

Court File No. T-514-10

FEDERAL COURT

FEDERAL COURT COUR FÉDÉRALE	
FILED	JUL 22 2010
V. Wong	
TORONTO, ON	68

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

PLAINTIFF'S NOTICE OF MOTION

(Plaintiff's motion in writing for case management and leave to file supplementary evidence)

TAKE NOTICE THAT the Plaintiff, His Highness Prince Karim Aga Khan, will make a motion to the Court in writing under Rule 369(1) of the *Federal Courts Rules*, SOR/98-106.

THE MOTION IS FOR:

1. An Order pursuant to Rule 383 of the *Federal Courts Rules* designating this action as a specially managed proceeding;
2. A case management conference to discuss scheduling matters for this motion and to schedule October 4, 2010, or the first available date thereafter, as the hearing date for the parties' summary judgment motions;
3. An Order granting the Plaintiff leave to serve and file the Certificate of Registration of Copyright dated June 23, 2010 for his unpublished literary works, entitled Farmans; and
4. Such further or other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Plaintiff commenced the present action for copyright infringement on April 6, 2010 with respect to the unauthorized reproduction of a book and mp3 audio bookmark entitled *Farmans 1957-2009 – Golden Edition Kalam-E Imam-E Zaman* (the “Infringing Materials”). The Infringing Materials contain a substantial reproduction of original religious messages authored by the Plaintiff over the past 50 years.
2. Both parties have served and filed motions for summary judgment. The Defendants’ motions were returnable on July 12, 2010. The Plaintiff’s motion was returnable on July 19, 2010. Both motions have been adjourned to a date to be fixed by special sitting.
3. Cross-examinations on the summary judgment motions have been scheduled for the second week of August, 2010. The parties, however, have been unable to agree on scheduling a hearing date for the motions.

Request for Case Management

4. At any time, the Court may order that a case continue as a specially managed proceeding. Case management is appropriate where “preliminaries” may take more than the usual time allowed for under the *Federal Courts Rules*.
5. The Plaintiff has been advised by the Court administrator that October 4, 2010 is the earliest date available for a one-day special sitting for the hearing of the summary judgment motions. The Defendants have advised, however, that they are not available on this date. The Defendants insist on waiting until cross-examinations are completed before agreeing to scheduling.
6. The Plaintiff submits that the present case should be specially managed for the following reasons:
 - (a) The parties require assistance with scheduling a special sitting hearing date for the summary judgment motions;

- (b) The parties require assistance with scheduling the delivery of supplementary materials with respect to the summary judgment motions;
- (c) This action is no longer proceeding according to the timelines provided in Part IV of the *Federal Courts Rules* and will require court-ordered scheduling;
- (d) The Defendants are self-represented and one of the Defendants, Mr. Tajdin, currently resides in Nairobi, Kenya, a factor that significantly impacts scheduling;

7. The Plaintiff further submits that due to the Defendants' ongoing infringement in selling the Infringing Materials, the Plaintiff desires to have this case proceed as quickly as possible.

Request to file supplementary evidence

- 8. On or about June 29, 2010, the Plaintiff obtained a Certificate of Registration of Copyright dated June 23, 2010 for his unpublished literary works, entitled Farmans.
- 9. On July 7, 2010, the Plaintiff provided the Defendants with a copy of the Certificate of Registration and advised that the Plaintiff would be seeking leave to rely on the Registration in the summary judgment motions.
- 10. The Plaintiff submits that leave should be granted to file the Certificate of Registration into evidence on the summary judgment motions. The Certificate of Registration had not yet been issued when the Plaintiff served and filed his summary judgment motion record, and thus could not be included into evidence at that time.
- 11. The Certificate of Registration is relevant to the present proceeding whereby the Defendants are alleged to be infringing the Plaintiff's Literary Works, which are the subject of the Certificate of Registration.
- 12. Finally, since the Plaintiff is seeking to include the Certificate of Registration into evidence in advance of cross-examinations, and has already given the Defendants notice of this request, its inclusion cannot cause "serious prejudice" to the Defendants. The Defendants can address the Certificate of Registration on cross-examination and in any

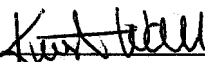
supplementary materials filed in advance of the hearing of the summary judgment motions.

13. The Plaintiff relies on Rules 3, 80 to 86, 363, 369 and 384 of the *Federal Courts Rules*, SOR/98-106.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Christian Landeta, sworn on July 22nd, 2010;
2. The pleadings and proceedings herein; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Toronto, in the Province of Ontario, this 22nd day of July, 2010.



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