

His Highness Prince Karim Aga Khan's Motion for Summary Judgement

By

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“Flawless” is perhaps the most appropriate term to describe the *Motion for Summary Judgement* (Motion) recently filed by the Legal Council representing the Plaintiff, His Highness Prince Karim Aga Khan, who is the 49th hereditary Imam of the Shia Imami Ismail Muslims (referred henceforth as Mawlana Hazar Imam, Plaintiff or His Highness). For those unfamiliar with legal jargon, the relevant Motion requests the Federal Court of Canada to grant a speedy judgement in favour of Mawlana Hazar Imam's claim for copyright infringement in relation to the Defendants Nagib Tajdin, Alnaz Jiwa, John Doe & Doe Co's unauthorized reproduction of a Farman book entitled "Golden Edition Kalam-E- Imam-E Zaman" & an mp3 audio *without an actual trial*ⁱ. Such a judgement is applicable when "the defendant's defence 'is so doubtful that it does not deserve consideration by the trier of fact at a future trial'ⁱⁱ". In my reading of the case, Mawlana Hazar Imam's Motion easily meets the threshold for a summary judgment. The evidence presented within this Motion reveals with absolute clarity that the defences of Defendants Nagib Tajdin and Alnaz Jiwa have no foundation and do not merit a trial.

At the heart of the matter are two of the Defendants allegations: the assertion that “consent” was granted by Mawlana Hazar Imam, and the accusation that Mawlana Hazar Imam has not authorized the relevant legal action.

In terms of the first allegation, the Motion reads: “According to the Supreme Court of Canada, '[t]he inference of consent must be clear before it will operate as a defence and must come from the person holding the particular right alleged to be infringed'”. There was absolutely no hint of such “clear” consent in the defences provided either by Defendants Nagib Tajdin or Alnaz Jiwa. To the contrary, the lack of Mawlana Hazar Imam's authorization had been explicitly communicated directly by the Imam Himself, Prince Aamyn Aga Khan (His Highness's brother), Vazir Dr. Shafik Sachedina (Head of the Jamati Institutions at the Aiglemont), Leaders' International Forum announcements made in Ismaili Jamatkhans, and a sworn Affirmation signed by Mawlana Hazar Imam dated May 12th, 2010ⁱⁱⁱ. Furthermore, in a letter dated January 4, 2010, the Defendant Nagib Tajdin wrote: “We are in need of direction, wisdom and

guidance as to this project...". Mawlana Hazar Imam's Solicitors conclude that the aforementioned statement is part of a letter that is "inconsistent with the Defendants' contention that they already had the Plaintiff's 'consent' to publish..."^{iv}. And despite all that has evolved, Defendants Nagib Tajdin and Alnaz Jiwa remain defiant, and continue their infringing activities and slandering propaganda. This fundamentally illustrates Defendants Nagib Tajdin and Alnaz Jiwa's hypocrisy, considering their past rhetoric of unwavering loyalty to the Imam.

The second allegation that Mawlana Hazar Imam has not authorized this case is ludicrous, and not worth spending any time on. Additionally, it is a direct insult to the integrity of the various solicitors and notable individuals involved, not to mention a direct insult to Mawlana Hazar Imam as well. For it implies that the Imam has absolutely no clue about notable developments within His own Community. Alluding to Vazir Dr. Shafik Sachedina, the Plaintiff's Memorandum maintains: "It is simply absurd for the Defendants to suggest that the Imam is not aware of significant announcements being made to his own Jamat"^v.

I would extend this generous characterization of "absurd" to "completely idiotic" and "delusional". Again, I echo a statement that I wrote in my previous report titled Defiance, and ask what planet these creatures – the Defendants Nagib Tajdin and Alnaz Jiwa - reside on. Although some things will always remain a mystery, what remains clearly evident is that Mawlana Hazar Imam's Counsel has filed a powerful, impressive, and crushing Motion – one that I personally believe merits a Summary Judgement, though only time shall tell how the scales of Canadian Justice will weigh the matter.

REFERENCES

Memorandum of Fact and Law of the Plaintiff, His Highness the Aga Khan,
Solicitors: Brian Gray and Kristin Wall

ⁱ It should be noted that "the Plaintiff is not seeking summary judgement with respect to his claim for infringement on moral rights

ⁱⁱ Paragraph 59

ⁱⁱⁱ Paragraph 90; other means of expression the lack of authorization are also mentioned in the Motion

^{iv} Paragraph 84 g

^v Paragraph 97