

**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 August 6, 2010, at 9:30 a.m., at a special sitting, 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 s. 50(1)(b) of the *Federal Courts Act*, staying the parties’ cross-examinations and other proceedings scheduled pursuant to the Direction issued by Madam Justice Heneghan dated July 6, 2010, in respect of the Rule 213 Motions for Summary Judgment brought by the parties;
2. An order pursuant to Rule 90(2) of the *Federal Court Rules* ordering the attendance of the named plaintiff for an oral examination in Paris, France, within 21 days of the order being pronounced by this court;
3. An order pursuant to Rule 223 requiring the named plaintiff to serve his affidavit of documents within 15 days after the date fixed for the oral examination, if he does not attend at the place and time fixed for his oral examination;

4. In the alternative, an order pursuant to Rule 90(2) ordering the named plaintiff to attend to be examined for oral examination for discovery in Paris, France, and to serve his affidavit of documents pursuant to Rule 233 within 21 days of the order pronounced by this court;
5. Such further and other relief as Jiwa may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The named plaintiff (the “Aga Khan”) is the spiritual leader of Ismailis (the followers of the Aga Khan), and Jiwa is a follower of the Aga Khan;
2. The plaintiff commenced the present action on April 6, 2010, for infringement of copyright and moral rights relating to publication and distribution of a book and mp3 audio bookmark entitled “Farmans 1957-2009 - Golden Edition Kalam-E Imam-E Zaman” (the “Golden Edition”);
3. On April 29, 2010, the defendant Nagib Tajdin (“Tajdin”) and Jiwa each served and filed a Statement of Defence, alleging that the Aga Khan is not behind this litigation and that the litigation has been commenced and prosecuted by the Head of the Imam’s Secretarial, Shafik Sachedina (“Sachedina”);
4. Both defendants plead that their actions are justified as the Aga Khan gave His consent to the publication and/or distribution of his Farmans on August 15, 1992, in Montreal; that the event was video taped by the Aga Khan’s institutional leaders; that by virtue of being Ismailis, they have implied consent to the distribution of the Aga Khan’s Farmans; that the action is out of the Limitations period set out in the Copyright Act; that the plaintiff be

estopped from seeking any relief as a result of laches on the grounds that the defendants have been distributing Farmans since 1992 to the knowledge of the plaintiff;

5. On May 25, 2010, the plaintiff served and filed: (i) a Reply to the Statement of Defence of Alnaz Jiwa; and (ii) a Reply to the Statement of Defence of Nagib Tajdin. On June 17, 2010, the plaintiff served and filed an Amended Reply to the Statement of Defence of Nagib Tajdin to correct minor grammatical errors;
6. On June 21, 2010, each defendant served and filed a motion for summary judgment returnable July 12, 2010, to dismiss this action on the grounds, *inter alia*, that: (i) the plaintiff provided consent, express and/or implied to the publication and distribution of the Famram books; (ii) the plaintiff did not authorize the commencement of this action;
7. In support of their motions for summary judgment, the defendants filed: (i) their personal affidavits, (ii) affidavit of the person who presented on August 15, 1992, to the Imam the very first Farman book (in public), (iii) affidavit of an expert who gave his opinion that the letters and affirmation purportedly signed by the Aga Khan were not signed by Him;
8. On June 28, 2010, the plaintiff served and filed his motion for summary judgment returnable July 19, 2010, with evidence by way of affidavits sworn by Sachedina and Aziz Bhaloo based on information and belief (in Bhaloo's evidence based on double hearsay), Daniel J. Gleason and Jennifer Coleman. None of the affiants have any personal knowledge respecting the consent given by the Aga Khan;
9. By a Direction of the Honourable Justice Heneghan dated July 6, 2010, both motions for summary judgment were adjourned *sine die* to permit the scheduling of cross-examinations

and a special setting to be requested after the cross-examinations are completed. Justice Heneghan specifically stated that the named plaintiff cannot be cross-examined unless he files an affidavit;

10. On July 12, 2010, Tajdin and Jiwa each served the plaintiff with a Direction to Attend, along with a certified cheque for \$20,000.00, requiring the named plaintiff's attendance for examinations for oral discoveries on July 30, 2010,
11. The plaintiff's counsel confirmed by correspondence dated July 23, 2010, that he had advised the named plaintiff not to attend on July 30, 2010, for his oral discoveries as, in the opinion of counsel, if either of the summary judgment motions succeed, then discoveries would not be necessary;
12. A total of twelve affidavits have been served by the parties in support of the motions for summary judgment, one affidavit of which is by an expert attaching four expert's reports, and cross-examinations are scheduled for the week of August 9, 2010. Three of the affiants are travelling from Kenya (two are expected to be cross-examined on August 12 and 13). The expert's cross-examination is to be scheduled for the week of August 16, 2010. The plaintiff's counsel has yet to confirm if he will cross-examine an affiant who is also residing in Kenya, and if so, a total of four affiants are or would be travelling from Kenya;
13. The plaintiff's counsel is now seeking a direction from Court to grant leave to allow him to file a reply affidavit replying the expert's reports filed by the defendants after he has conducted the cross-examinations of the defendants, and that affiant may also have to be cross-examined;

14. Tajdin had asked the plaintiff's counsel to arrange a 5-minute meeting with the Aga Khan when he visited Toronto in May of this year in order to confirm if He was behind this litigation and to obtain direct instructions from Him, confirming again the allegations and admission noted in his defence that if the Aga Khan tells him to cease the activities complained of, he would cease immediately his activities;
15. The plaintiff's counsel refused to set up the 5-minute meeting which would have ended the litigation without the necessity of filing motions for judgment, cross-examinations, etc;
16. The defendants ask that the cross-examinations and other procedures scheduled for the motions for judgment be stayed for a period of 30 days or until the Aga Khan is produced for oral examinations for the following reasons:
  - (a) the defendants position is that the Aga Khan is not behind this lawsuit,
  - (b) A delay of 30 days for the cross-examinations will not prejudice the plaintiff;
  - (c) Extensive cross-examination preparations, attendance for cross-examinations, transcript costs, costs for the experts' cross-examinations, preparation of updated memorandum of fact and law, two to three days set aside for hearing of the motions, travel by two (and possibly three) witnesses from Kenya, along with their own loss of time from work; judicial resources, all will be avoided if the named plaintiff attends for discoveries for five minutes to confirm if he is behind this litigation and directly confirms if he, either did not give his consent on August 15, 1992, or that he revokes that consent, or that he does not wish to have His Farmans distributed by the defendants;

- (d) The defendants have all along stated that if the Aga Khan wishes to stop the activities complained of, the defendants would be abided immediately by the defendants despite any legal avenues available to them;
  - (e) The plaintiff's counsel's instructing his client not to attend on reasoning that if either of the motions succeed discoveries would not be necessary, but he ignores the very real probability that the plaintiff may not succeed in his motion without any direct evidence from the named plaintiff, and in any event, there is a strong probability that neither party may succeed, and if so, the parties would have to proceed with the litigation;
  - (f) The defendants are not seeking costs from the named plaintiff, therefore, even if the defendants win their motion, they cannot collect costs from the named plaintiff who is their spiritual father; and
  - (g) Allowing the discovery to proceed will conclusively resolve the litigation, either by confirming that the Aga Khan is the real plaintiff, in which case the defendants would cease their activities, and if the Aga Khan is not the real plaintiff, then such injustice would be stopped in its tracks.
17. It would be just, most expeditious and least expensive manner to resolve the issues raised by this litigation when a five-minute discovery of the named plaintiff is all it will take to resolve the litigation. To date all attempts to have a direct meeting with the named plaintiff have been thwarted by Sachedina;

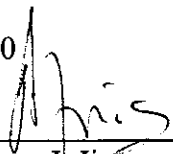
18. If the named plaintiff is the real plaintiff, He would have been anxious to have the defendants cease the activities complained of, but to date He has not given his direct evidence to refute the issue of consent, or even sought to bring an interim injunction to have the activities complained of stopped.;
19. Furthermore, the named plaintiff could have taken some very easy steps to have the activities stopped by making a Farman to his followers, as an example, or even amend the Ismaili Constitution ordained by Him in 1986 revoking all other older Constitutions which contained prohibitions on the publication of Farmans. The newly ordained Constitution was amended in 1998, and an article could have been inserted prohibiting the activities complained of rather than bring this litigation;
20. Filing of summary judgment motions do not automatically stay the opposite party's right to oral or documentary discovery;
21. Rules 90; 223; 358; of the *Federal Court Rules*, SOR/98-106, and s. 50 of the *federal Court Act*;

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

1. Affidavit of Alnaz I. Jiwa sworn July 28, 2010;
2. Affidavit of Nagib Tajdin, sworn July 29, 2010;
3. This defendant's Motion Record filed in support of its Motion for Summary Judgment;
4. This defendant's Responding Motion filed in response to the plaintiff's Motion for Summary Judgment;

5. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Toronto, in the Province of Ontario, this 29<sup>th</sup> day of July, 2010

  
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Solicitors for the Plaintiff



**FEDERAL COURT**

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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**

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**NOTICE OF MOTION**

of the defendant Alnaz Jiwa  
returnable August 6, 2010

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