

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

AFFIDAVIT OF ALNAZ JIWA

I, Alnaz Jiwa, of the City of Toronto, in the Province of Ontario, MAKE OATH AS FOLLOWS:

1. I am one of the defendants in this action and as such have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief. I am a lawyer by profession, licensed to practice in the Province of Ontario.
2. I accept His Highness Prince Karim Aga Khan (hereinafter called the "Imam"), as my Imam. I have given my oath of allegiance to my Imam in accordance with our traditions. I have an immense love and respect for my Imam and will not disobey my Imam, or in any way or form displease my Imam.
3. One of the essential requirements of being an Ismaili is to abide by the Imam's Farmans which are delivered by the Imam orally when He visits Jamats (congregation). Occasionally, the Imam might send a brief written message to the Jamats, which is known as Talika.
4. A Farman made by the Imam to any Jamat in any part of the world is binding upon being delivered on all Ismailis wherever they may be living, unless the Imam restricts the Farman for a particular Jamat, or a particular segment of the Jamat, and when the Imam restricts the Farman, He indicates such a restriction when making the Farman
5. As a result of the lack of access to the Imam's Farmans from our local institutions, I

expanded my search to seek copies of the Imam's Farmans privately from various leaders, both religious and administrative.

6. In 1993, I came across copies of our Imam's Farmans published by the co-defendant, Nagib Tajdin ("Tajdin"). Initially, I obtained a few Farman books for myself and my family, then I obtained more Farman books for my friends and their families, and ultimately I started distributing these books to Ismailis who wanted our Imam's Farmans.
7. Our Imams have always encouraged us to accept all Ismailis as brothers and sisters and to encourage each other to become better acquainted with our religion in order to become "true" Ismailis, and I have distributed the Farman books to make our Imam's Farmans available to all Ismailis.
8. I believe that all Ismailis have an inherent right to the Imam's Farmans and to distribute them to other Ismailis. The Farman books distributed by me were distributed personally to Ismailis only.
9. I have never sold the Farman books over the web for anyone to purchase them. I do not engage in the distribution of the Farman books in the nature of trade, or in a commercial fashion at all. I have distributed the Farman books at the same price I paid for them.
10. I have been distributing these Farman books openly since 1993. I have not been advised by anyone to stop distributing the Farman books, nor have I received any complaints about the distribution of the Farman books.
11. All aspects of an Ismaili's life concerning religious matters, personal law (an Ismaili can obtain a divorce from his own institution if the local law permits the exercise of such powers, etc.) are governed by a Constitution. The powers and authorities of various Ismaili institutional bodies are all governed by the Constitution. The Constitution also provides for taking disciplinary action (with rights of appeal) against any Ismaili and provides for various forms of penalties, including a provision for an Ismaili to be excommunicated from the community.

12. When ordaining the first Constitution in 1905, the Imam-of-the-Time, Sultan Mahomed Shah, stated that if any Ismaili disobeyed the Constitution, it was as if he or she directly disobeyed the Imam's Farman. Our present Imam stated that the Constitution is of no use if we did not live by the Constitution:

Secondly, in the new Constitution, I would like the new officers to remember that however much time we take to write out the Constitution to prepare it for My Jamats of East Africa, unless the officers and the Jamats themselves live by the Constitution, then there is no point in having one whatsoever.

13. Upon arriving to the Western countries in 1972, Ismailis were initially governed by the *Constitution of East Africa*. In 1976, the Constitution was subsequently replaced by the *Constitution of the Shia Imami Ismailis in Europe, Canada, and the United States of America*. On December 13, 1986, *The Constitution of the Shia Imami Ismaili Muslims* (the "New Constitution") was ordained by the Imam which was applicable to Ismailis worldwide, with rules and regulations for each country in accordance with local customs and laws.
14. All of the Constitutions of various separate countries ordained in and after 1948 (until the new one ordained in 1986) contained express Articles for the publication of Farmans. I do not know if the Constitutions in force before 1948 dealt with the powers for publishing Farmans, as I have not been able to review any copies of the older Constitution.
15. The *Constitution of the Shia Imami Ismailis in Europe, Canada, and the United States of America* (1976) contained the following articles:

HOLY FARMAN AND THE CONSTITUTION

7. The Ismailia Association shall record, compile and certify Holy Farman.
8. The Ismailia Association in consultation with the Supreme Council shall be responsible for publication of Holy Farman.
9. Copies of Holy Farman shall be forwarded by the Ismailia Association to the Supreme Council.

- 10 Any Holy Farman certified by the President of the Supreme Council shall be conclusive evidence thereof.

Articles 7 to 10 above reproduced from the *Constitution of the Shia Imami Ismailis in Europe, Canada, and the United States of America* (incorporating recent amendments), July 1976, published by His Highness the Aga Khan Shia Imami Ismailia Supreme Council for Europe, Canada, and the United States of America.

16. The New Constitution was ordained after a three and one-half year review of all previous Constitutions. On November 21, 1987, in Gilgit, Pakistan, the Imam said the following:

The Imam and leaders of the Jamat have worked for three and a half years on the new Constitution of the Jamat. The Constitution starts on the premise that every Murid, wherever he lives and wherever the Imam is, has a bond with the Imam-of-the-Time. And therefore the Constitution links every Murid to the Imam-of-the-Time. In the same way, the rules and regulations have been designed to take into account national law in various countries, old traditions and habits, new needs.

But basically, the new Constitution provides that every Murid has the same relationship to the Imam-of-the-Time in the administration of Jamati matters and that is, I think, a very important step. [Emphasis added] ...

The Constitution has not been designed as an instrument of uncaring direction. On the contrary, it is an instrument seeking to respond to the needs of the Jamat in a manner which will serve the purpose and the interests of the Jamat. The Constitution has been designed, therefore, to serve. And it is in that spirit that I would wish the leadership of the Jamat to conceive of this document. It is a document aimed at serving the Jamat.

17. The Ismailia Association referred to in paragraph 15 above, was renamed *Tariqah and Religious Education Boards* ("ITREB") when the New Constitution was ordained in 1986. Notably, unlike all previous Constitutions, the New Constitution did not vest the responsibility of recording, compiling, certifying and publishing Farmans to ITREB, the institution vested with powers over religious matters, or to any other institutions. Moreover, the Imam did not reserve this power for Himself.

18. Our Imam has always urged us to abide by our Constitution "in letter and spirit" and His Farmans. In my review of our Constitution and of various Farmans made by the Imam, the publication and distribution of the Farmans of our Imam by Tajdin and me does not in any way or form breach our Constitution, or any Farmans. I will not knowingly act in defiance of our Constitution and/or any Farmans made by our Imam.

19. With respect to the Farmans, our Imam has said as follows:

I have given you Farmans which I urge you to follow, because these Farmans I make are made for My Jamats.

November 29, 1964, in Karachi, Pakistan

I have a feeling I may have been speaking at a level which is difficult for some of you to comprehend. If this is the case, I simply ask you to listen to this Farman at your own time more peacefully, and try to understand what I have been saying to you.

March 4, 1981, in Nairobi, Kenya

This is a complex Farman. ... think about it, discuss it with your children, discuss it with your grandchildren, if they are old enough to think in these terms, and prepare them to see the way ahead, wisely and properly...

Bombay in 1992

20. On December 13, 2003, in Dubai, the Imam acknowledged that knowledge, including Farmans, have been lost and should be reconstituted:

My Jamat would know that during the past decades much time and effort has been taken to reconcile our knowledge of our own history. Knowledge which had been buried by time, which has sometime been buried on purpose by others, but which it is essential that we should reconstitute and use in order to inform ourselves as to the practices and beliefs and the ethics of the past within the Jamat, the guidance that was given by the Imams of the Time, and to inform ourselves so as better to project into the future a number of

important decisions. [emphasis added]

21. I am an avid reader of our religious materials and history of our faith, and I can say with certainty that the Imams have always encouraged the Jamats to abide by their Farmans, and have made Farmans available to the Jamats. The consequences of not abiding by the Imam's Guidance are severe:

The Imam's word on matters of faith is taken as an absolute rule. ... The Community always follows very closely the personal way of thinking of the Imam. ... An Ismaili who did not obey My word in matters of faith, would not be excommunicated, he would still be a Muslim. He simply would no longer be a member of the Jamath [His followers].

Sunday Times, December 12, 1965

22. The Farmans made by our Imam are not ordinary words spoken by an individual. The Imam's Farmans are of a special nature as explained by the Imam Himself:

You have looked to the Imam-of-The-Age for advice and help in all matters and through your Imam's immense love and affection for His spritual children, His Noor has indicated to you where and in which direction you must turn, so as to obtain spiritual and worldly satisfaction.

Karachi, Pakistan, December 13, 1964.

23. I do not believe that the Imam does not approve distribution of His Farmans to His Jamats by Tajdin and me. Considering that the Imam has not restricted the publication of Farman books in the New Constitution or made any Farmans prohibiting such activities, and referring to His Farman made in Dubai (noted in paragraph 20), I am not convinced that this action has been brought by the Imam.
24. Instead, I believe that Shafik who is seeking to stop Tajdin and me from distributing the Farmans, but in my belief his actions are in direct contradiction to the Imam's Guidance given on August 15, 1992, as set out in Karim Alibhay's affidavit filed in support of this motion.
25. Based on His Guidance given on August 15, 1992, I believe that the Imam is happy

that Tajdin is making His Farmans available to the Jamats. Although I have been distributing these Farman books openly since 1993, no one has ever told me to stop the distributing of the Farman books.

26. Considering that the Imam said on August 15, 1992, to continue “this work” when presented with the First Farman book, and conveyed His Blessings for the success of “this work”, I am not satisfied that the Imam has now changed His mind and is seeking to refrain us from distributing His Farmans.
27. We, Ismailis, are expected to govern ourselves by our Constitution and by the Imam’s Farmans. The Imam’s Farmans regarding the Constitution and regarding Farmans imply that we, Ismailis, are entitled to have access to the Farmans, and as a result, activities of copying and distributing the Farmans of the Imam to other Ismailis cannot be an infringement of the *Copyright Act*. The Ismaili Constitution, which has jurisdiction over Farmans, does not prohibit the publication or distribution of the Farmans for and among Ismailis.
28. The announcement of the Leaders International Forum (hereinafter “LIF”) read in the Jamatkhanas on April 15, 2010, (after this action was commenced) stated that the action was brought by the Aga Khan as there was no other alternative to compel us to cease distribution of the Golden Edition.
29. However, the announcement of April 15, 2010, was made by Sachedina to slander both Tajdin and me in the eyes of the worldwide Ismailis, whereby he made it appear that Tajdin and I were the worst Ismailis possible in deliberately refusing to abide by the Aga Khan’s and His brother’s pleas to us, and that He (the Aga Khan) reluctantly brought this action against us as He had no other alternative (although I note that I have not received (even with forged signatures) any correspondence from the Aga Khan or His brother. The announcement brought death threats to both Tajdin and me, and thousands of Ismailis worldwide slammed us as being the enemies of the Aga Khan.
30. The Aga Khan has amended the Ismaili Constitution a number of times since

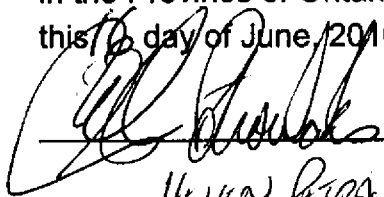
ordaining it in 1986, and to date He has not amended it to restrict the activities complained of in this action. Had the Aga Khan amended the Constitution to restrict the activities complained of in this action, I would have immediately abided by the Constitution. It is my belief that the Aga Khan, in keeping with His consent and blessings given on August 15, 1992, did not deliberately include the Articles that were part of the Constitution up to 1986.

31. Furthermore, the statement of claim alleges that a "complaint" was made when Tajdin commenced distributing the books in 1993 and 1994, and that he withdrew it after the complaint was made. This has been denied by Tajdin in his affidavit. However, I know that Tajdin never stopped distributing the books as alleged in the claim, and I note that paragraph 21 of the claim is simply a conclusion without any underlying facts supporting the conclusion.
32. Furthermore, I know that all institutional leaders, and in particular Sahedina, knew all along that Tajdin was publishing and distributing the books openly, and nothing was done by anyone, including the amending of the Constitution noted above.
33. I also note that if the publication of the Golden Edition was so frowned upon the Aga Khan that no steps were taken to withdraw from circulation the books distributed between 1992 and 2009 when the Golden Edition was introduced.
34. I also note that the letter dated January 24, 2010, referred to in Tajdin's affidavit, purportedly signed by the Aga Khan, as well as the announcements made by LIF contained factual errors, which together with the unusual step of bringing an action, which appears to be the first time an Imam brings an action against His spiritual children, when in fact by simply making a Farman or by sending a Talika would have sufficed, causes me to disbelieve that this action is brought by the Aga Khan.
35. Attached hereto as Exhibit "A" is a copy of an email dated February 15, 2010, sent by Tajdin to Michele Parkes, a secretary at the Aga Khan Secretariat, to inform her that the letter dated January 24, 2010, which she sent to Tajdin as an attachment to her email, was not signed by the Aga Khan. Tajdin has informed me, and I

believe it to be true, that he never received any response from Michele Parkes regarding the forged signature.

36. I am not at all convinced that the Aga Khan has initiated this action as everything that is said by Sachedina and/or his lawyer, Mr. Gray, the plaintiff's counsel, seems abnormal, including the forging of the signatures, the statements made to the press, the hiding of information (eg. denial to give information concerning the signing of the Affirmation), the failure to press ahead on a timely basis (delays in serving the reply, amending the reply for such irrelevant and minute errors apparently to extend time for serving the affidavit of documents, etc.), and the failure of counsel to give us convincing evidence that the Aga Khan has actually authorized this action. Accordingly, Tajdin and I are filing this motion for judgement.
37. There has never been any "complaint" by anyone prior to the announcement made at Jamatkhana in Europe, Canada, Africa, and United States of America, on January 16, 2010, by Leaders International Forum concerning the distribution of the Farman books, even though I have openly been distributing these Farman books since 1993.
38. As far as I am concerned, as things now stand, there are still no Farmans or any Articles of our Constitution prohibiting my activities. I have not breached or infringed any Articles of our Constitution, nor have I disobeyed any Farmans respecting the distribution of the Farmans.
39. The Aga Khan has amended the Ismaili Constitution a number of times since ordaining it in 1986, and has not amended it to prohibit the activities complained of by this action, and had it been amended, I would have immediately complied with the Constitution without question or reservation.
40. I am, therefore, making this affidavit in support of our motion for summary judgment dismissing this action.

SWORN at the City of Toronto
in the Province of Ontario
this 10 day of June 2010



HELEN PETROULAKIS

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)Alnaz Jiwa