

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 defendant Nagib Tajdin (hereinafter "Tajdin") will make a motion on Monday, July 12, 2010, at the Federal Court, 180 Queen Street West, Toronto, Ontario. The estimated duration of the motion is 1 hour.

THE MOTION IS FOR:

1. An order pursuant to Rules 213 to 215 granting summary judgment dismissing the plaintiff's action; and
2. Such further and other relief as this defendant may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Aga Khan is the spiritual leader of Ismailis, and Tajdin is an obedient follower of the Aga Khan;
2. Although this action is brought under the name of the Aga Khan as plaintiff, this action, in fact has been brought by the Secretariat of the Aga Khan without His consent;

3. Before commencing distribution of the Farmans, Tajdin sought Guidance from the Aga Khan on August 15, 1992, during His visit to the Montreal Jamat, at which time the Aga Khan was presented with a copy of KALAM-E IMAM-E-ZAMAN - FARMANS TO THE WESTERN WORLD, Volume 1 (hereinafter the "First Farman Book");
4. The First Farman book published by Tajdin contained Farmans made by the Aga Khan to the Western World between the years 1957 and 1991. Farmans are guidance given by the Aga Khan to His followers, and are immediately binding upon all followers across the world whether or not such a follower was present to hear the Farman in person;
5. The Aga Khan encourages all Ismailis to pay close attention to every Farman made by Him, and expects every Ismaili to seek to abide by all Farmans made by Him. Tajdin has distributed these Farman books only to Ismailis, without any expectation of deriving any profits, and by investing his own time, effort and financial resources for travel and other expenses to publish and distribute these Farman books for the sole purpose of making them available to Ismailis. This is in accordance with the historical tradition of voluntary service amongst the followers of the Aga Khan;
6. The Aga Khan accepted the offering made on behalf of Tajdin, blessed the book, and gave Guidance to "continue this work", and gave Blessings for the success of the work, and also said that once the work is completed, some other work may be undertaken jointly with Him;
7. After the Aga Khan gave His Blessings and Guidance in 1992, Tajdin commenced distributing the First Farman book and has published a number of Farman books over the years from 1992 to 2009, the last one being the one subject of this action, a white color hardcover book titled, "KALAM-E IMAM-E-ZAMAN - GOLDEN EDITION FARMANS

1957-2009" (hereinafter the "Golden Edition"), which contains all of the Farmans published in the previous books published under the same series as above, but the content has been updated to 2009;

8. Tajdin cannot be liable for copyright infringement for distributing the Aga Khan's Farmans on the grounds of consent given by the Aga Khan on August 15, 1992, and on the grounds of implied consent;
9. On January 1, 2010, after Tajdin had commenced distributing the Golden Edition, Sachedina, on his own behalf, called Tajdin to tell him to cease distribution of the Golden Edition. Tajdin informed Sachedina that he (Tajdin) had sent correspondence to the Aga Khan seeking His Guidance on the matter. Shortly thereafter, Tajdin received by email a letter (hereinafter "Letter") dated January 24, 2010, purportedly signed by the Aga Khan;
10. Tajdin retained two handwriting experts to review and report on the authenticity of the signature on the Letter, and both experts stated that the Letter was not signed by the Aga Khan;
11. After this action was commenced, counsel for the Aga Khan has delivered to the defendants an Affirmation purportedly signed by the Aga Khan in Boston, MA, before a Notary Public on May 12, 2010. The defendants retained a document and handwriting examination expert to review the signature on the Affirmation, and the expert stated in his forensic report dated June 9, 2010, that "Prince Karim Aga Khan **did not write** the questioned signature on the Federal Court Affirmation" [emphasis original];
12. This defendant submits that there is no genuine issue of fact and/or law requiring trial of the

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matter, and as such the action be dismissed without costs; and

13. Rules 213, 214, 215 of the *Federal Court Rules*, SOR/98-106, and s. 27(1) of the *Copyright Act*, R.S.C., 1985, c. C-42.

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

1. Affidavit of Alnaz I. Jiwa sworn June 16, 2010;
2. Affidavit of Karim Alibhay, sworn April 28, 2010;
3. Affidavit of Nagib Tajdin, sworn May 7, 2010;
4. Supplementary affidavit of Nagib Tajdin sworn on June 16, 2010;
5. The pleadings herein; and
6. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Nairobi, Kenya, this 18 day of June, 2010



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Plaintiff

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of the Infringing Materials.**

Defendants

NOTICE OF MOTION

by the defendant Nagib Tajdin

returnable July 12, 2010

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