consider email from B. Kofman; review and consider emails from Panama counsel.
KBP	20/11/19	\$475.00	1.00	\$475.00	Review and respond to emails from C. O'Shea; review and consider letters from BDT and Artcarm; emails exchange with client team.
KBP	21/11/19	\$475.00	1.60	\$760.00	Review and respond to emails from client team regarding [REDACTED]; email exchange with client team; email exchange with Hatstone; review translated orders; email exchange with client team regarding same.
KBP	22/11/19	\$475.00	0.40	\$190.00	Email exchanges with client team regarding [REDACTED].
KBP	25/11/19	\$475.00	0.60	\$285.00	Review and respond to emails form client team regarding Panama and Florida proceedings.
KBP	26/11/19	\$475.00	3.00	\$1,425.00	Prepare and attend meeting with client and Bennett Jones to discuss updates; various email exchanges with client to discuss next steps; email exchange with Clarke Gittens; email exchange with Hatstone.
SEB	27/11/19	\$595.00	5.60	\$3,332.00	Emails from and to and discussions with K. Plunkett; phone call with Panama counsel; emails from and to and discussion with G. Gopinath; review and summarize Florida court docket
GG	27/11/19	\$295.00	7.00	\$2,065.00	Reviewed status of Panamanian and US litigation; attended call with Panamanian counsel
KBP	27/11/19	\$475.00	4.10	\$1,947.50	Review and respond to various emails from client regarding follow tasks from meeting; attend call with Hatstone team; review and summarize Panama proceedings;

Name	Hours	Rate	Value
Stephanie A. D'Amico (SAD)	0.60	\$295.00	\$177.00
Sam E. Babe (SEB)	8.30	\$595.00	\$4,938.50
Andrew E. Magnus (AEM)	0.50	\$525.00	\$262.50

OUR FEE \$30,084.50
HST at 13% \$3,910.99

DISBURSEMENTS

Subject to HST

ACL - Litigation	\$100.00
Photocopies - Local	\$47.00
Binding and Tabs	\$22.50
Deliveries/Parss	\$174.76
Total Disbursements	\$344.26
HST at 13%	\$44.75

AMOUNT NOW DUE

\$34,384.50

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

KSV Kofman Inc.
In its capacity as Receiver

November 30, 2019 Account 653461

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$825.00	3.90	\$3,217.50
Kyle B. Plunkett	2011	\$475.00	39.10	\$18,572.50
Sam Babe	2004	\$595.00	8.30	\$4,938.50
Andrew Magnus	2009	\$525.00	0.50	\$262.50
Articling Student				
Gaurav Gopinth		\$295.00	9.50	\$2,802.50
Stephanie D'Amico		\$295.00	0.60	\$177.00
Court Clerk				
Patrick Williams		\$190.00	0.60	\$114.00

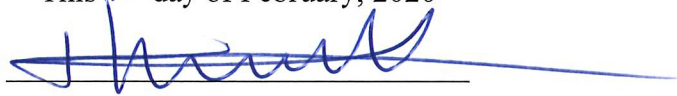
Attached is Exhibit "C"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'J. H. ...'.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:



Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 659588

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

January 30, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 28, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	02/12/19	\$595.00	2.00	\$1,190.00	Emails from and phone call with Barbados counsel; emails from and to and discussion with K. Plunkett; email from G. Gopinath; review and revise [REDACTED]
GG	02/12/19	\$295.00	3.50	\$1,032.50	Drafted Global Litigation Memo
KBP	02/12/19	\$475.00	2.00	\$950.00	Attend call with Barbados counsel regarding next steps and recognition order; review and consider emails from S. Ince; attend calls with client; review and provide comments on draft memorandum.
SEB	03/12/19	\$595.00	1.60	\$952.00	Emails from and to K. Plunkett; review memo; email from Barbados counsel; emails from G. Gopinath; email from Panama counsel; emails from and to N. Goldstein; email from B. Kofman
GG	03/12/19	\$295.00	0.40	\$118.00	Revised Global Litigation Memo
KBP	03/12/19	\$475.00	1.00	\$475.00	Provide comments on draft litigation memorandum; review and respond to emails from client; review and respond to emails from S. Ince.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	04/12/19	\$595.00	0.30	\$178.50	Emails from K. Plunkett; email from Barbados counsel; email from G. Gopinath
GG	04/12/19	\$295.00	1.60	\$472.00	Reviewed new US litigation court files and Bermuda file for Global Litigation Memo
KBP	04/12/19	\$475.00	1.10	\$522.50	Email exchange with S. Ince regarding Barbados proceedings; email exchange with client regarding updates on litigation and discussions with Torys.
SEB	05/12/19	\$595.00	0.20	\$119.00	Email - Email from B. Kofman; email from Panama counsel
GG	05/12/19	\$295.00	2.40	\$708.00	Conducted research re: Global Litigation Memo; obtained additional information from Panamanian counsel; drafted email to client with assistance of K Plunkett and S Babe
KBP	05/12/19	\$475.00	0.60	\$285.00	Review and respond to emails from B. Kofman on memorandum and emails from Hatstone; discuss same with G. Gopinath.
SEB	06/12/19	\$595.00	2.10	\$1,249.50	Emails from and to K. Plunkett; email from B. Kofman; emails from and to G. Gopinath; emails from Panama counsel; emails from Barbados counsel
KBP	06/12/19	\$475.00	1.10	\$522.50	Review and respond to email from client regarding follow up questions on memorandum; attend call with N. Goldstein; email exchanges with working group regarding same.
SEB	10/12/19	\$595.00	0.10	\$59.50	Email from Barbados counsel
KBP	11/12/19	\$475.00	1.00	\$475.00	Review and provide comments on draft Barbados retainer letter; review and respond to emails from N. Goldstein.
KBP	12/12/19	\$475.00	0.20	\$95.00	Review and respond to emails from client regarding Barbados retainer and instructions to firm.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	13/12/19	\$595.00	0.10	\$59.50	Email from Barbados counsel
KBP	13/12/19	\$475.00	0.80	\$380.00	Email exchange with client regarding updates; review and consider emails from Barbados counsel regarding retainer.
SEB	16/12/19	\$595.00	0.60	\$357.00	Telephone call with Barbados counsel; Discussion with K. Plunkett
KBP	16/12/19	\$475.00	0.60	\$285.00	Attend call with K. Boyce to discuss next steps [REDACTED].
KBP	17/12/19	\$475.00	1.10	\$522.50	Review and consider emails from Torys; review and consider letters from A. Durkovic; email exchange with client;
KBP	18/12/19	\$475.00	1.30	\$617.50	Review and consider emails from S. Ince; review and consider various emails from Torys; attend call to discuss letters from J. Guillermo group; email exchange with working group regarding response.
SEB	19/12/19	\$595.00	0.20	\$119.00	Email from K. Plunkett; Email from A. Almengor
KBP	19/12/19	\$475.00	1.00	\$475.00	Email exchange with Hatstone regarding updates; review and discuss offers from J. Gutierrez with N. Goldstein.
KBP	27/12/19	\$475.00	1.00	\$475.00	Review and consider various emails from Xela's counsel regarding proposed repayment of judgment and status of receivership; email exchange with client regarding same.
SEB	30/12/19	\$595.00	0.20	\$119.00	Emails from K. Plunkett; Email from B. Kofman; Emails from G. Gopinath
SLG	30/12/19	\$825.00	0.60	\$495.00	Review emails re Notice of Change of Counsel and proposed motion re discharge of receiver and payout
KBP	30/12/19	\$475.00	1.50	\$712.50	Email exchanges with Cambridge LLP regarding motion; email exchanges with client team regarding same; review and respond

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					to emails from Bennett Jones; review and consider correspondence from A. Durkovic.
SEB	31/12/19	\$595.00	0.80	\$476.00	Emails from K. Plunkett; Emails from B. Kofman; Email from Bennett Jones; Emails from Cambridge LLP
KBP	31/12/19	\$475.00	2.00	\$950.00	Various email exchanges with opposing counsel regarding motion of Xela; review and respond to various emails from Bennett Jones team; review and consider notice of motion; email exchange with client team.
SEB	02/01/20	\$625.00	0.90	\$562.50	Review Florida court docket and update tracking memo; emails from A. Almengor; email from Stewart McKelvey; email from Cambridge LLP; emails from G. Gopinath
SLG	02/01/20	\$850.00	0.20	\$170.00	Review notices served and available dates for attending hearing
KBP	02/01/20	\$525.00	1.60	\$840.00	Review and consider emails from Xela's counsel; various email exchanges with client; draft response to Xela's counsel; review and consider notice of motion; email exchange with working group.
SEB	03/01/20	\$625.00	0.20	\$125.00	Email from A. Almengor; email from G. Gopinath
KBP	03/01/20	\$525.00	0.70	\$367.50	Review and consider various emails from Xela's counsel regarding scheduling motion; review and respond to email from client side.
SEB	06/01/20	\$625.00	0.10	\$62.50	Email from Stewart Mckelvey
KBP	06/01/20	\$525.00	1.50	\$787.50	Review and consider notice of motion and motion record of Cambridge LLP; email exchanges with counsel; attend call with client to discuss same; email exchange with S. Zweig.
SEB	07/01/20	\$625.00	0.30	\$187.50	Email from Cambridge LLP; emails from and to K. Plunkett

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	07/01/20	\$850.00	0.30	\$255.00	Discussion with K. Plunkett re motion and discharge of receiver
KBP	07/01/20	\$525.00	1.10	\$577.50	Attend various calls with client team to discuss upcoming scheduling motion; review and consider materials and discuss same with client; review and consider letter from Torys.
SEB	08/01/20	\$625.00	3.30	\$2,062.50	Emails from and to and discussion with K. Plunkett; draft letter to Cambridge LLP; emails from and to B. Kofman; email from N. Goldstein; emails from Cambridge LLP
KBP	08/01/20	\$525.00	2.10	\$1,102.50	Review and prepare for call with Bennett Jones team; review and consider materials in preparation for scheduling motion.
SEB	09/01/20	\$625.00	0.30	\$187.50	Emails from K. Plunkett; email from B. Kofman
SLG	09/01/20	\$850.00	0.20	\$170.00	Emails with reps of debtor counsel in receivership
SLG	09/01/20	\$850.00	0.20	\$170.00	Review emails and letter with Cambridge law
KBP	09/01/20	\$525.00	3.00	\$1,575.00	Prepare and attend chambers appointment; attend chambers appointment meeting; review and respond to emails from Cambridge LLP; email to Hatstone.
SEB	10/01/20	\$625.00	1.00	\$625.00	Emails from K. Plunkett; emails from A. Almengor; email from B. Kofman; emails from Cambridge LLP
SRM	10/01/20	\$385.00	0.30	\$115.50	Order, review and report on profile and certificates of status
KBP	10/01/20	\$525.00	2.00	\$1,050.00	Various email exchanges with Cambridge LLP regarding proposed Lisa loan; various emails with Hatstone team regarding changing board of Gabinvest and Lisa SA; review and respond to various emails from client team regarding same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	11/01/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
KBP	11/01/20	\$525.00	1.00	\$525.00	Review and respond to emails from client team regarding Gabinvest and Lisa; email to Hatstone regarding same.
SEB	13/01/20	\$625.00	1.00	\$625.00	Emails from A. Almengor; emails from B. Kofman; emails from and to K. Plunkett; email from G. Gopinath; email from Cambridge LLP
GG	13/01/20	\$295.00	1.10	\$324.50	Conducted inventory of materials on file to ascertain shareholder information for Gabinvest, S.A. and Lisa, S.A.
SLG	13/01/20	\$850.00	0.20	\$170.00	Review emails and letters
KBP	13/01/20	\$525.00	1.10	\$577.50	Review and consider letter from Cambridge LLP; discuss same with client team; email exchanges with Hatstone; review and consider emails from client team;
SEB	14/01/20	\$625.00	2.00	\$1,250.00	Draft letter to Cambridge LLP; discussion with and emails from K. Plunkett; emails to and from B. Kofman
KBP	14/01/20	\$525.00	1.20	\$630.00	Review draft letter response to Cambridge; review and consider emails from Hatstone; email exchanges regarding changing board of subs;
SEB	15/01/20	\$625.00	1.90	\$1,187.50	Emails from and to A. Almengor; emails and discussion with A. Plunkett; emails from B. Kofman
KBP	15/01/20	\$525.00	1.20	\$630.00	Various email exchanges with Hatstone regarding [REDACTED] email exchanges with [REDACTED] working group regarding position of J. Gutierrez; review emails from D. Durkovic.
SEB	16/01/20	\$625.00	1.10	\$687.50	Emails from B. Kofman; emails from and to K. Plunkett; emails from A. Almengor; emails from N. Goldstein; emails from A. Durkovic

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
GG	16/01/20	\$295.00	0.50	\$147.50	Summarized status of ongoing Panamanian proceedings for K. Plunkett
SLG	16/01/20	\$850.00	0.30	\$255.00	Review emails on A. Durkovic
KBP	16/01/20	\$525.00	2.00	\$1,050.00	Review and respond to various emails from client team regarding response to Cambridge and D. Durkovic; draft letter response; review and respond to emails from Hatstone team; attend call with B. Kofman and S. Zweig.
SEB	17/01/20	\$625.00	2.60	\$1,625.00	Draft letter to Amsterdam and Partners; phone calls and emails from and to K. Plunkett; emails from P. O'Shea; emails from and to B. Kofman; email from A. Almengor; emails from J. Woychedhyn; email from A. Durkovic; email from Bennett Jones
KBP	17/01/20	\$525.00	2.00	\$1,050.00	Finalize letter response the A. Durkovic and circulate same; email exchanges with Hatstone regarding [REDACTED] email exchanges with working group regarding same.
SEB	20/01/20	\$625.00	0.20	\$125.00	Email from K. Plunkett; email from A. Almengor
ASB	20/01/20	\$430.00	0.20	\$86.00	Discussion with K. Plunkett regarding resolutions to change directors of subsidiaries
KBP	20/01/20	\$525.00	0.70	\$367.50	Review and consider emails from Hatstone; email exchange with client team regarding updates on board changes.
KBP	21/01/20	\$525.00	0.60	\$315.00	Review and respond to emails from client regarding board resolutions; attend call with N. Goldstein to discuss Barbados and other matters relating to reviewable transactions.
KBP	22/01/20	\$525.00	1.00	\$525.00	Review and respond to emails from client team regarding [REDACTED] [REDACTED] email exchange with

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Hatstone regarding same; attend call with N. Goldstein.
SEB	23/01/20	\$625.00	0.20	\$125.00	Email from and discussion with K. Plunkett
KBP	23/01/20	\$525.00	1.20	\$630.00	Review and consider emails from Hatstone; attend call with N. Goldstein to discuss [REDACTED]; attend call with client team to discuss [REDACTED]
KBP	24/01/20	\$525.00	0.70	\$367.50	Attend call with client team; review and consider various email exchanges between client and Hatstone team.
KBP	28/01/20	\$525.00	0.40	\$210.00	Review and consider emails from Hatstone team; review and respond to emails from client team regarding updates on Panama proceedings.
TOTAL:			76.80	\$39,988.00	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	23.40	\$614.49	\$14,379.00
Gaurav Gopinath (GG)	9.50	\$295.00	\$2,802.50
Kyle B. Plunkett (KBP)	41.40	\$505.31	\$20,920.00
Steven L. Graff (SLG)	2.00	\$842.50	\$1,685.00
Shannon R. Morris (SRM)	0.30	\$385.00	\$115.50
Aaron S. Bains (ASB)	0.20	\$430.00	\$86.00

OUR FEE \$39,988.00
 HST at 13% \$5,198.44

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Due Diligence-Gov Fee \$8.00

Subject to HST

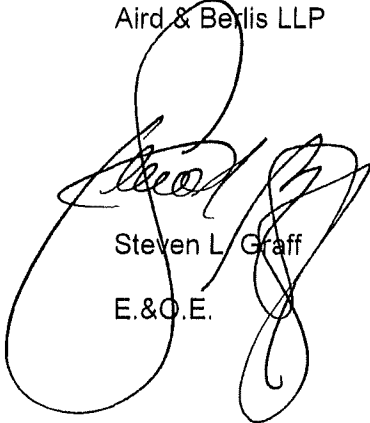
Travelling Expenses	\$9.30
Long Distance Charges	\$25.35
Photocopies - Local	\$13.25
Binding and Tabs	\$4.75
Certificate of Status	\$38.00
Due Diligence	\$12.00

Total Disbursements	\$102.65
HST at 13%	\$13.34

AMOUNT NOW DUE

\$45,310.43

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

38729614.1

KSV Kofman Inc.
In its capacity as Receiver

January 30, 2020 Account 659588

Lawyer	Call to Bar	2019/2020 average/hr	Total Time	Value
Steven L. Graff	1991	\$842.50	2.00	\$1,685.00
Kyle B. Plunkett	2011	\$505.31	41.40	\$20,920.00
Sam Babe	2004	\$614.49	23.40	\$14,379.00
Aaron Bains	2015	\$430.00	0.20	\$86.00
Articling Student				
Gaurav Gopinth		\$295.00	9.50	\$2,802.50
Stephanie D'Amico		\$295.00	0.60	\$177.00
Banking Clerk				
Shannon Morris		\$385.00	0.30	\$115.50

MARGARITA CASTILLO
Applicant

AND

XELA ENTERPRISES LTD. ET AL
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF FEES

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754, 181 Bay Street
Toronto, Ontario M5J 2T9

Tel: 416.863.1500
Fax: 416.863.1515
Email: kplunkett@airdberlis.com

Kyle B. Plunkett - LSUC No. 61044N

Lawyers for KSV Kofman Inc.

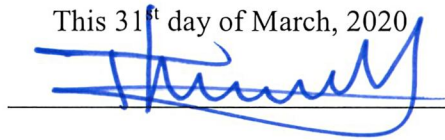
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

This 31st day of March, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc



**Supplement to the Second Report of
KSV Kofman Inc.,
as Receiver and Manager of
Xela Enterprises Ltd.**

March 17, 2020

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Mr. Hals' email dated March 11, 2020	D
First Report	E



COURT FILE NO.: CV-11-9062-00CL

**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

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

SUPPLMENT TO THE SECOND REPORT OF KSV KOFMAN INC.

MARCH 17, 2020

1.0 Introduction and Purpose

1. This report (the "Supplemental Report") supplements the Second Report of the Receiver dated February 18, 2020 (the "Second Report").
2. Capitalized terms used but not defined in this Supplemental Report shall have the meaning provided to them in the Second Report.
3. The purpose of the Supplemental Report is to:
 - a) update the Court on events since the Receiver's last Court attendance on February 21, 2020; and
 - b) recommend that the Court issue an order finding Juan Guillermo in contempt of the Court's Orders issued in these proceedings.

1.1 Restrictions

1. This Report is subject to the restrictions provided in the Second Report.

2.0 February 21 Court Appearance

1. On February 21, 2020, the Receiver scheduled a chambers appointment before Justice McEwen to, *inter alia*, schedule the Receiver's motion seeking certain relief, including approving the Receiver's activities and its fees and disbursements.
2. The chambers appointment was attended by the Receiver and its counsel, A&B, as well as Cambridge and Bennett Jones. At the appointment, the Receiver summarized its Second Report, including advising the Court that Juan Guillermo had been causing the Company's subsidiaries to take actions that are undermining and frustrating the purpose of these proceedings, including, but not limited to, interfering with the Receiver's changes to the boards of directors for each of Gabinvest and Lisa and failing to have Lisa, BDT, Arven, the Trust and ATC comply with the Disclosure Order.
3. The Receiver further advised the Court that if Juan Guillermo continued to frustrate the receivership proceedings, the Receiver intended to bring a motion to find Juan Guillermo in contempt of the Court's Orders.
4. During the chambers appointment, Mr. Justice McEwen advised Cambridge, legal counsel to Juan Guillermo, of the Court's concerns regarding Juan Guillermo's conduct described in the Second Report. Mr. Justice McEwen advised Cambridge to advise Juan Guillermo of the Court's concerns. The Court also scheduled the Receiver's motion to be heard on March 24, 2020. A copy of Mr. Justice McEwen's endorsement dated February 21, 2020 is attached as Appendix "A".

3.0 Events Since the Chambers Appointment

1. As referenced in the Second Report, a meeting was scheduled in Bogota, Columbia on February 21, 2020, the same day as the chambers appointment, between the Receiver's Panamanian counsel, Hatstone and, among others, Mr. Hals, a current director and officer of Lisa, and Juan Guillermo. This meeting was requested by the non-Hatstone members of the Gabinvest and Lisa boards, and agreed to by Hatstone (at the direction of the Receiver) in the hopes of resolving the problems caused by the non-Hatstone board members in response to the changes to those boards made at the direction of the Receiver. At this meeting, Juan Guillermo expressed an interest in settling the dispute with Margarita and requested a subsequent meeting to be held on February 28, 2020 with the Receiver, the Receiver's counsel and Margarita.
2. On February 24, 2020, at the direction of the Receiver, Hatstone emailed Mr. Hals advising that the Receiver was prepared to meet with Juan Guillermo once the Lisa and Gabinvest Boards have been reconstituted on the basis sought by the Receiver. The Receiver also advised that it spoke with Margarita's legal counsel and that she was not interested in meeting. A copy of Hatstone's email is attached as Appendix "B".
3. On February 24, 2020, Mr. Hals responded to Hatstone and alleged, among other things, that Margarita had already been repaid the Judgement Debt. A copy of Mr. Hals' email and a translation of the e-mail from Spanish to English is attached as Appendix "C".

4. On March 3, 2020, Juan Guillermo called Hatstone to advise, *inter alia*, that he, allegedly on behalf of Gabinvest, would not agree to the Gabinvest board changes made by the Receiver and instead proposed a split board comprised of an equal number of appointees by the Receiver and Juan Guillermo. Presently, the Board of Gabinvest is comprised of the Receiver's appointees; however, Hatstone has advised that representatives of the former Board intend to challenge the Receiver's changes.
5. As set out in the Second Report, Juan Guillermo refused to accept the changes made to the Board of Lisa. Between January 30, 2020 and February 4, 2020, Juan Guillermo instructed Panamanian counsel to file a shareholder resolution changing back the board to the prior board, comprised of Mr. Hals, Mr. Hess Jr. and Mr. Shields. These changes have been filed with the Public Registry in Panama and the Public Registry is refusing to recognize the Gabinvest appointees.
6. On March 4, 2020, the Receiver served a motion record seeking, *inter alia*, an order:
 - a) declaring that, unless retained by the Receiver, no person or law firm shall act as counsel to the Company except for the limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Receivership Order, and that neither the Company nor the Receiver shall be liable for the fees and disbursements of any counsel not retained by the Receiver, unless otherwise ordered by the Court; and
 - b) approving and ratifying the shareholder resolution changing the composition of the board passed by Gabinvest's sole shareholder, being the Company.
7. On March 11, 2020, the Receiver was forwarded an email by Hatstone from Mr. Hals which states that Lisa's Board (comprised of the non-Hatstone members) intended to forthwith initiate new criminal proceedings in Panama against Margarita. A copy of the email translated from Spanish to English is attached as Appendix "D".

4.0 Contempt Order

1. For the reasons provided in the Second Report and in Section 3.0 above, Juan Guillermo appears to be directing and representing Lisa, and purporting to direct and represent Gabinvest, notwithstanding that he is not an officer or director of either. Juan Guillermo is also the person directing Cambridge.
2. The Receiver believes that a contempt order is appropriate in the circumstances for the following reasons:
 - a) as of the date of this Report, Juan Guillermo, Lisa, BDT, Arven and the Trust have not provided the information requested by the Receiver under the Disclosure Order.
 - b) Juan Guillermo appears to be closely associated with each of the entities listed in 2(a) above, as detailed in the First Report (provided in Appendix "E", without appendices) and the Second Report, and is communicating with and participating in meetings with Hatstone as the directing mind of both Lisa and Gabinvest;

- c) despite Justice McEwen advising Cambridge at a chambers appointment on January 9, 2020 that he expected fulsome disclosure be provided to the Receiver, Juan Guillermo has refused to provide substantive disclosure concerning the purported Loan that is to be used to repay the Judgement Debt or pursuant to the Disclosure Order, as discussed in the Second Report; and
 - d) Juan Guillermo continues to instruct and direct the foreign subsidiaries to take steps that undermine these proceedings, including the steps taken by the Receiver and Gabinvest to reconstitute the boards of Gabinvest and Lisa.
3. Accordingly, the Receiver sees no option but to recommend that the Court find Juan Guillermo in contempt of Court and that he be appropriately sanctioned.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.0 (3)(b) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”

COUNSEL SLIP

COURT FILE

NO.: CV-11-00009062-00CL

DATE: FEB 21 2020

NO. ON LIST 3

TITLE OF
PROCEEDING

CASTILLO

v.

XELA ENTERPRISES LTD et al.

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

Kyle B. Plunkett
↳ Aird & Berlis LLP
↳ T: 416-865-3406
↳ E: kplunkett@airdberlis.com

PHONE _____
FAX _____
EMAIL _____

COUNSEL FOR:

- DEFENDANT(S)
- RESPONDENT(S)

↳ Counsel to Receiver

PHONE _____
FAX _____
EMAIL _____

JUDICIAL NOTES:

JEFFREY LEON + Sean Zwarg
BENNETT JONES LLP
T 416 777 7472
leonj@bennettjones.com
for MARGARITA CASTILLO

CHRIS MACLEOD
N. JUAN KASOZI
CAMBRIDGE LLP
jkasoz@cambridgellp.com
for Xela Enterprises Ltd
P: 416 477 7007
F: 289 812 7385

21 Feb 20²⁰

Motion to be heard by me on March 24/20
90 mins ^{PM} ~~AM~~ confirmed. If matters become urgent
the case may return before me in the interim
on 2 days notice

MELETT

Appendix “B”

From: Carl O'Shea <carl.oshea@hatstone.com>

Date: Monday, 24 February 2020 at 09:01

To: Harald Johannessen | L <H_Johannessen@granadavalley.com>, Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Xela - Settlement meetings

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

During the meeting we discussed the role and authority of the Receiver. As part of its role, the Receiver is responsible for understanding and securing the assets of Xela for the benefit of all of its stakeholders. The Receiver has been trying to do this, but has so far been prevented from doing so in relation to the two Panama companies, Gabinvest S.A and Lisa S.A.

The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

Of course, should a full and final settlement be concluded, then the board can then be changed as you wish.

Consideration will need to be given to whom shall replace AFRA as resident agent of the two companies following its resignation. The Receiver would like Hatstone to provide this role. Again, the resident agent can be replaced with a party of your choosing when a settlement is concluded.

As we discussed and agreed at the meeting, for the purposes of trying to settle this matter, we need to focus on an amount which is acceptable to both sides and try as best as possible to put aside the history. The Receiver is willing to consider any reasonable amount you would like to put forward together with a clear deadline for payment. As noted, the Receiver is appointed over Xela for the benefit of all stakeholders, not just Margarita. If you would like to propose a figure prior to the Friday meeting then please kindly do so.

At the same time we held a meeting in Bogota a meeting was held at Chambers before Justice McEwen. I am sure the serious content of that meeting has been communicated to Juan and he is aware that a court date has been set for 24 March (or earlier, if necessary).

In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could be agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea

Group Partner

Jersey T +44 1534 761 180 M +44 7700 326 852

Panama T +507 830 5300 M +507 6501 8530



BVI | JERSEY | LONDON | MALTA | PANAMA | SOUTH AFRICA

www.hatstone.com

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The Hatstone Group is comprised of Hatstone Lawyers, Hatstone Listing Services Limited, Hatstone Abogados, Hatstone Lawyers UK Limited and other associated entities.

Hatstone Lawyers UK Limited's registered office: 2nd Floor, 6 Caledonia Place, St Helier, Jersey, JE2 3NG. Hatstone Lawyers UK Limited is a Jersey limited liability company with registered number 122279. Its solicitors are independently authorised and regulated by the Solicitors Regulation Authority (ID number 569029).

Appendix “C”

From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: February 24, 2020 at 14:41:49 EST
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Cc: Carl O'Shea <carl.oshea@hatstone.com>
Subject: Xela - Settlement meetings

Guatemala, febrero 24 de 2020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día de hoy debo realizar las siguientes precisiones:

- El receiver debe de velar por los intereses de XELA y no exclusivamente por los intereses de la Señora Margarita Castillo, como ha sido el caso hasta la fecha.
- En desarrollo de la reunión en mención la firma HATSTONE, quedo debidamente informado que el mayor acreedor de LISA S.A., es la sociedad BDT INVESTMENTS.
- Que hoy en día se cuenta con la suficiente información para afirmar y probar que la señora Margarita ya fue pagada en su totalidad. Es obligación del receiver estudiar los documentos que así lo acreditan.
- Respecto de las acciones arbitrariamente desplegadas por ustedes a fin de recomponer la directiva de LISA y GABINVEST, se cometieron actos arbitrarios e ilegales a saber:

El nombramiento realizado por la Corte de Ontario, establece claramente dos situaciones:

1. El Recevier Appointment fue otorgado a KSV Kofman Inc., es decir que ÚNICAMENTE, la entidad KSV Kofman Inc, puede en nombre del Deudor (Xela Enterprises, Ltd) actuar como Administrador Judicial (Receiver) de los bienes, activos, propiedades del Deudor.

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional

necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

Es decir, que el nombramiento del Administrador Judicial, es ejecutado en cumplimiento con una norma legal aplicable únicamente en la República de Canadá, y para que la misma sea ejecutada fuera del ámbito territorial de dicha corte, el Administrador Judicial nuevamente, debe cumplir con las normas de derecho internacional aplicables al caso, y que una autoridad con facultad y jurisdicción dentro de la República de Panamá, emita la orden que permita al Administrador Judicial ejecutar sus atribuciones.

Sumado a lo manifestado en precedencia, los artículos de incorporación de las sociedades LISA y GABINVEST, son claros en los requerimientos que se deben dar para el cambio de directores, procedimiento que fue ignorado por la sociedad HATSTON, quien a su saber y entender consideró que bastaba con una orden del Receiver.

Ambas limitaciones las encontramos contenidas y sostenidas, bajo el amparo factico-jurídico, de que, aunque Xela Enterprises, sea la beneficiaria final de las entidades GABINVEST, S.A. y LISA, S.A., cada una de éstas son personas jurídicas distintas, con domicilios y regulaciones distintas, por lo que cumplir con las formalidades tanto intrínsecas como extrínsecas resulta eminentemente necesario para darle validez a los actos que el mismo Administrador Judicial contempla realizar.

No obstante, lo anterior todas las partes continúan con un ánimo conciliatorio, siempre y cuando la firma HATSTONE, cuente con un poder y/o mandato debidamente constituido bajo las leyes de la República de Panamá.

Sin otro particular

Harald Johannessen
Director - Presidente
Lisa, S.A.

El 24/02/2020, a la(s) 08:03, Carl O'Shea <carl.oshea@hatstone.com> escribió:

Dear Harald

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In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could be agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea

Group Partner

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<image001.png>

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Sirs:

HATSTONE

Att'n. Lic. Álvaro Almengor

Ref E-mail of February 24 of 2020

Dear Sirs, with respect to your email of today, I should make the following clarifications:

- The receiver should look out for the interests of XELA and not exclusively for the interests of Ms. Margarita Castillo, as has been the case up until now.
- In the development of the aforementioned meeting, the company HATSTONE was duly informed that the major creditor of LISA, S.A. is the company BDT INVESTMENTS.
- That today there is enough information to affirm and prove that Ms. Margarita was already completely paid. It is the obligation of the receiver to study the documents accrediting this.
- With respect to the actions arbitrarily undertaken by you to restore the board of LISA and GABINVEST. Arbitrary and illegal acts were committed, to wit:

The appointment undertaken by the Ontario Court clearly establishes two situations:

1. The receiver appointment was granted to KSV Kofman Inc., that is, ONLY, the company KSV Kofman Inc., may in the name of the Debtor (Xela Enterprises, Ltd) act as the legal administrator (receiver) of the assets, properties of the Debtor.

With the foregoing, we find a clear LIMITATION of action of Mr. Alvaro Almengor, representing the forensic company HATSTONE ABOGADOS [Lawyers], to have authority over the assets of the Debtor in Panama. For this legal scenario to have had the hoped for results, the Legal Administrator who was named, had to have complied with the necessary rules of international law for his/her appointment to be valid in the Republic of Panama. Since the firm HATSTONE ABOGADOS and its representatives have lack of active legitimacy to be able to act on behalf of the Legal Administrator. This is a situation which persists to this day.

2. The Receiver Appointment clearly establishes that this appointment is executed pursuant to 101 of the Courts of Justice, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

That is, the appointment of the Legal Administrator is executed in fulfillment with the legal regulation which is only applicable in the Republic of Canada, and for this to be executed outside of the national territory of this court, the Legal Administrator once again, must comply with the rules of international law applicable to the case, and that an authority with the powers and jurisdiction within the Republic of Panama issue an order permitting the Legal Administrator to execute its arbitrations.

In addition to the foregoing, the articles of incorporation of the companies LISA and GABINVEST, are clear in the requirements necessary for the change of directors; this procedure was ignored by the HATSTONES company, which according to their knowledge and understanding thought it was enough with an order from the Receiver.

We find both limitations contained and substantiated, under the factual-legal *amparo*, that even if Xela Enterprises is the ultimate beneficiary of the companies GABINVEST, S.A. and LISA, S.A., each one of these are legal entities, with registered addresses and different regulations; so that, to comply with both intrinsic and extrinsic formalities, it becomes eminently necessary to give validity to the acts that the Legal Administrator itself contemplates undertaking.

Notwithstanding the foregoing, the parties continue with a conciliatory spirit, as long as the firm HATSTONE, counts with the power and/or mandate duly constituted under the laws of the Republic of Panama.

With no other matter at hand

Harald Johannessen
Director - President
Lisa, S.A.

Appendix “D”

From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Sent: March 9, 2020 5:59 PM

To: alvaro.almengor@hatstone.com

Subject: Correo electrónico de febrero 24, 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Respetados señores, como quiera que transcurrido el tiempo necesario y a la presente no se ha recibido respuesta sobre la solicitud de análisis de los pagos hechos por VILLAMOREY S.A. a la señora Margarita Castillo con dividendos de propiedad de LISA S.A., procedimos a presentar QUERELLA PENAL, con el objetivo de que sean las autoridades quien establezcan la veracidad del mismo. Adjunto a este correo copia de la misma.

He sido informado por el señor Juan Guillermo Gutiérrez, que usted manifiesta no tener conocimiento de las sentencias que en Panamá favorecen los intereses de LISA S.A., en los litigios en contra de la Sociedad VILLAMOREY S.A., he ordenado que dichas sentencias sean entregadas a usted de manera FORMAL el día de mañana.

Sin otro Particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

English Translation

Álvaro Almengor,

Respected gentlemen, as the necessary time has elapsed and no response has been received to the request for the analysis of payments made by VILLAMOREY S.A. To Margarita Castillo with dividends owned by LISA S.A., we proceeded to present this criminal charge, with the aim that the authorities establish the veracity of it. Attached to this email is a copy of it.

I have been informed by Mr. Juan Guillermo Gutiérrez, that you state that you are not aware of the judgments that in Panama favor the interests of LISA SA, in the litigation against the VILLAMOREY SA Company, I have ordered that said judgments be delivered to you formally tomorrow.

Appendix “E”



**First Report of
KSV Kofman Inc.
as Receiver and Manager of Xela Enterprises Ltd.**

October 17, 2019

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COURT FILE NO.: CV-11-9062-00CL

**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

**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.
FIRST REPORT OF KSV KOFMAN INC.**

OCTOBER 17, 2019

1.0 Introduction

1. On January 18, 2011, Margarita Castillo ("Margarita") commenced an application in the Ontario Superior Court of Justice (the "Court") seeking, among other things, relief against her now-deceased father, Juan Arturo Gutierrez ("Juan Arturo"), and her brother, Juan Guillermo Gutierrez ("Juan Guillermo"), in her capacity as a director of Tropic International Limited ("Tropic"), a wholly-owned subsidiary of Xela Enterprises Ltd. (the "Company").
2. Pursuant to a judgement issued by the Court on October 28, 2015, the Company, Juan Guillermo and Juan Arturo, became jointly obligated to pay Margarita approximately \$5 million, plus interest and costs (the "Judgment Debt").
3. Margarita, through an Alberta company, also owns preference shares in the Company with a face amount of approximately \$14 million. The Alberta company continues to own these shares.
4. On January 15, 2019, Margarita made an application to the Court for, among other things, the appointment of KSV Kofman Inc. ("KSV") as receiver and manager of the Company (the "Receiver") pursuant to Section 101 of the *Court of Justices Act* (Ontario). The Receiver understands that the present balance owing under the Judgment Debt is approximately \$4.1 million, plus interest and costs which continue to accrue.

5. In response to Margarita's application, the Company filed an application for protection under the *Companies' Creditors Arrangement Act* ("CCAA") on June 17, 2019.
6. On July 5, 2019, the Court dismissed the CCAA application and appointed KSV as Receiver. A copy of the receivership order is attached as Appendix "A" (the "Receivership Order").
7. The Company is the parent company of more than two dozen subsidiaries, located predominantly in Central America, that carry or carried on business in the food and agricultural sectors. Most of these businesses have been discontinued, are no longer operating or, as discussed in this report ("Report"), were conveyed to the ARTCARM Trust (the "Trust"), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo's children. The Trustee of the Trust is Alexandria Trust Corporation ("ATC").
8. Presently, the Company's most significant asset is its indirect one-third interest in a group of successful family-owned vertically integrated poultry businesses operating in Central America referred to as the "Avicola Group". The Company's interest in the Avicola Group is held as follows:
 - a) 25% through its wholly owned indirect subsidiary, Lisa, S.A. ("Lisa"), a Panamanian holding company; and
 - b) 8.3% through Villamorey S.A. ("Villamorey"), a Panamanian holding company¹.Attached as Appendix "B" is the Company's present corporate organizational chart.²
9. Dionisio Gutierrez Sr., Isabel Gutierrez de Bosch and their children (collectively, the "Cousins") are believed to own the remaining two-thirds of the Avicola Group through entities they own, including the remaining two-thirds of Villamorey.
10. Margarita, Juan Guillermo and the Cousins have been litigating for decades, primarily related to shareholder disputes involving the Avicola Group (the "Avicola Litigation").
11. As of mid-2018, the Company and Lisa had received approximately \$43 million and US\$57 million, respectively, from BDT, Arven and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA ("PAICA"), to assist them to fund the Avicola Litigation.
12. The Receiver understands that prior to April 2016, Empress Arturo International ("EAI"), a Barbados company and a wholly owned subsidiary of the Company, directly and indirectly owned and operated the "Arturos" restaurant business in Venezuela through BDT and Arven. The Receiver has been advised by Juan Guillermo that the Arturos restaurant chain is still operating and that BDT and Arven are now owned by the Trust.

¹ Villamorey owns 25% of the Avicola Group, of which the Company has an indirect one-third ownership interest.

² The Company's corporate organizational chart does not show the Villamorey interest in the Avicola Group; however, the Receiver understands based on court pleadings and its conversations with Juan Guillermo that Villamorey owns a 25% interest in the Avicola Group.

13. The effect of the transactions discussed in this Report (the transactions are defined below as the EAI Transaction and the Assignment Transaction) was to transfer from the Company to the Trust all or the majority of the potential value of the Avicola Litigation and the Arturo business (owned by BDT and Arven) to Juan Guillermo's children as beneficiaries of the Trust.

1.1 Purposes of this Report

1. The purposes of the Report are to:
 - a) provide background information concerning the Company;
 - b) discuss the Receiver's concerns regarding:
 - i. the sale, conveyance or transfer in early 2016 by EAI of the shares of BDT and Arven to Juan Arturo, and then from Juan Arturo to the Trust (the "EAI Transaction"); and
 - ii. the assignment in January 2018 by Lisa of the proceeds from the Avicola Litigation to BDT (the "Assignment Transaction");
 - c) recommend that the Court issue an order:
 - i. requiring each of BDT, Arven, the Trust and ATC, the directors of EAI and any other person with information concerning the EAI Transaction, to deliver such information to the Receiver, including any and all documentation related to the EAI Transaction;
 - ii. requiring each of Lisa, BDT, the Trust and ATC and any other person with information concerning the Assignment Transaction to deliver such information to the Receiver, including any and all documentation related to the Assignment Transaction;
 - iii. sealing Confidential Appendices "1" and "2" pending the issuance of a further order of the Court unsealing the Confidential Appendices;
 - iv. approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP ("A&B"), arising for the periods referenced in the attached fee affidavits; and
 - v. approving this Report and the Receiver's activities, as described herein.

1.2 Currency

1. All references to currency in this Report are in Canadian dollars unless otherwise stated.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the books and records of the Company, materials filed in the Avicola Litigation, discussions with representatives of the Company and discussions with Margarita. The Receiver has also relied upon answers to questions it submitted to Juan Guillermo and on the information provided by Juan Guillermo during meetings between him and the Receiver and their respective legal counsel.
2. The Receiver has also relied upon the Examination of Juan Guillermo held on June 26, 2019 (the "Examination") and the related Answers to Undertakings, Advisements and Refusals from the Examination (the "Examination Undertakings"). Copies of the Examination and Examination Undertakings are attached hereto as Appendices "C" and "D", respectively.
3. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
4. This Report provides an update relating to these receivership proceedings and support for the relief to be sought by the Receiver at its motion returnable October 29, 2019. This Report should not be relied upon for any other purpose. The Receiver expresses no opinion or other form of assurance with respect to the financial and other information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the financial information should perform its own diligence.

1.4 Receivership Materials

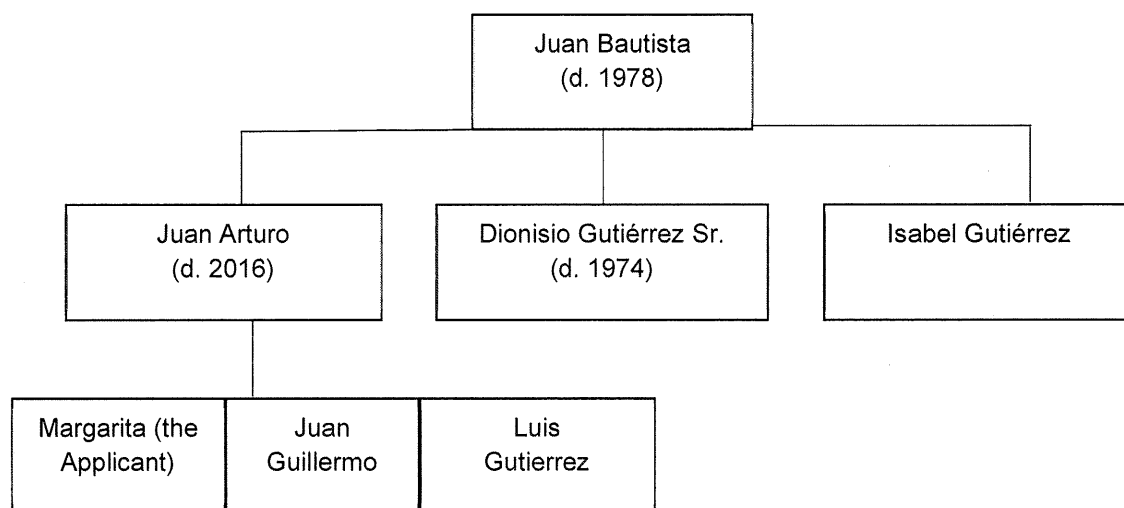
1. All materials filed in the receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

2.0 Executive Summary

1. As a result of the EAI Transaction (i.e. the sale, transfer or conveyance of the shares of each of BDT and Arven to the Trust) and the Assignment Transaction, the majority of the economic interest in the Company has been transferred from the Company to the Trust, the beneficiaries of which are Juan Guillermo's children. The EAI Transaction and the Assignment Transaction were completed at a time when Juan Guillermo was litigating with Margarita. While the Receiver has not completed its review of the EAI Transaction and the Assignment Transaction because several information requests made of Juan Guillermo and others remain outstanding, it is apparent that Juan Guillermo had (and has) several conflicts of interest related to these transactions, including that his children will benefit from them if there is a recovery by Lisa on the Avicola Litigation. Juan Guillermo appears to be leading the Avicola Litigation on behalf of Lisa, notwithstanding he is not an officer or director of that company.
2. As the Receiver is continuing to review the EAI Transaction, the Assignment Transaction and other matters related to these proceedings, the Receiver is of the view that any settlement of the Avicola Litigation and/or the sale of the Company's interests in Avicola Group should require consultation with the Receiver and approval of the Court.

3.0 Background

1. Juan Bautista Gutierrez ("Juan Bautista") was the patriarch of the Gutierrez family and the founder of the Avicola Group. A condensed family tree is provided below:



2. The Avicola Group is based in Guatemala. The Avicola Group carries on a large and successful poultry business in Central America.
3. The Receiver understands that in 1978, Juan Bautista conveyed his interest in the Avicola Group equally to his three children, Juan Arturo, Dionisio Gutierrez Sr. and Isabel Gutierrez. Juan Arturo's interest in the Avicola Group was indirectly held by the Company through Lisa.
4. A dispute arose in 1998 as to whether the Cousins were concealing the Avicola Group's financial results from Lisa. The Avicola Group has not paid dividends to Lisa since that time. The Receiver understands that Lisa is presently involved in over 100 lawsuits with the Cousins in multiple jurisdictions, including Canada, the State of Florida, Panama and Guatemala with respect to, among other things, dividends totalling approximately US\$360 million³ owing to Lisa and Villamorey from the Avicola Group.

3.1 The Company

1. The Company is a holding company incorporated in Canada. The Company's major shareholders include members of Juan Arturo's family.⁴ Juan Guillermo is a director and the President of the Company.
2. The Company has six wholly owned subsidiaries, as detailed below.

Subsidiary	Jurisdiction	Status
Gabinvest, S.A.	Panama	Owens Lisa, which holds the Avicola Group Interest
Xela International Inc.	Canada	Inactive
Tropic International Ltd.	Canada	Inactive
Empress Arturo International	Barbados	See Section 4
Xela Global Resources	Canada	Inactive
Boucheron Universal Corp.	Panama	Inactive

³ Paragraph 121 of the Examination.

⁴ As reflected in the Affidavit of Juan Guillermo sworn June 17, 2019 in support of the CCAA application (the "Guillermo Affidavit").

3. The Company's most recent financial statements were prepared as of May 31, 2018. A summary of the Company's unaudited and unconsolidated⁵ balance sheet as of that date is provided below⁶:

(unaudited; \$000s)	
Assets	
Investments	270
Advances to related parties	22,485
Total assets	<u>22,755</u>
Liabilities	
Accounts payable and other current liabilities	9,459
Due to shareholders	671
Due to related parties	72,944
Total liabilities	<u>83,075</u>
Equity	<u>(60,319)</u>
Total liabilities and equity	<u>22,755</u>

4. As reflected above, as at May 31, 2018, the Company had significant liabilities owing to related parties. A summary of these balances as at May 31, 2018 is provided below:

(unaudited; \$000s)	Amount	Status
BDT	24,194	See Section 4 below
Badatop Holdings Inc.	21,884	Inactive
PAICA	11,835	See Section 4 below
Arven	6,508	See Section 4 below
Other	8,523	Inactive
Total due	<u>72,944</u>	

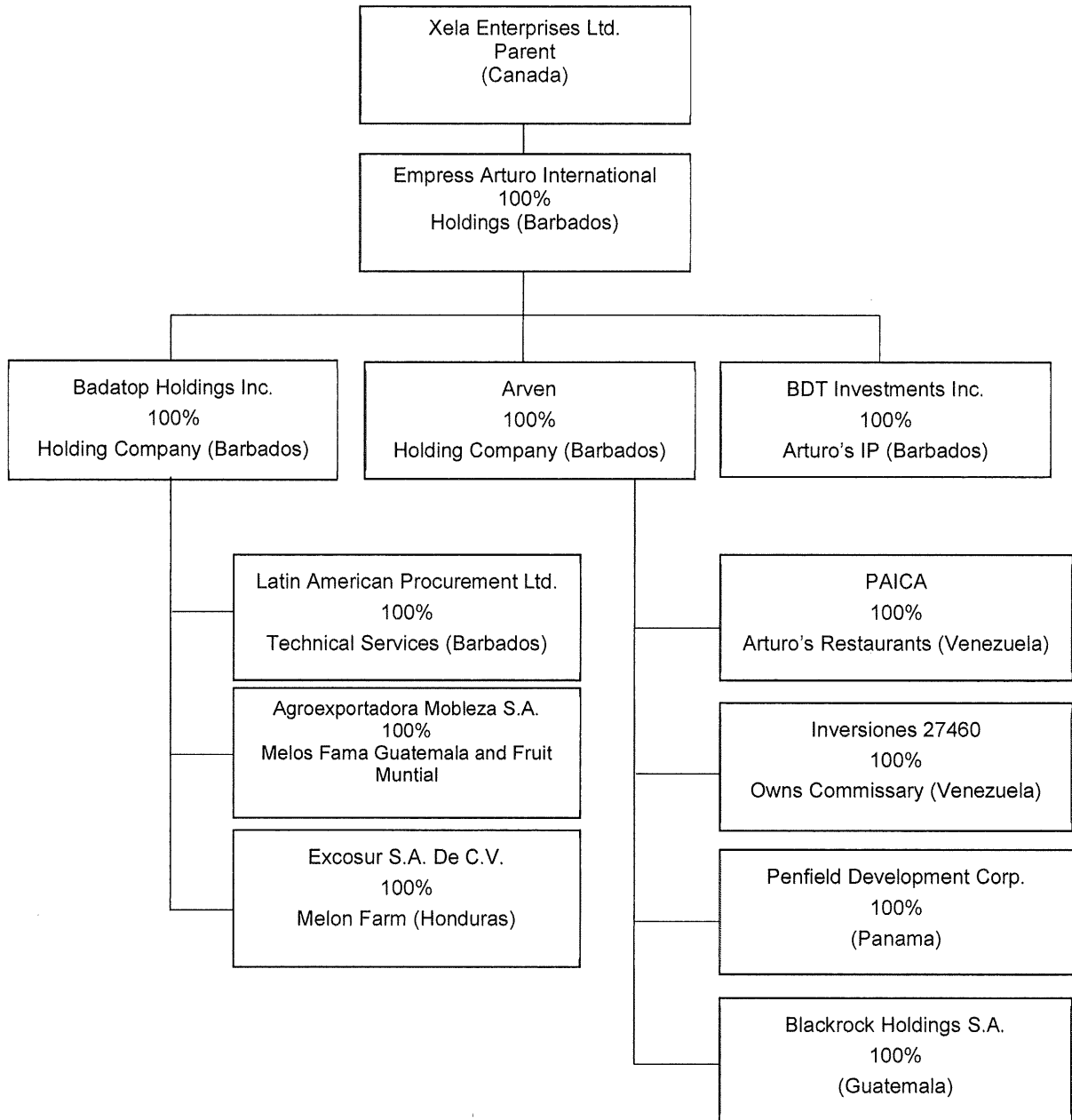
⁵ The Company has not provided consolidated financial statements.

⁶ The Company's financial statements exclude the debt owing to Margarita.

4.0 EAI Transaction and Assignment Transaction

4.1 EAI Transaction

1. The Company is the sole shareholder of EAI. At the time of the EAI Transaction, Juan Guillermo was a Director of EAI and its President.
2. BDT and Arven were subsidiaries of EAI prior to April 2016. The corporate chart for EAI prior to the EAI Transaction is reflected below.



3. The Receiver understands that BDT owns the intellectual property used by “Arturos”, a chain of 90 fast food chicken restaurants operating in Venezuela. The Arturos restaurants are owned by PAICA, a Venezuelan entity which is wholly owned by Arven. PAICA pays royalties and service fees to BDT.
4. The Receiver understands that BDT, Arven and PAICA have a history of profitability. Juan Guillermo has advised that the Arturos business has suffered in recent years due to the political and economic situation in Venezuela. The Receiver understands that BDT, Arven and PAICA have collectively advanced a total of approximately USD\$57 million to Lisa and \$43 million to the Company to fund the Avicola Litigation as of the dates reflected in the table below.

(unaudited; \$000s)	Company (CAD) (as at May 31, 2018)	Lisa (USD) (as at June 30, 2018)	Total
BDT	24,194	47,076	71,270
Arven	6,508	12,727	19,235
PAICA	11,835	(2,913)	8,922
	42,537	56,890	99,427

5. According to information provided to the Receiver by Juan Guillermo, at the time of the EAI transaction (around April 2016), EAI owed Juan Arturo approximately US\$9 million on account of loans purportedly advanced by Juan Arturo to EAI. To date, the Receiver has not been provided with any evidence of advances by Juan Arturo to EAI despite the Receiver’s requests for this evidence.
6. The Receiver has been advised by Juan Guillermo that EAI was unable to repay the amounts owing to Juan Arturo and, as a result, EAI conveyed the shares of BDT and Arven to Juan Arturo for US\$6.5 million⁷ in partial satisfaction of EAI’s obligation to him. The Receiver understands from Juan Guillermo that the balance of the debt remains outstanding.
7. The Receiver has been further advised by Juan Guillermo that Juan Arturo subsequently transferred the BDT and Arven shares he acquired from EAI to the Trust. The effect of the EAI Transaction was to remove the shares of BDT and Arven from the Company’s organization and to transfer them to the Trust. The Receiver is concerned that the consideration paid by Arturo for the shares of BDT and Arven may not have reflected the value of the Arturos’ business, nor that sufficient value was attributed to the receivables owing by Lisa and the Company to BDT, Arven and PAICA.
8. Juan Arturo died in June 2016. Juan Guillermo advises that: (a) he only learned of the sale, transfer or conveyance of the shares in BDT and Arven to the Trust from his father just prior to father’s death; (b) he has no information concerning the Trust or the details of the EAI Transaction; and (c) he is not presently involved in the business and operations of either of BDT and/or Arven.

⁷ Comprised of US\$3.75 million for the shares of BDT and US\$2.75 million for the shares of Arven.

9. Juan Guillermo provided the Receiver with valuations of BDT and PAICA⁸ (the “Valuations”) in the context of the EAI Transaction. Copies of the Valuations are attached hereto as Confidential Appendix “1”. The Receiver’s concerns with the Valuations are provided in Confidential Appendix “2”.
10. The Receiver has the following additional concerns with respect to the EAI Transaction:
 - a) BDT, Arven and PAICA have advanced tens of millions of dollars to Lisa to fund its costs (and the Receiver understands that they continue to fund, or are prepared to continue to fund, Lisa’s litigation); however, it is unclear to the Receiver why EAI decided not to use the cash flow generated by these entities to repay the amounts EAI owed to Juan Arturo. This could have been done through payment of a dividend from some or all EAI’s subsidiaries to EAI; and
 - b) it is unclear how the Boards of Directors of each of the Company and EAI satisfied themselves as to the value of BDT and Arven, including the receivables owing from Lisa. It is also unclear whether the Boards of the Company and EAI had separate legal counsel when completing the EAI Transaction, and the extent of Juan Guillermo’s participation in the EAI Transaction.
11. Based on the foregoing, the Receiver requires additional information from each of BDT, Arven, and ATC to further investigate the EAI Transaction⁹. The Receiver recommends that the Court issue an order requiring these and any other party with information concerning the EAI Transaction to provide all such information to the Receiver forthwith, so that the Receiver can complete its review of the transaction.
12. In the interim, as EAI is incorporated in Barbados, the Receiver has engaged local counsel in Barbados.

4.2 Assignment Transaction

1. In January 2018, BDT sought additional consideration from Lisa for amounts advanced, or to be advanced, by BDT to Lisa to fund the Avicola Litigation. Pursuant to the Assignment Agreement, BDT agreed to fund Lisa’s costs in the Avicola Litigation, provided Lisa assign its interest in the Avicola Litigation to BDT. BDT agreed to pay Lisa 30% of the net litigation proceeds, after deducting costs and the repayment by Lisa of any amounts owing to BDT. A copy of the Assignment Agreement is attached as Appendix “E”.

⁸ The BDT valuation was prepared by Deloitte LLP. The PAICA valuation was prepared by Lara Marambio & Asociados, which is a subsidiary of or related to Deloitte LLP.

⁹ The Receiver has requested details regarding the Trust, including a copy of the Trust Agreement and the names of the law firms that represent the Trust. Juan Guillermo has advised the Receiver that ATC will not provide any information concerning the Trust.

2. The effect of the Assignment Transaction is to transfer further recoveries from the Avicola Litigation to BDT. At the time of the Assignment Transaction, Lisa owed BDT approximately \$47 million. The Receiver understands that the amounts advanced from BDT to Lisa since the date of the Assignment Agreement are insignificant¹⁰. Accordingly, it is unclear whether Lisa received any consideration for entering into the Assignment Agreement. If the litigation is settled in the near term, BDT will receive a windfall despite making no material additional advances to Lisa to fund the Avicola Litigation since the date of the Assignment Agreement.
3. The Receiver is concerned, again, that Juan Guillermo is conflicted as President of the Company, a director of the Company and the father of the beneficiaries of the Trust (who stand to benefit from the Assignment Transaction).

4.3 Confidential Appendices

1. Torys LLP (“Torys”), which is acting as counsel to the Company (but not to the Receiver) required that the Receiver sign a Non-Disclosure Agreement in order to be provided with a copy of the Valuations. Accordingly, the Receiver respectfully requests that the Valuations be filed with the Court on a confidential basis and be sealed as the documents contain confidential information and are currently subject to confidentiality restrictions as ordered by the Court under the Receivership Order. In the circumstances, the Receiver is of the view its concerns with the Valuations should also be subject to the confidentiality provisions as they reference the Valuations. The Receiver is not aware of any party that will be prejudiced if the information in the Confidential Appendices is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

5.0 Receivership Order – Clarification re Paragraph 4

1. Pursuant to paragraph 4 of the Receivership Order, the Receiver is not permitted to, among other things, take steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Company and its subsidiaries and/or affiliates and any third party until December 31, 2019 or such other date as the Court may order.
2. The Avicola Group presently represents substantially all the Company’s value and currently is the only potential source of recoveries for the Company’s stakeholders. In the circumstances, the Receiver is of the view that it should be consulted with respect to any settlement or transaction negotiated by Juan Guillermo, and that any such settlement or transaction must be approved by the Court given Juan Guillermo’s conflicts of interest. The Receiver also believes that Court approval of any settlement or transaction involving the Avicola Group is required until the Receiver can fully investigate the transactions discussed in this Report. The Receiver is of the view that this requirement is not inconsistent with paragraph 4 of the Receivership Order.

¹⁰ According to answer 15 to the undertakings at the Examination, the debt owing by Lisa to BDT is less than \$50 million. An exact amount was not provided in the answers.

3. The Receiver has been advised by Juan Guillermo that he disagrees with the Receiver's position that Court approval is required of any settlement. Despite efforts to bridge the gap between the parties, and to avoid involving the Court, the parties were required to attend before Justice McEwen to request advice and direction in this regard. The Court requested that the Receiver, Margarita and Juan Guillermo provide written submissions by no later than October 25, 2019 outlining their respective interpretations of paragraph 4 of the Receivership Order. This matter is to be determined by the Court at a case conference on October 29, 2019, following the Receiver's motion.

6.0 Professional Fees

1. The fees of the Receiver and A&B are summarized in the table below:

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Jan 7/19 – Aug 31/19	36,763.75	65.92	36,829.67	620.49
A&B	Jan 10/19 – Sept 11/19	42,636.50	852.15	43,488.65	549.44
Total		79,400.25	918.07	80,318.32	

2. Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices "F" and "G", respectively.
3. The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.
4. Funding for these proceedings has been provided by Margarita pursuant to Receiver Certificates. There is presently no source of liquidity in the Company to fund the costs of these proceedings.

7.0 Overview of Receiver's Activities

1. The Receiver's activities in respect of these proceedings include the following:
 - a) familiarizing itself with the status and history of the litigation involving the Company;
 - b) corresponding with A&B concerning all matters in connection with the receivership proceedings;
 - c) preparing the Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
 - d) attending two meetings with Margarita and Bennett Jones;
 - e) attending two meetings with Torys and Juan Guillermo;
 - f) preparing questions for Juan Guillermo, reviewing his responses and sending follow-up questions;

- g) reviewing financial information concerning the Company;
- h) reviewing the EAI Transaction and the Assignment Transaction;
- i) dealing with Torys regarding various matters in these proceedings, including several information requests and the dispute as to whether Court approval is required of any settlement of the Avicola Litigation;
- j) engaging with Barbados and Panamanian counsel to assist the Receiver with a review of the subsidiaries, the Avicola Litigation and the EAI Transaction;
- k) reviewing, commenting and executing a confidentiality agreement between the Receiver and Juan Guillermo; and
- l) corresponding with Stikeman Elliot LLP, Canadian counsel to the Cousins.

8.0 Conclusion and Recommendation

1. As a result of the transactions discussed in this Report, the Receiver is concerned that EAI may have received inadequate consideration when it sold, conveyed or transferred the shares of BDT and Arven to Juan Arturo. In addition to further investigating the EAI Transaction and the Assignment Transaction, further investigation is required into the Valuations of BDT, Arven and PAICA to assess the reasonableness of the consideration paid by Juan Arturo to EAI for the shares of BDT and Arven.
2. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.1(1)(c) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR
JUSTICE MCEWEN

)
)
)

TUESDAY, THE 24TH
DAY OF MARCH, 2020

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

ORDER

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the second report of the Receiver dated February 14, 2020 (the “**Second Report**”) and the activities of the Receiver set out therein; (ii) approving the supplement to the second report of the Receiver dated March 17, 2020 (the “**Supplemental Report**”) and the activities of the Receiver set out therein, and (iii) approving the fees and

disbursements of the Receiver and its legal counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the Second Report and the appendices thereto, the Supplemental Motion Record, including the Supplemental Report, the fee affidavit of Steven Graff sworn February 14, 2020, and the fee affidavit of Noah Goldstein sworn February 18, 2020, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by each of the affidavit of Sam Babe sworn March 4, 2020 and the affidavit of Kyle Plunkett sworn March 17, 2020, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Amended Notice of Motion, the Motion Record and the Supplemental Motion Record is hereby abridged and validated and that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE SECOND REPORT AND THE SUPPLEMENTAL REPORT

2. **THIS COURT ORDERS** that Second Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

3. **THIS COURT ORDERS** that Supplemental Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF GABINVEST RESOLUTION

4. **THIS COURT ORDERS AND DECLARES** that the resolution of the shareholder of Gabinvest S.A., dated January 16, 2020, replacing the directors of Gabinvest S.A., as described in Section 3.0 of the Second Report (the “**Gabinvest Resolution**”), was a proper exercise of the

Receiver's exclusive power and authority, under paragraph 3 of the Order made in these proceedings on July 5, 2019 by which the Receiver was appointed, to exercise the Debtor's shareholder rights. The making of the Gabinvest Resolution by the Receiver is hereby approved without limitation as to third party reliance, notwithstanding the general limitation on reliance in paragraph 2 of this Order.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$107,626.81 (excluding HST) as set out in Appendix "CC" to the Second Report, are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$108,783.09 (excluding HST) as set out in Appendix "DD" to the Second Report, are hereby approved.

GENERAL

7. **THIS COURT ORDERS AND DECLARES** that, unless retained by the Receiver, no person or law firm including, without limitation, Cambridge LLP, is permitted to act as counsel to the Debtor in these proceedings, in any foreign legal proceedings or otherwise, except for the limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Order of this Court made July 5, 2019 by which the Receiver was appointed. Unless otherwise ordered by the Court under Rule 57 of the Rules of Civil Procedure, neither the Debtor nor the Receiver shall be liable for the fees and disbursements of any counsel not retained by the Receiver.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama, Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD. *et al.*

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
Receiver of Xela Enterprises Ltd.*

Tab 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR) TUESDAY, THE 24TH
)
JUSTICE MCEWEN) DAY OF MARCH, 2020
)

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

ORDER

THIS MOTION, made by KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the second report of the Receiver dated February 14, 2020 (the “**Second Report**”) and the activities of the Receiver set out therein; ~~and~~ ~~(ii) approving the supplement to the second report of the Receiver dated March 17, 2020 (the~~ “**Supplemental Report**”) and the activities of the Receiver set out therein, and (iii) approving

the fees and disbursements of the Receiver and its legal counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the Second Report and the appendices thereto, the Supplemental Motion Record, including the Supplemental Report, the fee affidavit of Steven Graff sworn February 14, 2020, and the fee affidavit of Noah Goldstein sworn February 18, 2020, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by each of the affidavit of Sam Babe sworn March 4, 2020 and the affidavit of Kyle Plunkett sworn March 17, 2020, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Amended Notice of Motion ~~and~~ the Motion Record and the Supplemental Motion Record is hereby abridged and validated and that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE SECOND REPORT AND THE SUPPLEMENTAL REPORT

2. **THIS COURT ORDERS** that Second Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

~~3.~~ **THIS COURT ORDERS** that Supplemental Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF GABINVEST RESOLUTION

~~4.~~ ~~3.~~ **THIS COURT ORDERS AND DECLARES** that the resolution of the shareholder of Gabinvest S.A., dated January 16, 2020, replacing the directors of Gabinvest S.A., as described

in Section 3.0 of the Second Report (the “**Gabinvest Resolution**”), was a proper exercise of the Receiver’s exclusive power and authority, under paragraph 3 of the Order made in these proceedings on July 5, 2019 by which the Receiver was appointed, to exercise the Debtor’s shareholder rights. The making of the Gabinvest Resolution by the Receiver is hereby approved without limitation as to third party reliance, notwithstanding the general limitation on reliance in paragraph 2 of this Order.

APPROVAL OF FEES AND DISBURSEMENTS

5. ~~4.~~ **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$107,626.81 (excluding HST) as set out in Appendix “CC” to the Second Report, are hereby approved.

6. ~~5.~~ **THIS COURT ORDERS** that the fees and disbursements of the Receiver’s legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$108,783.09 (excluding HST) as set out in Appendix “DD” to the Second Report, are hereby approved.

GENERAL

7. ~~6.~~ **THIS COURT ORDERS AND DECLARES** that, unless retained by the Receiver, no person or law firm including, without limitation, Cambridge LLP, is permitted to act as counsel to the Debtor in these proceedings, in any foreign legal proceedings or otherwise, except for the limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Order of this Court made July 5, 2019 by which the Receiver was appointed. Unless otherwise ordered by the Court under Rule 57 of the Rules of Civil Procedure, neither the Debtor nor the Receiver shall be liable for the fees and disbursements of any counsel not retained by the Receiver.

8. ~~7.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama, Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

MARGARITA CASTILLO
Applicant

-and-

XELA ENTERPRISES LTD. et al.

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

ORDER

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Lawyers for KSV Kofman Inc., in its capacity as the court-appointed Receiver of Xela Enterprises Ltd.

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Tab 5

“**Disclosure Order**”), and for various ancillary relief, was heard this day at the Courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the Second Report dated February 14, 2020 and the appendices thereto, the Supplemental Motion Record, including the supplement to the Second Report dated March 17, 2020, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by each of the affidavit of Sam Babe sworn March 4, 2020 and the affidavit of Kyle Plunkett sworn March 17, 2020, filed.

1. **THIS COURT DECLARES AND ADJUDGES** that the Respondent, Juan Guillermo Gutierrez, is in contempt of each of the Appointment Order and the Disclosure Order.
2. **THIS COURT ORDERS** that the Respondent, Juan Guillermo Gutierrez, forthwith comply with all of the provisions of the Appointment Order and the Disclosure Order, and that Juan Guillermo Gutierrez deliver, or cause to be delivered, to the Receiver the items listed below within the timeframes set out as follows:
 - (a) within five (5) business days of this Order, confirmation or evidence satisfactory to the Receiver that any and all objections and/or written correspondence to the Public Registry of Panama by Joao Quiroz, or any other person purporting to represent the wholly-owned subsidiary of the Debtor, Gabinvest, S.A. (“**Gabinvest**”), or the wholly-owned subsidiary of Gabinvest, Lisa, S.A. (“**Lisa**”), in response to the changes to the board of directors of each of Gabinvest by the Receiver and to the subsequent changes to the board of directors of Lisa by Gabinvest have been retracted or otherwise withdrawn;
 - (b) within five (5) business days of this Order, any further documents required by the Receiver to legally effect the Receiver’s changes to the board of directors of each of Gabinvest and Lisa;

- (c) within fifteen (15) calendar days of this Order, any and all documentation relating to the purported loan arrangement to be entered by Lisa as described in the Affidavit of Harald Johannessen Hals sworn December 30, 2019; and
- (d) within fifteen (15) calendar days of this Order, fully comply with the terms of the Disclosure Order, including delivery of any and all documentation relating to the Assignment Transaction and EAI Transaction (as such terms are defined in the Disclosure Order).

3. **THIS COURT FURTHER ORDERS** if the Respondent, Juan Guillermo Gutierrez, fails to comply with the terms set out in Paragraph 2 above, a Warrant for Arrest shall be issued by this Court against Juan Guillermo Gutierrez by way of a motion by the Receiver on 2 days notice.

4. **THIS COURT FURTHER ORDERS** that the Receiver shall be permitted to serve a copy of this order on the Respondent, Juan Guillermo Gutierrez, by substituted service, as follows:

- (a) by delivering a copy to 47 York Mills Road, Unit 212, Toronto, Ontario, M2P 1P2 by courier;
- (b) by emailing a copy to jgutierrez@xela.com and jgutierrez@arturos.com; and
- (c) by serving a copy to Cambridge LLP, counsel to the Respondent, Juan Guillermo Gutierrez.

5. **THIS COURT ORDERS** that the Respondent, Juan Guillermo Gutierrez, shall pay the Receiver its costs of this motion as it relates to the terms of this Order and costs thrown away, fixed in the amount of \$10,000, inclusive of disbursements and harmonized sales tax, within 30 days of the date of this Order.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama, Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to

give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD. *et al.*

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

CONTEMPT ORDER

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*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
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Tab 6

SERVICE LIST

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<p>CLARKE GITTENS FARMER Parker House, Wildey Business Park, Wildey Road, St. Michael, Barbados, BB14006</p> <p>Kevin Boyce and Shena-Ann Ince Tel: (246) 436-6287 Fax: (246) 436-9812 Email: kevin.boyce@clarkes.com.bb / shena-ann.ince@clarkes.com.bb</p> <p>Barbados Counsel to the Receiver</p>	<p>HATSTONE GROUP BICSA Financial Center, Floor 51, Suite 5102, Panama City, Republic of Panama</p> <p>Alvaro Almengor and Carl O'Shea Tel: (507) 830-5300 Fax: (507) 205-3319 Email: alvaro.almengor@hatstone.com / carl.oshea@hatstone.com</p> <p>Panama Counsel to the Receiver</p>
<p>STEWART MCKELVEY Suite 900, Purdy's Wharf Tower One 1959 Upper Water St. PO Box 997, Stn. Central Halifax, Nova Scotia B3J 2X2</p> <p>Jason Woycheshyn Phone: (902) 420-3200 Fax: (902) 420-1417 Email: jwoycheshyn@stewartmckelvey.com</p> <p>Co-Counsel for Margarita Castillo</p>	<p>BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON, M5X 1A4</p> <p>Sean Zweig and Jeffrey Leon Phone: (416) 863.1200 Fax: (416) 863.1716 Email: zweigs@bennettjones.com / leonj@bennettjones.com</p> <p>Co-counsel for Margarita Castillo</p>

<p>CAMBRIDGE LLP 333 Adelaide Street West 4th Floor Toronto, ON M5V 1R5</p> <p>Christopher Macleod and N. Joan Kasozi Tel: (416) 477-7007 Fax: (289) 812-7385 Email: cmacleod@cambridgellp.com / jkasoz@cambridgellp.com</p> <p>Ontario Lawyers for Juan Guillermo Gutierrez and others</p>	<p>DEPARTMENT OF JUSTICE CANADA Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: Diane.Winters@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>
<p>STIKEMAN ELLIOTT LLP Suite 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Katherine Kay and Aaron Kreaden Tel: (416) 869-5507 Fax: (416) 618-5537 Email: KKay@stikeman.com / AKreaden@stikeman.com</p> <p>Lawyers for the Avicola Group and each of Juan Luis Bosch Gutierrez, Felipe Antonio Bosch Gutierrez, Dionisio Gutierrez Mayorga and Juan Jose Gutierrez Moyorga</p>	<p>THE ARTCARM TRUST c/o Alexandria Trust Corporation Suite 3 Courtyard Building The Courtyard Hastings Main Road Christ Church Barbados, BB15156</p> <p>Robert Madden and Debbie McDonald Tel: (246) 228-8402 Fax: (246) 228-3847 Email: robert.madden@alexandriabancorp.com / Debbie.McDonald@alexandriatrust.com</p>
<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Legal Services, 11th Floor, 777 Bay Street Toronto, ON M5G 2C8</p> <p>Kevin J. O'Hara Tel: (416) 327-8463 Fax: (416) 325-1460 Email: kevin.ohara@ontario.ca</p>	<p>CORPORACION ARVEN, LIMITED First Floor Hastings House, Balmoral Gap Hastings, Christ Church Barbados</p> <p>Attention: Patrick A. Doig Tel: (246) 434-2640 Fax: (246) 435-0230 Email: pdoig@bdtinvestments.com</p>

<p>REGINALD M. MCLEAN 1035 McNicoll Ave. Scarborough, ON M1W 3W6</p> <p>Tel: (416) 512-1200 Email: maclaw@bellnet.ca</p> <p>Ontario Lawyers for BDT Investments Inc.</p>	<p>EMPRESAS ARTURO INTERNATIONAL LIMITED First Floor, Hastings House Balmoral Gap Hastings, Christ Church Barbados</p> <p>Attention: Patrick A. Doig Tel: (246) 434-2640 Fax: (246) 435-0230 Email: pdoig@bdtinvestments.com</p>
<p>BDT INVESTMENTS INC. #2 Rendezvous Road Worthing, Christ Church Barbados</p> <p>Attention: Patrick A. Doig Tel: (246) 434-2640 Fax: (246) 435-0230 Email: pdoig@bdtinvestments.com</p>	<p>TORYS LLP 79 Wellington St. W. 33rd Floor (reception), Box 270 TD South Tower Toronto, Ontario M5K 1N2 Canada</p> <p>Adam Slavens and Jeremy Opolsky Tel: (416) 865.0040 Fax: (416) 865.7380 Email: aslavens@torys.com / jopolsky@torys.com</p>

EMAIL SERVICE LIST

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MARGARITA CASTILLO

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Applicant

Respondents

CV-11-9062-00CL

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

Proceedings commenced at Toronto

**SUPPLEMENTARY MOTION RECORD
(returnable March 24, 2020)**

AIRD & BERLIS LLP
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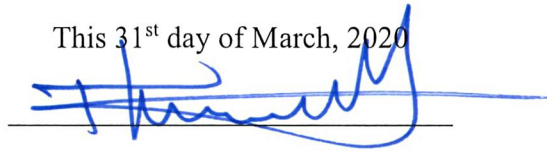
Attached is Exhibit "C"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

This 31st day of March, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc



**Second Supplement to the
Second Report of
KSV Kofman Inc.,
as Receiver and Manager of
Xela Enterprises Ltd.**

March 23, 2020

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COURT FILE NO.: CV-11-9062-00CL

**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**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.****SECOND SUPPLEMENT TO THE SECOND REPORT OF KSV KOFMAN INC.****MARCH 23, 2020**

1.0 Introduction

1. This report (the “Second Supplemental Report”) is the second supplement to the Second Report of the Receiver dated February 18, 2020 (the “Second Report”).
2. Capitalized terms in this Second Supplemental Report have the meaning provided to them in the Second Report and the First Supplemental Report dated March 17, 2020 (the “First Supplemental Report”).
3. This Report is subject to the restrictions provided in the Second Report.

2.0 Update to the Court since the First Supplemental Report

1. As set out in the Second Report, on January 16, 2020, the Receiver passed a resolution replacing the Board of Directors of Gabinvest.
2. As set out in the Second Report, on January 27, 2020, Gabinvest appointed three directors to the Board of Lisa (the “New Lisa Directors”). Lisa has six Directors, including the New Lisa Directors and the Board members who were appointed prior to the commencement of the receivership (the “Existing Board Members”).

3. At 9:45 pm, on March 22, 2020, Cambridge served a responding motion record containing an affidavit of Juan Guillermo sworn March 22, 2020 (the “Guillermo Affidavit”) and an affidavit of Harald Johannessen Hals (the “Johannessen Affidavit”), both sworn in Toronto. The Receiver understands that Mr. Johannessen is the brother-in-law of Juan Guillermo.
4. The Receiver understands that many of the issues raised by the affiants in each of the Guillermo Affidavit and the Johannessen Affidavit have already been adjudicated by this Court in 2017, as set out in Endorsement of Justice McEwen dated July 6, 2017. A copy of the Endorsement is attached hereto as Appendix “A”.

3.0 Unlawful Transfer of Remaining Assets

1. The Guillermo Affidavit states at paragraph 30 that Lisa transferred its one-third interest in Avicola to BDT in full satisfaction of its indebtedness to BDT, including its interest in unclaimed dividends (the “Lisa Transfer”). The date of this transaction is not provided in the Guillermo Affidavit. BDT is owned by the Trust, the beneficiaries of which are Juan Guillermo’s children.
2. As previously noted by the Receiver in its reports filed with the Court to date, the underlying debt purportedly owed by Lisa to BDT, and the terms related thereto, is currently the subject of the Receiver’s review and the Disclosure Order.
3. The Johannessen Affidavit states at paragraph 21 that the Lisa Transfer occurred in February 2020. The specific date is not provided. The Lisa Transfer transaction documents are not provided.
4. The Lisa Transfer happened at the time that the changes to the Gabinvest and Lisa boards were being frustrated by Juan Guillermo, the prior Board of Gabinvest and the Existing Lisa Directors.
5. As set out in the First Supplemental Report, there has been a dialogue between Hatstone, Juan Guillermo and some or all of the Existing Lisa Directors for several weeks. None of these individuals disclosed the Lisa Transfer to Hatstone during their extensive discussions and communications.
6. The Receiver understands from Hatstone that the disposal of assets by a corporation requires shareholder approval under Panamanian law and is not simply a board decision. Lisa’s shareholder is Gabinvest and approval of such decision has not been granted by the Receiver or the Gabinvest board.
7. The Lisa Transfer is the main asset in the receivership. The Lisa Transfer renders the receivership meaningless, if permitted.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”

FILE/DIRECTION/ORDER

BEFORE JUDGE McEwen ACTION # CU-11-91062-00CL

Castillo

Plaintiff(s)

-v-

Xela Enterprises Ltd. et al

Defendant(s)

CASE MANAGEMENT: YES [] NO []

COUNSEL: Leon/Woycheshyn - PHONE NO. _____
Applicant PHONE NO. _____
Richard/Mendelzon - PHONE NO. _____
Respondents

ORDER [] DIRECTION FOR REGISTRAR

[] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____

[] NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

The moving respondents (Xela, Juan Guillermo and Arturo) bring this motion seeking an order to stay the execution of the Divisional Court Order dated Dec 30/16 which affirmed the decision of Justice Newbould dated Oct 28/15.

6 July 17
DATE

McEwen
JUDGE'S SIGNATURE

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

In his decision Justice Newbould held that the Applicant had been oppressed¹ and ordered that the moving respondents purchase her 100 Common Shares in Tropic for the amount of \$4,250,000.00

The moving respondents and others have commenced another action against the Applicant and others (CO11-9177001) claiming \$400 million from all the defendants and specific relief against the Applicant. That action is currently bogged down in jurisdictional disputes.

It also bears noting that Newbould J. severed the Tropic claim from the Applicant's claim against Kela and decided the issue (which was upheld).

The moving respondents now submit that the execution of the

1. within the meaning of s. 243 of the OBCA -

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

Divisional Court order be stayed until there has been a determination of the Applicant's liability in the aforementioned action ("the Action")

I disagree and for the reasons below dismiss the motion.

Insofar as the governing law is concerned, the parties agreed that the test for exercising discretion to award a stay under s. 106 of the CTA is set out by the Div. Ct in [24-7902 Ont] In re US Carlisle 2003 Carswell Ont 6433. In Carlisle, the court generally held that the bar for a stay is a high one and ought to be used only in very rare circumstances. It added that it should only be granted where the court seeks to avoid an oppressive or vexatious result, but also

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

in Circumstances where it would not
cause an injustice to the plaintiff.

The moving respondents submit that
more recent Caselaw of this court
have applied a "broader test" that
simply looks at the equities. Having
reviewed the caselaw I disagree and
even if I am wrong, in my view,
the equities favour the Applicant.
In any event, as I have noted,
Carlisle is the binding authority.

The main thrusts of the moving
respondents' submissions are that the
Applicant is one of the key defrs
in the Action; this proceeding and
the Action are intricately linked and
that the Applicant was involved in a
conspiracy against the moving
respondents that involved her, amongst
other things, stealing corporate

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

documents and now facing criminal charges. Accordingly, they submit that it would be inconsistent with the interests of justice to allow the Applicant to collect the money awarded by Justice Newbould at this time.

While the moving ~~of~~th respondents have made serious allegations against the Applicant I do not believe that I should exercise my discretion in their favour and stay the execution of the Div. Cert order for the following reasons:

- Justice Newbould and, later, the Div. Cert allowed the Applicant's claim regarding Tropic to proceed separately for the reasons set out. Chief amongst those reasons is the fact that the ~~Action~~ does not include the Tropic

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

issues.

- While these reasons are not binding upon me, they are highly persuasive. The reasons set out a number of reasons as to why the Tropic issue had little to do with the Xela issue and the Action In Mine regard Justice Newbould characterized the moving respondents' accusations of a conspiracy ~~as~~ ^{as} "speculative at best." Little has changed since then.
- The moving respondents could have brought a motion to join the two proceedings. They did initiate such a motion, but it was later abandoned.
- Justice Newbould's decision set out numerous examples of aggressive and inappropriate conduct by the moving respondents against the Applicant.
- A stay of the execution could result in real prejudice to the

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Applicant as the moving respondents could take further steps to diminish her shareholding in Tropic.

As set out by Justice Newbould the moving respondents past actions made it clear that the Applicant cannot expect to be properly treated.

• It also cannot be said that the Applicant may have received money that some day may be shown to be inappropriate. As a result of Justice Newbould's order the moving respondents will pay the money in exchange for the Applicant's Tropic shares.

• It also bears noting that much of Tropic's supporting affidavit contains unconfirmed hearsay and investigations with respect to critical issues concerning the alleged conspiracy

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

This ^{part} of course is inadmissible.

• With respect to the allegation of stolen documents, we must question how this can be said to be an accurate assertion against a Director and shareholder, but in any event, the moving respondents have done little to show what it is that the Applicant should not have disclosed in those documents.

In all of the above circumstances I find that the moving respondents have failed to satisfy the test in Carlisle or even establish that the equities favour a stay. Indeed the moving respondents have continued to take steps prejudicial to the Applicant when Thopre sold Fresh Quest in Oct/15 in/around the time Justice Newbold released his

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

decision.

Overall, given Justice Newbould's clear findings of oppression in the specific Trade claim, I cannot conclude that it would be oppressive or vexatious, or an abuse of process to enter the settlement now or, as noted, that the equities favour the moving respondents. In fact, based on the above, given the actions of the moving respondents and the glacial pace of the Action any further delay would likely cause an injustice to the Applicant.

Last, I should reiterate that the claims of wrongdoing against the Applicant were largely before Justice Newbould. The later criminal complaint, initiated by ~~the~~ Juan, is also essentially based on information that

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

was before Justice Newbould as well.

The motion is dismissed. The Applicant shall have her costs on a partial indemnity basis in the amount of \$15,000.00 for fees plus HST and disbursements of \$291.29.

At the hearing the Applicant sought an order to compel the respondents to attend at an examination in aid of execution. Since no motion was brought by the Applicant, I decline this relief sought.

McE...

MARGARITA CASTILLO
Applicant

AND

XELA ENTERPRISES LTD. ET AL.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ROBERT KOFMAN
RE: COURT REPORTS

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court-appointed Receiver of Xela Enterprises Ltd.*