

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140115

Docket: A-156-13

Citation: 2014 FCA 6

**CORAM: GAUTHIER J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Appellant

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**

Respondents

Heard at Montréal, Quebec, on January 15, 2014.

Judgment delivered from the Bench at Montréal, Quebec, on January 15, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.



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Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on January 15, 2014).

TRUDEL J.A.

[1] This is an appeal of an order rendered by Justice Tremblay-Lamer on April 24, 2013, in which she granted the respondents' motion in part and set aside an order of Prothonotary Milczynski dated October 29, 2012 (T-514-10). Prothonotary Milczynski had ordered the

respondents to produce certain documents and to answer a number of questions they had previously refused to answer on an examination for discovery. Justice Tremblay-Lamer set aside the Prothonotary's order with the exception that she still required the respondents to answer one question.

[2] In *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, the Supreme Court held that:

18 Discretionary orders of prothonotaries ought to be disturbed by a motions judge only where (a) they are clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts, or (b) in making them, the prothonotary improperly exercised his or her discretion on a question vital to the final issue of the case: *Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425 (C.A.), *per* MacGuigan J.A., at pp. 462-63. An appellate court may interfere with the decision of a motions judge where the motions judge had no grounds to interfere with the prothonotary's decision or, in the event such grounds existed, if the decision of the motions judge was arrived at on a wrong basis or was plainly wrong: *Jian Sheng Co. v. Great Tempo S.A.*, [1998] 3 F.C. 418 (C.A.), *per* Décary J.A., at pp. 427-28, leave to appeal refused, [1998] 3 S.C.R. vi.

[3] We are all of the view that Justice Tremblay-Lamer had no grounds to interfere with the Prothonotary's order who was here appointed as a Referee by the Chief Justice of the Federal Court for the purpose of quantifying the profits realized by the respondents as a result of a finding of copyright infringement made against them by Justice Harrington of the Federal Court (2011 FC 14, *aff'd* 2012 FCA 12).

[4] Justice Tremblay-Lamer justified her intervention on the statement made by the respondents that they had already satisfactorily answered the questions. Moreover, the Judge found that the

matter should be brought to a conclusion forthwith in view of the limited financial scope of the debate and the extent of resources allocated to this litigation. None of the reasons given by the Judge could justify her intervention on the basis of the applicable standard of review. There was no basis on which the Judge could proceed on a *de novo* basis.

[5] If, as decided by the Judge, the questions ordered answered had in effect been answered by the respondents, there was no basis for allowing the appeal and quashing the Prothonotary's order. At best, the respondents' submission to her rendered their own appeal moot and such appeal should have consequently been dismissed.

[6] As a result, this appeal will be allowed and the order of the Federal Court will be set aside. This is not a case for costs and consequently the parties will assume their own costs throughout. Moreover, in view of the nature of this appeal, the fact that the respondents are now represented by counsel who has provided documents to counsel for the appellant since the Prothonotary's order, the matter is sent back to Prothonotary Milczynski for new determination on the questions still at issue. These questions are numbered at paragraphs 4, 5, 6, 7 and 10 of her October 29, 2012 order.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-156-13

(APPEAL FROM AN ORDER OF JUSTICE TREMBLAY-LAMER OF THE FEDERAL COURT, DATED APRIL 24, 2013, DOCKET NO. T-514-10)

STYLE OF CAUSE:

HIS HIGHNESS PRINCE KARIM
AGA KHAN v. NAGIB TAJDIN,
ALNAZ JIWA, JOHN DOE AND
DOE CO. ET AL

PLACE OF HEARING:

MONTREAL, QUEBEC

DATE OF HEARING:

JANUARY 15, 2014

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.
TRUDEL J.A.
MAINVILLE J.A.

DELIVERED FROM THE BENCH BY:

TRUDEL J.A.

APPEARANCES:

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FOR THE APPELLANT

Philippe Gervais

FOR THE RESPONDENTS

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FOR THE RESPONDENTS



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Docket: A-156-13

Dossier : A-156-13

Montréal, Quebec, January 15, 2014

Montréal (Québec), le 15 janvier 2014

CORAM: GAUTHIER J.A.
TRUDEL J.A.
MAINVILLE J.A.

CORAM: LA JUGE GAUTHIER
LA JUGE TRUDEL
LE JUGE MAINVILLE

BETWEEN:

ENTRE :

HIS HIGHNESS PRINCE KARIM
AGA KHAN

HIS HIGHNESS PRINCE KARIM
AGA KHAN

Appellant

appelant

and

et

NAGIB TAJDIN, ALNAZ JIWA, JOHN
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or entities unknown to the Plaintiff who
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and/or authorizing the reproduction and
promotion of the Infringing Materials

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authorizing the reproduction and promotion
of the Infringing Materials

Respondents

intimés

JUDGMENT

JUGEMENT

The appeal is allowed, each party assuming their own costs throughout. The order of Justice Tremblay-Lamer dated April 24, 2013, is set aside. The matter is sent back to Prothonotary Milczynski for a new determination in respect of the questions still at issue identified as questions 4, 5, 6, 7 and 10 of her October 29, 2012 order.

L'appel est accueilli, chaque partie assumant ses frais devant les deux cours. L'ordonnance de la juge Tremblay-Lamer datée du 24 avril 2013 est infirmée. L'affaire est retournée à la protonotaire Milczynski afin qu'elle tranche de nouveau les seules questions encore en litige, lesquelles sont identifiées aux paragraphes 4, 5, 6, 7 et 10 de son ordonnance du 29 octobre 2012.

"Johanne Gauthier"

J.A. / j.c.a.