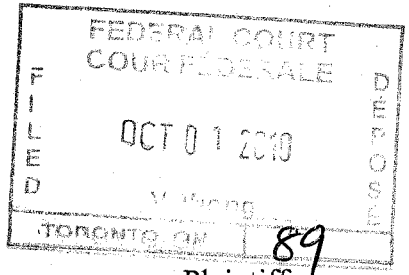


FEDERAL COURT

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

NOTICE OF MOTION

TAKE NOTICE that the Plaintiff, His Highness Prince Karim Aga Khan (the "Plaintiff"), will bring a motion before a Judge of the Federal Court, at the General Sittings on October 7, 2010, at 9:30 a.m. or as soon thereafter as the motion can be heard, at the Federal Court offices located at 90 Sparks Street, Ottawa, Ontario. The Plaintiff estimates that the duration of the motion will be 1.5 hours.

THE MOTION IS FOR an Order:

1. Setting aside the Order of Prothonotary Tabib dated September 24, 2010 as it relates to all matters except the setting down of the parties' motions for summary judgment;
2. Directing that the parties' motions for summary judgment should proceed before discovery in this action commences;
3. Directing that any further determination of when the Plaintiff should attend on examination for discovery should be determined by Motion in the General Sittings of this

Court in accordance with the Order of Madam Justice Heneghan dated August 4, 2010;
and

4. Costs of this motion.

THE GROUNDS FOR THE MOTION ARE:

5. The Plaintiff is appealing the Order of Prothonotary Tabib dated September 24, 2010 (the "Forced Settlement Order"), by which Prothonotary Tabib (the "Prothonotary") set out a series of steps according to which the unrepresented Defendants could force a 15 minute "examination for discovery" of the Plaintiff in early October in an attempt to facilitate various settlement offers improperly placed before the Court by the Defendants who are seeking to meet with the Plaintiff on the pretext of settling the action.
6. The Plaintiff, the 49th hereditary Imam of the Shia Imami Ismaili Muslims, is the spiritual leader of millions of Ismaili Muslims living throughout the world, including across Canada.
7. The Plaintiff has brought this action to obtain a declaration recognizing his copyright and moral rights in his "Farmans" (a Farman is an address by His Highness as Imam to his community) and "Talikas" (a Talika is a brief, written religious message conveyed by His Highness to his community) and to obtain an injunction against the Defendants to prevent their infringement of the Plaintiff's copyright and moral rights.
8. The Defendants admit that they have copied and published and continue to copy and publish the Plaintiff's Farmans and Talikas despite their acknowledgment of the Plaintiff's copyright and moral rights in these literary works and readings.
9. The Defendants say that they have the right to print and publish these works based on a one minute event in a religious ceremony in 1992 in which neither of the Defendants participated and in which a book was secretly introduced into the religious ceremony by a third party and the Plaintiff supposedly blessed and approved it. Since 1992 neither Defendant has requested permission to publish these or other works of the Plaintiff.

10. The Defendants say that others in the Ismaili community are publishing similar works. It is the evidence of the Head of the Department of the Jamati Institutions, Dr. Shafik Sachedina, that the Plaintiff has been concerned about unauthorized copying and publication of the Plaintiff's Works for some time.
11. This appeal raises important issues of procedural fairness and a question regarding the extent to which case management functions can be carried out to achieve the just, most expeditious and least expensive *settlement* of a proceeding without regard to the achievement of the just, most expeditious and least expensive determination of the proceeding *on its merits*.
12. The Prothonotary erred in law and clearly misused her judicial discretion in granting an order which takes into account the Defendants' settlement offers which have been disclosed to the Court in a transparent effort to force a settlement of the action at the expense of procedural fairness to the Plaintiff and which denies the Plaintiff an opportunity to have this case determined on its merits.
13. The Prothonotary has no authority to make an order relating to summary judgment motions, except on consent. By issuing the Forced Settlement Order, the Prothonotary has in effect attempted to by-pass the orderly hearing of the summary judgment motions now before the court.

The Parties' Motions for Summary Judgment

14. After filing their respective Statements of Defence, the Defendants filed motions for summary judgment. These motions seek to dismiss the action on the basis that the Plaintiff provided consent, express and/or implied to the publication, distribution and sale of the Infringing Materials.
15. The Plaintiff filed its own motion for summary judgment on June 28, 2010. It is the Plaintiff's position that, even if one accepts completely the events upon which the Defendants base their defence of prior consent, these circumstances are insufficient as a matter of law to ground a defence of consent and there is no genuine issue for trial.

The Defendants' Attempts to Derail the Summary Judgment Motions and Force Discovery

16. Despite having sought a summary disposition of the proceedings, the Defendants brought a motion dated July 29, 2010 seeking to stay the cross-examinations for the parties' respective summary judgment motions. The Defendants also sought an order requiring the Plaintiff to serve an affidavit of documents and attend discovery in Paris, France (collectively, the "Defendants' Stay Motions").
17. The Defendant Tajdin acknowledged in a letter to the Court that his main purpose in bringing the Defendants' Stay Motions was to compel the attendance of the Plaintiff for an oral examination in order to resolve the action.
18. By letter to the Court dated August 3, 2010, counsel for the Plaintiff requested that if the Court determined that the Defendants' Stay Motion should proceed, then a schedule should be arranged for the Plaintiff to file responding materials and conduct cross-examinations.

Justice Heneghan's Disposition of the Request for an Urgent Hearing for the Defendants' Stay Motions

19. The Defendants' urgent request for a hearing of the Defendants' motions for a Stay was considered by Madam Justice Heneghan. In an Order dated August 4, 2010, Heneghan J. found that the Defendants had attempted "to derail the orderly progression in the perfection of the motion records in support of the two motions for summary judgment" and she denied their request for a special and urgent sitting to hear the Defendants' Stay Motions. Instead, she expressly directed that the Defendants' Motions for a Stay be brought on by the Defendants in the General Sittings, while other matters could be dealt with as part of the case management process.

The Defendants' Improper Disclosure of Without Prejudice Settlement Offers

20. Throughout the course of the action, the Defendants have repeatedly advised the Court in their pleadings, written motion materials, and in letters to the Court, that all they require in order to settle this action is a 5 minute meeting with the Plaintiff.

21. In a letter to the Court dated August 17, 2010, the Defendant Tajdin repeated his view that a "5 minute informal" meeting with the Plaintiff would resolve the action.

Case Management of the Action

22. Prothonotary Tabib was appointed Case Management Judge by Order dated September 3, 2010.
23. A first case management conference with Prothonotary Tabib was scheduled for September 23, 2010. Counsel for the Plaintiff submitted an agenda in advance of the conference which listed the following issues for discussion at the conference: report on the status of the cross-examinations; the filing of the Plaintiff's reply affidavit; and the Plaintiff's request for a hearing date for the motions for summary judgment.

The Forced Settlement Order under Appeal

24. A Case Management Conference was held with Prothonotary Tabib by telephone conference on September 23, 2010. On September 24, 2010, Prothonotary Tabib issued the Forced Settlement Order which, *inter alia*, provided that, upon delivery of their affidavits of documents, the Defendants would be permitted to serve the Plaintiff with a Direction to Attend for a 15 minute "discovery" during the Plaintiff's anticipated trip to Canada in early October.
25. The Forced Settlement Order reflects a clear case of the misuse of judicial discretion and the application of wrong principles. Specifically, the Prothonotary committed the following errors of law:
- (a) She exercised her discretion with a misguided view to promote settlement of this action rather than with a view to promoting the just, most expeditious and least expensive determination of the proceeding on its merits;
 - (b) In executing her Case Management function, she considered the Defendants' (and possibly the Plaintiff's) offers of settlement which had been improperly previously placed by the Defendants before the Court contrary to Rule 422 of the *Federal Courts Rules*;

- (c) By granting the Defendants an opportunity to examine the Plaintiff for “discovery” for 15 minutes prior to the hearing of the motions for summary judgment, she effectively varied the previous Order of Madam Justice Heneghan dated July 6, 2010 which ordered that, “[t]here will be no cross-examination of the Plaintiff unless he files an affidavit in relation to either of the motions for summary judgment” and which further directed that the Defendants’ Motion for a Stay would need to be brought on in the General Sittings for determination;
- (d) The Plaintiff has been denied procedural fairness and rights otherwise provided to litigants by the *Federal Courts Rules*:
- (i) in granting a 15 minute “discovery” of the Plaintiff, Prothonotary Tabib has granted the relief requested in the Defendants’ Stay Motions, without permitting the Plaintiff to file responding materials or conduct cross-examinations, despite the Plaintiff’s clear request to do so in a letter to the Court dated August 3, 2010, and without any notice that the relief that was the subject of the Defendants’ Stay Motions would be discussed on the September 23, 2010 Case Management Conference; and
 - (ii) the timeline fixed by Prothonotary Tabib for the steps that the Defendants may take to force a 15 minute “discovery” of the Plaintiff while he is in Canada in early October on other business, will preclude the Plaintiff from taking such other procedural steps that a Plaintiff otherwise has a right to take prior to submitting to examination for discovery, such as cross-examining the Defendants on their affidavits of documents, or bringing a motion for a further and better affidavit of documents. Given that the Defendants have refused to answer questions on cross-examination, relating to the printing, distribution, and sale of the Infringing Materials, there is reason to believe that the documents relating to this will not be produced.

26. Costs of the within motion on such a scale as this Honourable Court deems appropriate; and

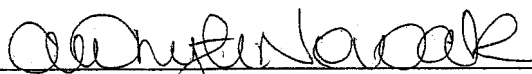
27. Rules 3, 51, 385 and 422 of the *Federal Courts Rules*; and
28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Affidavit of Christian Landeta sworn September 29, 2010;
2. The pleadings and proceedings herein, including the following motion materials previously filed with the Court in connection with the parties' respective motions for summary judgment:
 - (a) Motion Record of the Defendant Alnaz Jiwa (Motion for summary Judgment returnable July 12, 2010) dated June 18, 2010;
 - (b) Motion record of the Defendant Nagib Tajdin (Motion for summary Judgment returnable July 12, 2010) dated June 18, 2010;
 - (c) Motion Record of the Plaintiff (Plaintiff's Rule 213 Motion for Summary Judgment) dated June 28, 2010;
 - (d) Responding Motion Record of the Plaintiff (Defendants' Motion for Summary Judgment) dated July 2, 2010;
 - (e) Responding Motion Record of the Defendant Alnaz Jiwa (Plaintiff's Rule 213 Motion for Summary Judgment) dated July 15, 2010;
 - (f) Responding Motion Record of the Defendant Nagib Tajdin (Plaintiff's Rule 213 Motion for Summary Judgment) dated July 15, 2010;
 - (g) Motion Record of the Defendant Alnaz Jiwa (Special Sitting Motion returnable August 6, 2010); and
 - (h) Motion Record of the Defendant Nagib Tajdin (Special Sitting Motion returnable August 6, 2010).

3. Such further and other material as counsel may advise and this Honourable Court may permit.

October 1, 2010


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Court File No: T-514-10

FEDERAL COURT

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

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