

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120917

Docket: A-421-11

Citation: 2012 FCA 238

**CORAM: NADON J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

NAGIB TAJDIN

Appellant

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent

Heard at Toronto, Ontario, on September 17, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on September 17, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario on September 17, 2012)

DAWSON J.A.

[1] On September 6, 2011, a prothonotary of the Federal Court issued the following direction:

Further to the case management teleconference held on August 26, 2011 and upon reading correspondence from the parties, the following timetable shall govern the next steps in the proceeding:

1. Counsel for the Plaintiff will deliver a letter to the Defendants by September 2, 2011, listing the categories of relevant documents and specific documents to be produced in this Reference.

2. The Defendants, Mr. Tajdin and Mr. Jiwa, will deliver a supplementary affidavit of documents, including delivery of complete and unredacted copies of all relevant documents, and including an explanation for any documents missing or lost; and including enquiries that have been made of others to locate relevant documents, to Counsel for the Plaintiff by October 7, 2011.

3. Mr. Tajdin and Mr. Jiwa will make themselves available for discovery in Toronto on November 8 to 9, 2011.

4. A case management conference will be held with the parties at the Federal Court at 180 Queen Street West, 4th Floor, Toronto, Ontario on November 15, 2011 at 9:30 a.m.

[2] Mr. Tajdin, the appellant, purported to appeal this direction to a judge of the Federal Court. He took issue with respect to the propriety of paragraphs 1 and 2 of the direction. On October 26, 2011, a judge of the Federal Court (Motions Judge) dismissed the appellant's motion on its merits. The Motions Judge ordered that the plaintiff (who is the respondent to this appeal) should “have the costs of this motion on a full indemnity basis payable forthwith and irrespective of the cause”.

[3] This is an appeal from the order of the Motions Judge rendered in Federal Court File T-514-10.

[4] We are of the view that the Motions Judge erred by entertaining the appeal from the direction of the prothonotary. The jurisprudence is well-established that no appeal lies from a direction (*Peak Innovations Inc. v. Simpson Strong-Tie Co.*, 2011 FCA 81, [2011] F.C.J. No. 330; *Froom v. Canada (Minister of Justice)*, 2003 FCA 141, [2003] F.C.J. No. 448).

[5] To the extent the appellant took issue with what was in substance a direction establishing a timetable for certain steps in pending litigation, on receipt of the plaintiff's list of relevant

documents he could have brought a motion to determine the propriety of the plaintiff's categorization of relevant documents. As well, at any time the appellant was free to bring a motion, on proper evidence, seeking a confidentiality order in respect of documents he was obliged to produce. Finally, as this Court noted in *Peak Innovations*, the appellant was entitled to request, on motion, a formal order setting out the substance of the direction. Such an order could then have been appealed to a judge of the Federal Court. For these reasons, if an appeal did lie on these issues, we are satisfied that there is no merit whatsoever in the issues raised by the appellant.

[6] For these reasons, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-421-11

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE RUSSELL
DATED OCTOBER 26, 2011, DOCKET NO. T-514-10)**

STYLE OF CAUSE: NAGIB TAJDIN V HIS HIGHNESS
PRINCE KARIM AGA KHAN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2012

**REASONS FOR JUDGMENT OF
THE COURT BY:** (NADON, DAWSON & STRATAS
JJ.A.)

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

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