

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, and where so stated I verily believe the same to be true.
2. I will also rely on my previous affidavits sworn by me in this matter, and as such will not give background and other details already noted in the previous affidavits.
3. I note that the plaintiff issued the claim on April 6, 2010, and did not even serve the claim on my co-defendant Nagib Tajdin ("Tajdin") as required by the rules until May 1, 2010, and only after Tajdin served and filed his defence, and to date the plaintiff has not brought a motion to seek an interim injunction to restrain our activities, if indeed the ongoing infringement was a concern.
4. The plaintiff's counsel ("Gray") and Shafik Sachedina ("Sachedina"), who we are alleging is behind this litigation, have been intimidating us by damaging our reputation in our community. As an example, the claim was immediately upon being issued distributed by way of a mass email campaign across the world to our Ismaili community to ruin our reputation, and which has brought about death threats to us

and an immense amount of verbal and written abuses by many members of our community, against not only against us, but also against our families.

5. As noted in our defence and our evidence filed in support of and opposing the motions for summary judgment, the named plaintiff gave his consent on August 15, 1992, to us to distribute His oral Guidance, known as Farmans, to his followers, and that the plaintiff had very simple ways to have us stop the activities complained of *if* he had wanted to stop us from distributing his Farmans.
6. Both Tajdin and I are committed to stop the distribution immediately and without any conditions whatsoever, *if* the plaintiff gives us instructions to stop the activities complained of by Mr. Sachedina despite any legal arguments available to us. To date He has not done so, and the only information being relayed to us is from Sachedina, who does not have any power or jurisdiction to overrule the Imam's Farmans or instructions given to us to distribute His Farmans.
7. Sachedina is the main person who desires us to stop the activities and not the named plaintiff. To date there have been four documents given to Tajdin by or at the behest of Mr. Sachedina - two letters and an affirmation purportedly signed by the plaintiff, and an email purportedly sent by the plaintiff's brother. Three of these documents contain false signatures, and we have submitted five experts reports by three independent experts, and the email purportedly sent by the plaintiff's brother was not signed, was not on His letterhead, was not sent from His email, and contains an error which only Mr. Sachedina has made in the past when writing to Tajdin.
8. More importantly though, is the fact that we are governed by a written Constitution which the plaintiff urges all of us to abide by "in letter and in spirit", and the older versions of the Ismaili Constitution had articles restricting the publishing of Farmans, while the new Ismaili Constitution ordained by the plaintiff in 1986 revoked such

restrictions, and there are no Farmans or articles of our Ismaili Constitution or any oral or written instructions given by the plaintiff restrict the distribution of the Farmans, or prohibiting the distribution of the Farmans, but on the contrary He encourages the dissemination of the Farmans to our congregation members.

9. As matters now stand, there are twelve affidavits filed in support of the three motions for summary judgment, but none by the named plaintiff. Tajdin and I are not surprised as we have all along maintained that the named plaintiff is not behind this litigation, and has not signed the three documents which appear to show that He has signed them.
10. The plaintiff's counsel has also not served the plaintiff's affidavit of documents.
11. On July 19, 2010, Tajdin and I each served a Direction to Attend on the named plaintiff requiring Him to attend for examination on July 30, 2010, and we also enclosed a certified cheque of \$20,000.00 towards conduct money to appear in Toronto. In my letter enclosed to Gray, I noted that we could attend at Paris to conduct the examinations if the plaintiff so desired.
12. The plaintiff's counsel responded to our Direction to Attend by saying that he advised the plaintiff not to attend the discoveries, and has instead brought a motion for requiring the case to be case managed and asking that the motions for summary judgement be set down for a hearing on October 4, 2010, or immediately thereafter as a date can be available, and for leave to file the Certificate of Registration of Copyright (which we are not opposing.) Attached hereto as Exhibit "A" is a copy of the correspondence received from Gray in this regard.
13. Although Gray submits that we are refusing to set a date for hearing on October 4, 2010, or giving another date, I note that he had argued this point with Madam Justice Heneghan, who directed that either singly or jointly, parties to ask for a date

after the cross-examinations are conducted.

14. It is also not clear at the moment whether motions for compelling answers or undertakings may be required. Madam Justice Heheghan, after discussing the issues with us, agreed and directed that once cross-examinations are completed, we would be able to determine whether we were ready to argue the motions, and to determine how much time would be required to argue the motions.
15. I note that there are twelve affidavits, four experts reports, dozens of documents will have to be reviewed, legal arguments made, and considering that one of the parties is not a lawyer, I estimate that the time required to argue the motions may be two to three days and not one hour estimated by Gray.
16. However, there is only one way to minimize the expenses to the parties, and bring a final solution to the issues raised by this litigation, and that is to examine the named plaintiff for five-minutes, because if the named plaintiff personally confirms that he did not give His consent in 1992 to distribution of his Farmans (which was video taped but Sachedina has refused to produce it), and/or if the named plaintiff indicates that He would like us to stop the distribution of the Farman books, then we will stop immediately.
17. Gray and Sachedina are desirous of litigating this action to no end, and to date have not produced any credible evidence that the named plaintiff is actually behind the litigation.
18. Cross-examinations have been scheduled for the week of August 9, 2010, for four days, with one day to be confirmed to cross-examine the expert. Gray has indicated that he has not yet made up his mind whether to cross-examine one more affiant who resides in Nairobi, Kenya, and if so that will have to be organized as well.

19. Furthermore, Gray has been seeking to exclude us from the cross-examinations of witnesses, including Tajdin and me from each other's cross-examinations, despite that fact that we are self-represented parties. He has written to the court seeking a Direction to exclude us, and my position is that he would have to bring a motion to exclude us as we are parties.
20. Gray has also asked for a Direction to grant him leave to file responding evidence *after* he has cross-examined us (parties) but before he cross-examines our expert. This is not acceptable to me, and again my position is that Gray would have to bring a motion, as this is not something that can be determined by way of a Direction. Attached hereto as Exhibit "B" is a copy of the correspondence received from Gray and our response in this regard.
21. Gray's and Sachedina's tactics are to intimidate us and inundate us with motions and procedural issues, all the time refusing to provide us with direct access to the named plaintiff, although we have maintained that the named plaintiff's name is being used by Sachedina. We, the defendants, are not seeking costs for the action, or even for the motions, as we know that any costs ordered would be paid by the named plaintiff's community funds and not personally by Gray or by Sachedina, and we cannot accept the community funds to be used to pay us. We serve our community with all our efforts and resources, and cannot take for the community funds.
22. This is another reason, it appears to me, that Gray and Sachedina would rather litigate and frustrate us to death and make us suffer rather than resolve the issues in the most expeditious and effective manner, that is, to allow for discoveries to take place, so that we can be assured that the named plaintiff is really seeking to stop the activities He has consented to in the past.
23. I also note that, the Affirmation purportedly signed by the named plaintiff says that

He did not give consent to the distribution of the Farman book published by Tajdin in December of 2009, but notably He did not say that He did not give us consent back in 1992, or that He was revoking the previously given consent to publish and distribute His Farmans. We have been continuously distributing the Farmans since 1992 based on the consent given by the named plaintiff in 1992.

24. It is only after 1997, after Sachedina was appointed as head of the named plaintiff's secretariat, that *he started saying that the distribution should stop*. Sachedina says that the named plaintiff had told him to seek the cessation of the distribution, but there are no Farmans, or any articles of our Ismaili Constitution, which we are obliged to abide by in "letter and in spirit", that prohibits our activities.
25. By this litigation, we are being portrayed as "satans" in our community and many people are seeking to harm us, or are seeking to have us leave the faith we believe in and we serve with our hearts and life.
26. There are many people who continue to harass us, and continue to remind our fellow brothers how terrible we are by fighting our Imam, and one such example can be found in the web site: <http://lawsuit2010.com/index.html>. Gray and Sachdina are content with publically humiliating us, I believe to make us cave in to their demands.
27. However, all of the litigation problems would be resolved, all expenses of conducting cross-examinations, ordering transcripts, arguing motions for refusals, etc., (evident by the number of letters written to the court by Gray), and the scarce judicial resources avoided if the named plaintiff attends for discoveries, even for a mere five minutes. I am also not asking that the affidavit of documents be served by the named plaintiff before attending for the discoveries.
28. I am a lawyer, operating as a sole practitioner, with two full time and a part-time staff, practice family law and some litigation files. Gray, in his correspondence to the court stated that we are refusing to set dates for hearing of the motions. It is

perfectly okay by him to refuse dates when such dates conflict with his scheduling, but when it conflicts with ours, he cannot tolerate it and commenced writing to the court to seek directions.

29. As noted earlier, Gray seeks leave to file a responding affidavit after cross-examining us, the parties, despite the rules and case law to the contrary, and yet seems to say that he is ready to set a date for hearing. It is my position that he would have to bring a motion for the relief he is seeking, and furthermore, that there may be refusals or undertakings motions arising from the cross-examinations.
30. Gray's estimate of one hour he requires to argue the three summary judgment motions, despite the five days or more of cross-examinations, appears to me to be clearly inaccurate, and stated simply to obtain earliest dates from the court.
31. I am scheduled for a four to five day trial at the Family Court in Toronto. Toronto court does not fix dates for trials and we are expected to remain on stand by and often trials have started a week or so later than scheduled date, which in my case is week of September 20, 2010. For me to confirm a two or three day summary motion arguments immediately after a four to five day trial is very difficult, especially when the trial itself is an estimate and could take longer. I would also have to order and review transcripts of cross-examinations and prepare for trial as well as preparing my memorandum of facts and law would be difficult for me under these circumstances.
32. Gray's argument in advising the named plaintiff that if either of the parties win the motion for summary judgment, then discoveries would not be necessary. But there is the possibility that neither would win the motion, or that a summary trial could be ordered, and all of the costs and Judicial time would be wasted.
33. I am, therefore, asking this court to stay all cross-examinations and steps in this litigation for a 30 day period and order that the named plaintiff be discovered within

21 days of the order, without the need for Him to serve His affidavit of documents, as the litigation will surely be resolved once the named plaintiff appears, if He is actually behind this litigation, as my position is that if the named plaintiff wished me to stop the activities complied of in this litigation, I will cease the activities immediately without any conditions whatsoever.

34. Tajdin has given evidence that in response to his seeking direct contact with the named plaintiff to ensure that the named plaintiff is Himself behind this litigation, or that He wishes the distribution of His Farmans to stop, he received written correspondence which contained forged signatures, confirmed by three experts giving five reports that the correspondence was not signed by the named plaintiff.
35. I am asking that this court order that discoveries of the named plaintiff be produced within 21 days of making of an order, and that the examination to take place in Paris, which is just about one-half hour from the named plaintiff's residence, and I am also satisfied in exempting the named plaintiff from serving his affidavit of documents before being examined.
36. I am, therefore, making this affidavit to ask that the named plaintiff be produced for examination and for no other purpose.

SWORN at the City of Toronto
in the Province of Ontario
this 28th day of July, 2010



)
)
)
) Alnaz Jiwa



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

AFFIDAVIT OF ALNAZ JIWA

sworn on July 28, 2010

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

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

This is exhibit A attached to the
Affidavit of Arvoe Tiwa
Sworn on July 28, 2010

A handwritten signature in cursive script, appearing to read "Arvoe Tiwa", written over the "Sworn on" line.

Direct Dial: (416) 216-1905
Direct Fax: (416) 216-3930
bgray@ogilvyrenault.com

Toronto, July 23, 2010

Alnaz Jiwa
205 – 37 Sandiford Drive
Stouffville, Ontario
L4A 7X5

Dear Mr. Jiwa :

RE: Federal Court File No. T-514-10

We have received your letter of July 19, 2010 and the Direction to Attend.

I find it curious that both of you appear to be available on July 30, 2010 in Toronto notwithstanding your representation to the Court that you could not be available until August to conduct the cross-examinations.

In any event, your request is premature. As you know, both the plaintiff and the defendants have motions for summary judgment pending and for these motions cross-examination is scheduled for August 9 – 13, 2010. If either of those motions succeed, the examination that you have requested would be unnecessary. In addition, document discovery has not yet taken place.

Accordingly, I have advised my client not to attend and I am returning your cheque for \$20,000.00.

Yours very truly,



Brian Gray
BWG/cf
encl.



RE: Federal Court - Cour fédérale T-514-10

Thursday, July 22, 2010 3:44 PM

From: "Nagib Tajdin" <nagib@tajdin.com>

To: "Gray, Brian" <bgray@ogilvyrenault.com>, "Jlwa Law Office" <jlwalaw@yahoo.ca>

Cc: "Wall, Kristin" <kwall@ogilvyrenault.com>, nagibtajdin@yahoo.com

Dear Mr Gray,

I trust you have now received the check for the discovery expense.

Please let me know if the date is convenient for discovery or if the named plaintiff would like us to do the discovery in Paris around that date.

If Paris it is more convenient, I will be able to change the date on my ticket and stop there on my way from Nairobi to Canada .

As you know, this discovery will allow all of us to avoid costly procedures such as motions, trials and further examinations, therefore saving time and money to all parties involved including to your client and to the Court and it will bring an end to the court proceedings.

I trust you will confirm at the earliest.

Regards,

Nagib tajdin

This is exhibit B attached to the
Affidavit of Araez Tine
Sworn on July 28, 2010

A handwritten signature in cursive script, appearing to read 'Sully', with a long diagonal stroke extending from the bottom right of the signature.

Alnaz I. Jiwa
205 - 37 Sandiford Dr.
Stouffville, ON L4A 7X5
Tel: (905) 640-3831
Fax: (905) 640-7533
Jiwalaw@yahoo.ca

July 27, 2010

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

Attention: Brian W. Gray / Kristin E. Wall

Dear Counsel:

Re: Jiwa et al. ats His Highness Prince Karim Aga Khan

I acknowledge the return of the certified cheque and your comments concerning the unavailability of both of us on July 30, 2010.

Please refrain from making false accusations against me.

I never said to you or to the court that I was **not** available on July 30, 2010. I had made it very clear both to you and to the court that I was available and ready to be examined in July.

It was **only** after the judge asked you to report back to her concerning Mr. Bhaloo and Mr. Sachedina's availability in **July** and in August that you reversed your position of cross-examining me during July, indicating to the Judge that it made sense to conduct **all** cross-examinations in August. You then asked the judge to allow you to report back on the availability of Mr. Bhaloo and Mr. Sachedina's for August and not for July. Please review your notes of the case conference, if you made them. You are confused as to what happened, and/or simply accusing me to intimidate me.

In any event, I do not agree with your comments suggesting that the bringing of summary judgment motions *stays* the rules concerning the discovery of documents and conducting examinations for discoveries.

You may choose not discover us, but by refusing to confirm discoveries of the named plaintiff, you leave us with no choice but to bring a motion so seek an order to conduct discoveries of the named plaintiff, and to require you to serve your affidavit of documents.

Yours very truly,

Alnazi. Jiwa





T-514-10 - His Highness Prince Karim Aga Khan v. Tajdin and Jiwa ... Wednesday, July 28, 2010 9:54 AM

From: "Wall, Kristin" <kwall@ogilvyrenault.com>
To: "Federal Court Case Management" <cmt_toronto@cas-satj.gc.ca>
Cc: "jwalaw@yahoo.ca" <jwalaw@yahoo.ca>, "nagib@tajdn.com" <nagib@tajdn.com>,
"Gray, Brian" <bgray@ogilvyrenault.com>
2 Files (172KB)



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Attn: Case management

Please see the attached correspondence, which was sent to the Court by the parties on July 26 and 27, 2010 respectively.

As set out in the letters, the parties require a direction from the Court on issues concerning the conduct of cross-examinations on summary judgment motions in advance of August 9, 2010.

Respectfully submitted,

Kristin Wall

T: 416.216.3964
F: 416.216.3930
kwall@ogilvyrenault.com

Direct Dial: (416) 216-1905
Direct Fax: (416) 216-3930
bgray@ogilvyrenault.com

VIA FACSIMILE

Toronto, July 26, 2010

The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, ON M5V 3L6

Dear Sir:

RE: His Highness Prince Karim Aga Khan v. Nagib Tajdin, Alnaz Jiwa, John Doe *et al.*
Federal Court File No. T-514-10

We are the solicitors for the Plaintiff, His Highness Prince Karim Aga Khan in the above-noted matter. This letter concerns the scheduling of cross-examinations respecting the Plaintiff's and Defendants' motions for summary judgment. The Plaintiff has filed a motion in writing dated July 22, 2010, requesting that a case management judge be designated to assist with this case. Until this motion is determined, however, we ask that you bring this letter to the attention of the appropriate judge and/or registrar.

On June 21, 2010, the Defendants, Mr. Tajdin and Mr. Jiwa, each filed separate motions for summary judgment to dismiss the Plaintiff's claim against them. On June 28, 2010, the Plaintiff filed his own motion for summary judgment for a declaration that the Defendants have infringed the Plaintiff's copyright infringement, *inter alia*. Further to a teleconference on July 2, 2010, Madam Justice Heneghan issued a Direction dated July 6, 2010 adjourning the motions for summary judgment *sine die* in order to be heard at the same time, by the same judge, at a special sitting. The Direction further states that cross-examinations on the summary judgment motions will occur between August 9 and August 26, 2010.

The parties have agreed to a schedule for the majority of the cross-examinations to take place the week of August 9, 2010. However, in the course of scheduling cross-examinations, two issues have arisen which require the assistance of this Court, as follows:

OGILVY RENAULT LLP / S.E.N.C.R.L., s.r.l.
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Patent & Trade-mark Agents

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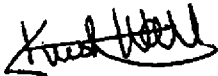
Montréal • Ottawa • Québec • Toronto • Calgary • London

1. The Defendants, Mr. Tajdin and Mr. Jiwa are both self-represented litigants. The Plaintiff intends to cross-examine both Mr. Tajdin and Mr. Jiwa on the affidavits they have filed in support of their own respective motions for summary judgment, as well as on the responding affidavits they have each filed on the Plaintiff's motion for summary judgment. Since both Mr. Jiwa and Mr. Tajdin are witnesses in this case, the Plaintiff has requested that they not attend each other's cross-examination. The Defendants have denied the Plaintiff's request. As a result, the Plaintiff requests that this Court issue a direction that Mr. Tajdin cannot attend Mr. Jiwa's cross-examination and vice versa.
2. The Defendants requested an 8-day extension of time to file a response to the Plaintiff's motion for summary judgment dated June 28, 2010. The Plaintiff consented to this request. The Defendants each filed a responding motion record on July 16, 2010. Both Defendants included the same expert affidavit in their respective motion records - the Affidavit of Graham P. Ospreay, sworn July 14, 2010. The Ospreay Affidavit contains three separate handwriting analysis reports. None of the handwriting specimens studied to prepare the reports are attached to the Affidavit. The Plaintiff has asked the Defendants to provide the original specimens for inspection. Upon receiving these documents, the Plaintiff may wish to file an affidavit in reply, if necessary. The Plaintiff hereby requests leave from the Court to file an affidavit in reply to the Ospreay affidavit, if required, after cross-examinations of the individual defendants commence on August 9, 2010, but before the cross-examination of Mr. Ospreay.

If required, Counsel for the Plaintiff is available for a case teleconference to determine these matters.

Respectfully submitted.

OGILVY RENAULT LLP



per: Brian W. Gray

BWG/KEW/jb

cc. Mr. Alnaz Jiwa (via e-mail)
Mr. Nagib Tajdin (via e-mail)

Direct Dial: (416) 216-1905
Direct Fax: (416) 216-3930
bgray@ogilvyrenault.com

Toronto, July 23, 2010

Alnaz Jiwa
205 – 37 Sandiford Drive
Stouffville, Ontario
L4A 7X5

Dear Mr. Jiwa :

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Accordingly, I have advised my client not to attend and I am returning your cheque for \$20,000.00.

Yours very truly,



Brian Gray
BWG/cf
encl.