



Date: 20100804

Docket: T-514-10

Ottawa, Ontario, August 4, 2010

PRESENT: The Honourable Madam Justice Heneghan

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

DIRECTION

I have reviewed the letter dated July 29, 2010 from Mr. Alnaz I. Jiwa, one of the Defendants, being an urgent request for a special sitting to hear the motions filed on July 30, 2010, by the Defendants. The motions seek an Order staying the cross examinations currently scheduled to be carried out between August 9 and August 26, 2010.

I have also reviewed the following material:

(a) the Court's Direction dated July 6, 2010 concerning the timing of cross examinations relative to the motions filed by both the Defendants and the Plaintiff for summary judgment;

(b) the letter dated July 6, 2010 from Counsel for the Plaintiff concerning the availability for cross examination of his witnesses, Mr. Sachedina and Mr. Bhaloo, on August 12 and 13, 2010;

(c) the letter dated July 26, 2010 from Counsel for the Plaintiff concerning scheduling of the cross examinations relative to the respective motions for summary judgment, also seeking directions that the Defendants not attend each other's cross examination and seeking leave to serve and file a reply affidavit, following cross examinations of the Defendants' deponents;

(d) letter dated July 26, 2010 from Mr. Jiwa in response to the letter of July 26, 2010, from Counsel for the Plaintiff;

(e) letter dated July 27, 2010 from Mr. Tajdin, also in response to the letter of July 26, 2010 from Counsel for the Plaintiff;

(f) letter dated July 29, 2010 from Mr. Jiwa requesting a special sitting of the Defendants' stay motions on August 6, 2010;

(g) letter dated August 3, 2010 from Counsel for the Plaintiff to the Court concerning his availability for a hearing on August 4th or August 6th of the Defendants' motion to stay the cross examinations; and

(h) letter dated August 3, 2010 from Mr. Jiwa to the Court, purporting to respond to the matters raised in the letter of August 3, 2010 from Counsel for the Plaintiff.

I will first address the Defendants' request for a special sitting of their stay motions. This request is denied.

The mere submission of a letter pursuant to Rule 35 of the *Federal Courts Rules*, SOR/98-106 (the "Rules") does not mean that a state of urgency exists.

During the teleconference held on July 2, 2010, Counsel for the Plaintiff and the two Defendants agreed that cross examinations in connection with the motions for summary judgment would be conducted between August 9th and August 26th. On that date, the parties were offered a date in October for the hearing of the motions for summary judgment and Counsel for the Plaintiff was unavailable. In any event, the parties were not ready to have a hearing date scheduled since cross examinations had not been conducted and their motion records were not perfected.

The current request by the Defendants to seek a stay of the cross examinations which are scheduled, by agreement, to take place between August 9th and August 26th, appears to be an

Page: 1
attempt to derail the orderly progression in the perfection of the motion records in support of the two motions for summary judgment. The Defendants have failed to show, in their motions for a stay of cross examinations, why such stay should be granted.

Furthermore, the Defendants have failed to show that there is urgency in the matter of hearing their motion for a stay.

Third, neither party has shown that there is urgency in the hearing of their respective motions for summary judgment.

I note that Counsel for the Plaintiff is seeking, by way of notice of motion in writing filed on July 22, 2010, an Order that this action be specially managed. The notice of motion in that regard is not yet perfected, insofar as the Index of Recorded Entries shows that the Defendants have not yet filed responding motion records to this motion filed on behalf of the Plaintiff.

In my opinion, it is appropriate that this matter be specially managed but in the absence of a perfected motion record in that regard, I cannot deal with the Plaintiff's request.

In the result, the Defendants' request for a special sitting to hear their motions for a stay of the cross examinations that are scheduled to be undertaken between August 9th and August 26th, is denied. The Defendants can bring their motions in this regard before a general sittings of the Court.

The various other matters addressed in the correspondence referred to above can be dealt with by the Case Management Judge, following disposition of the Plaintiff's motion to have this action designated as a specially managed proceeding pursuant to the Rules.

I note that any delay in the conduct of the scheduled cross examinations, on the part of any of the parties, may lead to costs sanctions.

"E. Heneghan"

Judge