

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 Alnaz Jiwa (hereinafter "Jiwa") 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 Jiwa 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 Jiwa is a 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. All Ismailis give their oath of allegiance to the Aga Khan, and the Aga Khan in return

promises to guide and protect His followers, and therefore, all Ismailis have an inherent right to the Farmans of the Aga Khan;

4. All Ismailis are governed by *The Constitution of the Shia Imami Ismaili Muslims*, which was ordained by the Aga Khan on December 13, 1986, with *Rules and Regulations of the Shia Imami Ismaili Muslims* signed on July 11, 1987, for each country, after taking into account the local laws governing the issues respecting personal law. The Ismaili Constitution governs all aspects of an Ismaili's life, governing over religious matters, personal law, and administrative matters;
5. The Aga Khan urges all Ismailis to abide by the Ismaili Constitution "in letter and spirit", and also to obey His Farmans. Any Ismaili who does not abide by the Ismaili Constitution, or does not abide by the Aga Khan's Farmans loses the right to call himself an Ismaili. 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;
6. Jiwa states that by urging all Ismailis to abide by the Ismaili Constitution, and by virtue of having given an oath of allegiance to the Aga Khan and by His promise to guide such followers, Jiwa cannot be found to have infringed the Copyright of the Aga Khan in distributing His Farmans to Ismailis;
7. Since 1993, Jiwa has distributed the Farman books published by the co-defendant Nagib Tajdin (hereinafter "Tajdin") to his family and friends, and has always sold the books at the same price he paid for them, and moreover he often gave away free books to friends or family. Jiwa has never distributed the Farman books to any non-Ismailis.

8. Jiwa cannot be liable for distributing the Aga Khan's Farmans on the grounds of consent given by the Aga Khan to Tajdin on August 15, 1992, for the distribution of the Farman books, and on grounds of implied consent;
9. The Ismaili Constitutions in effect prior to 1986 had express Articles governing the publication of Farmans, but in the new one ordained in 1986, these Articles were revoked by the Aga Khan. There are no Farmans or any Articles of the Ismaili Constitution prohibiting the publication of the Aga Khan's Farmans, and on the contrary, the Aga Khan has expressly stated that He makes Farmans for Ismailis;
10. Jiwa has not breached any Articles of the Ismaili Constitution and nor has he breached any Farmans prohibiting the publication and/or distribution of Farmans;
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 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 Toronto, in the Province of Ontario, this 18th day of June, 2010

Alnaz I. Jiwa
37 Sandiford Dr.
Suite 205
Stouffville, ON
L4A 7X5

Tel: (905) 640-3831
Fax: (905) 640-7533

jiwalaw@yahoo.ca

TO: OGILVY RENAULT LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

Brian W. Gray
Kristin E. Wall

Tel: (416) 216-4000
Fax: (416) 216-3930

Solicitors for the Plaintiff

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

and

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all
others 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

by the defendant Alnaz Jiwa

returnable July 12, 2010

Alnaz I. Jiwa
37 Sandiford Drive
Unit 205
Stouffville, ON
L4A 7X5

Tel: (905) 640-3831
Fax: (905) 640-7533
jiwalaw@yahoo.ca