

July 21, 2011

Sent by FacsimileRegistrar
Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario
M5V 3L6Our reference
01020560-0001

Dear Sir/Madam,

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

We are the solicitors for the Plaintiff, His Highness Prince Karim Aga Khan. We ask that you bring this letter to the attention of Madam Prothonotary Milczynski who has been designated as the referee in this reference proceeding for damages.

Background

By judgment dated March 4, 2011, Harrington J. ordered a reference for damages resulting from the Defendants' infringement of the Plaintiff's copyright. On March 16, 2011, the Chief Justice designated Madam Prothonotary Milczynski as the referee in respect of this reference. The Defendant, Mr. Tajdin, submitted an Affidavit of Documents in this proceeding on October 2, 2010.

Further to a case management conference held on June 16, 2011, the parties agreed to the following actions:

- Defendants agreed to serve a response to the Plaintiff's Statement of Issues within 30 days;
- The Defendant Mr. Jiwa agreed to serve his Affidavit of Documents within 30 days;
- The Defendant Mr. Tajdin agreed to serve a more complete affidavit of documents by August 22, 2011;
- The Defendants agreed to meet with the Plaintiff on August 25, 2011 to review the sufficiency of the documents produced;
- A case conference was scheduled for August 31, 2011 to discuss the sufficiency of document production, but was subsequently moved to August 26 at the request of Madam Prothonotary Milczynski.

During the case management conference, Mr. Tajdin, who ordinarily resides in Kenya, advised that he would be in Canada at the end of August. He has subsequently advised in e-mails that he will be in Canada August 15 to September 3, 2011.

Defendants' Reply to the Plaintiff's Statement of Issues

On July 18, 2011, the Defendants each served a Reply to the Plaintiff's Statement of Issues. The Defendant Mr. Jiwa also served an Affidavit of Documents.

DOCSTOR: 222194713

Mr. Tajdin's "Reply to the Plaintiff's Statement of Issues" attaches three additional documents and states at paragraph 24: "All documents have been given to Plaintiff's counsel, Mr. Gray, on October 4, 2010. In fact, the only documents that were not produced are the expenses incurred during the past 15 years because those were not kept, as this was a deficit project of religious nature."

Both Defendants take the position that they have no further documents to produce. The Plaintiff remains of the view that the Defendants' document production to date is deficient.

It should be noted that almost no original documents have been produced. For example, there are no documents identifying who printed the books and nothing that would enable the Plaintiff to verify how many books were printed. There are virtually no original documents verifying expenses. Rather, Mr. Tajdin has produced tables of financial data that he created himself, and which require explanation. Apparently, Mr. Tajdin has not kept any original receipts, nor submitted any tax returns with respect to the book project.

Mr. Tajdin is in Canada only occasionally. His next return to Canada after August may be delayed by many months. Given the limited production of documents that he has now made, it is necessary to have an examination of Mr. Tajdin under oath.

Order for Examinations for Discovery

In view of the foregoing, the Plaintiff respectfully requests an order under Rule 157 of the *Federal Courts Rules* to proceed with examinations for discovery. The Plaintiff submits that proceeding with discovery on the documents produced to date (and any evidence Mr. Tajdin may be able to explain under oath) will be the simplest, least expensive and most expeditious manner of dealing with deficiencies concerning the Defendants' document production.

The Plaintiff proposes to schedule discoveries during the time that Mr. Tajdin has previously indicated he will be in Canada (August 15 to September 3, 2011) at a time which is most convenient to Mr. Tajdin but preferably before the case management conference on August 26, so that any objections or refusals to questions can be dealt with by the court at that time.

The Plaintiff is available at the Court's convenience for a case management conference to discuss the scheduling of discoveries should this be required.

Yours very truly,



Brian W. Gray

BWG/KEW/jb

Cop(y/ies): Afnaz Jiwa (Defendant/Appellant)
 Nagib Tajdin (Defendant/Appellant)