

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 NAGIB TAJDIN

I, Nagib Tajdin, of the City of Nairobi, Kenya, MAKE OATH AND SAY AS FOLLOW:

1. I am a defendant in this action and as such I have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief.
2. I have prepared this affidavit both in response to the plaintiff's Motion for Refusal and in support of my Cross-Motion for Stay and for Confidentiality.
3. There is an on-going Appeal on matters which are at the heart of Mr Gray's Motion. I have therefore requested a Stay of these proceedings.
4. However, if the Hon court decided that the matter is to proceed, I request Confidentiality in order to terminate the reference within a couple of weeks, therefore saving judicial resources, costs and this will be to the satisfaction of the named Plaintiff whose interest I always have in my heart.

RELATION BETWEEN THE NAMED PLAINTIFF AND THE DEFENDANT:

5. The concept of voluntary service is a pillar of the Ismaili faith. I have endeavored to serve the plaintiff (the "Imam") all my life. My relation with my Imam is not of money but one of spiritual salvation.

6. The litigation has left my relation with my Imam untouched and unchanged. Even after the lawsuit was launched under his name, His Highness has personally invited my wife and me in a restricted event which he attended last July in Nairobi with the Prime Minister of Kenya.
7. I have founded and maintained the oldest and largest web site (www.ismaili.net) dedicated to the Imam and the Ismaili faith. I have not charged any membership fees nor accepted any financial help nor sold advertisement on the site. I have supported the web site for 16 years personally out of my own means. It is in this spirit as well that I have published these farman books, the latest being the Golden Edition, the book for which I have been held to be infringing the copyright of the Imam.
8. All of the projects, the web site as well as the farman books, were all undertaken without any expectation of profit or of deducting losses (incurred over the years) from my income taxes as deductible expenses, and as such I never kept records of income or expenses, and most of the transactions and expenses were incurred by transactions in cash and all sales never had receipts issued or receipts kept for expenses, etc.
9. In fact, none of the projects have produced any profits for me and I have, on the contrary, lost a lot of money in these projects.
10. I have met often with Shafik Sachedina ("Sachedina") and Mohamed Manji, ("Manji") both of whom are giving instructions to Mr. Gray. Sachedina had filed an affidavit in the motions for summary judgment and is well aware of the publications.
11. Sachedina has on a number of occasions acknowledged to me that the projects of publishing these farman books have a lost of money. He knows that I cashed in my life insurance to help pay for these projects. I have met him at many exotic places, such as Syria, Ivory Coast, Pakistan, Tajikistan, in addition to main stream places such as London, etc.
12. In 1998, Sachedina when he visited our family in Montreal, told me (in Aziz Bhaloo's presence (who had also given an affidavit in the motions for summary judgment) that the

Imam had sent me and my family special blessings for my and my family's services, and at that time too, he had confirmed that he knew that I had invested a lot of money and was distributing the books at an enormous financial loss.

THE ACCOUNTING ISSUE

13. To deal with the accounting issue, the only real issue is the number of Golden Edition printed by me. Once that number is established, the sale price would need to be determined which would establish the gross revenues earned by me, and the remaining issue would be deducting expenses from the revenue to produce the value of profit or loss.
14. Many costs were incurred in the creation of the Golden Edition, such as countless meetings, typing, proofreading, hardware, software, printer cartridges, travel and accommodation, taxis, meals, numerous digital recorders, etc. But collecting 15 years' worth of receipts is a gargantuan task and many of the receipts were not even kept by me as I had no desire to deduct my losses or expenses as tax deductible expenses.
15. In reviewing the affidavit of Mr. Jiwa ("Jiwa"), I note that he is prepared to pay rather than face harassment. I have also decided to do same. I will not deduct from the gross revenues any deductions for my office supplies, travel costs, accommodation costs, shipping costs , etc., as in seeking the costs to be deducted, Mr. Gray seems bent on my having to disclose all of my and my wife's intimate financial disclosure such as bank accounts, etc., and the names and details of the persons who have bought from me.
16. Therefore, I will also not seek to deduct from the gross revenues all the books given away by me for free as Mr. Gray is insisting that he wants the names of each person and he wants to contact each one to verify the information. Not only is this not relevant, but it is highly prejudicial to the privacy of these individuals.

17. The following is my estimates for the actual accounting (with estimates of the expenses incurred) and the accounting after I forgo all of the other expenses:

	Revenue	Actual	Accounting
Number published Golden Edition Books 5,500 at \$50		275,000	275,000
Free Books - (1,441 books x \$50 = \$72,050) To be decided by Referee		-72,050	
Free to ITREB Kenya 193 books		-9,650	-9,650
Total max real sales		193,300	265,350

EXPENSES			
	Paid MP3 prod.	\$18,148	\$18,148
	Paid Books Basic Printing cost paid to Printer	\$181,209	\$181,209
	Preparation of book hosting working session, transport, photocopying, renting meeting rooms 3 to 5 sessions per year for 15 years \$45,000 To be decided by Referee	\$45,000	
	Various computer/audio-visual hardware/software. Recorder, convertes Router/cable/printer purchased for the book estimated Total \$15,000 To be decided by Referee	\$15,000	
	Secondary Shipping (such as Kenya to Uganda) \$4,000 To be decided by Referee	\$4,000	
	Net Paid Courier and post for Golden Edition shipping (ground and UPS courier as well as Canada Post) To be decided by Referee (have invoiced for \$14,655)	\$24,656	
	Paid NRB Air Cargo (\$4,000) plus delivery in Nairobi(\$1,000) 2x500 kg = 1,000 kg.	\$5,000	
	Paid NRB Custom clearance	\$950	
	International phone calls and communications Total \$9,000	\$9,000	
	Travel costs since 1992 around the world for Tajdin only (helpers paid about \$81,300 for their own trips.	\$50450	
	TOTAL EXPENSES	\$353,413	\$199,357
	Loss	(\$160,113)	\$65,993

18. Accordingly, although I have lost about \$160,000.00, I am willing to pay about \$66,000.00 as profits deemed to be made by me as I will not seek to deduct the remaining expenses.

19. The only items I will seek to deduct from the gross revenues are the following:
 - a. 193 books given to ITREB for free;
 - b. cost of the amount paid for printing the books; and
 - c. cost of manufacturing the MP3 given with each book.

20. I reiterate that I have given away free books and incurred costs and suffered losses but to avoid the harassment and the loss of time and incredible expenses incurred in this litigation which is paid for from our community resources and to disclose names and details of individuals I will waive the expenses and simply pay as profits to bring this matter to a close.

21. I will mention below as to why I need to protect the names of individuals and the name of the printing company, but for the moment I will address the gross revenues from the sales of the Golden Edition.

SALES PRICE

22. Sachedina retained an investigator to investigate my activities well before the litigation had commenced or even threatened. His investigator discovered that I had quoted him a price of \$400 for 8 books of Golden Edition including the cost of shipping, essentially charging them \$50 per book. Attached hereto as Exhibit "A" is a copy of email from Sachedina dated January 29, 2010, well before the litigation was commenced.

23. This email was produced by Mr. Gray in Sachedina's affidavit filed by him during the motions for judgement, and that email was redacted by Mr. Gray. Yet during my examinations, Mr. Gray seemed to blame me for the redaction. (Transcript question: Q163)

24. Emails sent to ilm-net members by Jiwa (as noted on his affidavit) shows that the selling price of the books was \$50.00.

25. Jiwa also swore in his affidavit that he bought it from someone for \$50 and he sold the books

for \$50. This demonstrates further that the sale of this book was not driven or motivated by profit. not only for me but for all who were involved in the endeavor to distribute a religious book and that the books were sold for \$50.

26. Therefore, it is not surprising that Mr. Gray in the Statement of Claim at paragraph 25 has said concerning the selling of the books as follows:

"The Defendants promote the Book for sale on their respective website for \$50.00 CAD a volume, to be purchased in multiples of four volumes. The MP3 is offered as a free gift with each book "

27. Despite having said that we were selling the Golden Edition for \$50, Mr. Gray has been insisting that he wants proof from us of same, meaning he wants us to produce all emails and other documents to prove that we are selling the Golden Edition for \$50. Mr. Gray is also insisting that names of all people who has bought the books also be disclosed to him despite their privacy issues on the grounds that he wants to verify that we were selling the books for \$50.
28. Clearly after having stated in his claim and submitting an email from Sachedina confirming that I offered to sell 8 books for \$400. Yet Mr. Gray continues to harass us to determine the selling price, and any questions relating to this issue is not relevant.
29. In spite of all his worldwide connections Sachedina has not been able in 2 years since this litigation started, to find even one person that would have paid more then \$50 for the book including the electronic MP3 bookmark player, as no evidence has been given by Mr. Gray.
30. It is important to state that Mr. Gray has not even asserted in his Statement of issues that we were selling the book for more than \$50 nor has he given any evidence of same, and to continue to ask us questions to determine the selling price is sheer harassment for improper purpose of discovering the names of all persons who has bought the books as this is what is sought by Sachedina and Manji.
31. Clearly then asking us to produce names of people and copies of all emails to verify the sale price is not relevant and nonetheless he continues to seek this information, and persistently

continues asking same questions, both of me and of Jiwa. There is no need to invade privacy of the third party individuals because the Justice Harrington's Judgment did not require the purchasers or those who received free books to return the books.

32. Therefore the only *real and material issue* is how many copies I have printed. I ordered 5,000 copies from the printer, and the printer printed 5,500 copies. I explained during my discoveries that the printer explained that due the manner in which presses run, they cannot make exact copies because it depends on the overall number of pages when printing, and as such they printed 5,500 copies of the books, and they delivered the books in batches. I have paid to the printer \$181,209.00 for 5,500 books, and I paid \$18,148 for the MP3 for a total of \$199,357 for the printing costs, or \$32.25 per book is what the raw costs for production was.
33. I had in one email noted that a second edition was ordered. Mr. Gray has made a serious attempt to try to state that I am hiding the issue of how many books were printed. However, I explained in my discoveries that the printer had sent me books in separate batches and that separate printing orders were not prepared for me. Jiwa has produced an email sent well before the litigation - confirming that a second batch was coming and not a second printing was ordered.

EXPENSES

34. Printing & MP3: The statement of invoices and payment with date and amount has been submitted pending disposal of this cross-motion for confidentiality and the Appeal on the Docket. A letter from the printing press confirming that there were only 5,500 copies printed along with the cost of printing has been provided to Mr. Gray except that the name of the printer has been redacted. Attached hereto as Exhibit "B" is a copy of the letter from the printer dated July 26, 2011, and the details of the payments and the invoice for the MP3.
35. I am prepared to give the original documents of the printer (and of the MP3) to an independent person to investigate the number of total copies printed and the cost paid to them as this is the only information that needs to be verified.

36. I will explain later why it is important not to release the name of the printer to Mr. Gray.
37. 193 Books to ITREB: Attached hereto is a letter confirming that I have delivered to ITREB Kentya 193 books. Attached hereto as Exhibit "C" is a copy of the acknowledgment by ITREB in receiving these books.
38. Accordingly, the only issue remaining to verify is the number of books (and MP3) printed and the cost for same to determine the issues.

COUNSEL REFUSES TO KEEP CONFIDENTIAL

39. I have proposed several times to Mr. Gray to give him the information relating to the printing if he agreed to keep it confidential. Each time he has refused.
40. During my Discovery dated 8 November, I proposed to give all the information if Mr Gray would keep it confidential. Mr Gray unequivocally refused to keep it confidential. I therefore did not give him the name.

a. Question 150 to 155:

"You can have someone that you trust going to the printing press. And I will give you a letter allowing the printing press to give you those information, which are accounting and finance information, how much money they received; how many books they have printed; what are the dates they printed; when they printed, how many did they bind the first time and release the first time; how many did they bind the second time, release the second time, because you know the way it's done. It's all printed in one go. But then you know this binding books, packing, all these things are done by batches. So first batch, second batch. They will tell you all of those things. I will write to them that they can disclose the information on how many; when it was printed; when it was sent; how much money they have received for issuance of the shipment; which are the dates. So that takes care of all the expenses that I have incurred for the printing. There is no better way of doing that."

41. Again in Q172 I reiterated that:

“We'll find a way to verify for you from a person which you trust to go there, an accountant or a lawyer, to the printing press, verify in their books, I will give you the authorization, how many books were printed.”

42. Again and again I reiterated that I am prepared to give the information to an independent person to verify the number of books printed in total and the total charged and paid by me to the printer.

Q My answer to Question 301:

A. Once we agree on this confidentiality issue we can give you that. We don't want this name to go to Mr. Sachedina, to Mr. Mohammed Manji. I'm not going to agree to it. I already have an appeal and a stay, which I have asked.”

43. I continued to maintain my position (Qs: 243, 244, 289, 290, 367, etc.), but Mr. Gray said as follows:

Q: 367: I'm just going to keep ask asking the question until you answer it.

44. Mr Gray constantly asked the same questions on the same documents trying to show there were ten times more redacted documents than the document redacted of names or address. However, I have not refused to give all information, I have simply refused to give Mr. Gray the names of persons who bought the books, the name of the printer and the name of the MP3 manufacturer and shipping company.

ABUSE OF PROCESS

45. Mr. Gray continued asking me where my money came from to pay the printing press, how much loan I took, or what I did with the money I received.

46. Mr. Gray also asked me which companies I have dealt with, about my client that I dealt with **in my previous Internet Business of 7 years ago**, what is my relation to Sterling Properties (I have no relation with them except that Internet Global which was the company I was working as manager before moving to Kenya 6 years ago. I had been asked to register a

domain name for Sterling Properties and one of the employees did that name registration as he did for so many other clients at that time in the scope of our work as an Internet provider. My name is on the registration of their domain on behalf of Internet Global Inc which is the company name shown on their record.)

47. In any event, such questioning is completely improper and uncalled for.
48. In para 54 of his Written Submission, Mr Gray proposes that we may have the potential to fabricate information and he need to cross reference third parties to prevent fabrication.
49. The lines of questioning by Mr. Gray obviously informed me that he is interested in a lot more than accounting for profits.

CONFIDENTIALITY NEEDED:

50. On the issue of confidentiality, Mr Gray has previously represented that he would not share the information he receives with anyone except with the Imam. However later, in writing to the Referee, Mr Gray confirmed that he would share information with many others.
51. During our cross-examinations, Mr. Gray told us that he takes instructions from Sachedina and Manji, and recently on 31st August 2011, Mr Gray sent an email about this lawsuit to Mr Abdulla Dharamsey, who is a "Founder and Honorary Chair of the Global Ismaili Muslim eForum, claiming over 32,500 worldwide email recipients" (who also widely circulates to his recipients emails inciting hatred against us) and in the said email, Mr. Gray wrote, "However if you would like me to ask His Highness or Shafik Sachedina if I have permission to speak freely to you, I would be happy to do so...").
52. This does clearly shows that Mr Gray can seek and is seeking instructions from Sachedina in regards to this lawsuit. He has said this to me and Jiwa just after he finished Jiwa's cross-examinations for the summary motion judgment.
53. For instance, the Statement of Claim was circulated by mass email and to the news outlets within a few days of issuing and well before it was even served on us as per the Rules.

54. Mr. Gray regularly gives information to websites such as Vancouverite.com and lawsuit2010.com which are committed to condemn us and to incite hatred against us in the community. Mr. Gray has also given the transcripts of the discovery to these websites which were used by the websites to create troubles for us in the community, despite Prothonotary Tabib saying "The parties do not agree the transcript should be filed." The Transcripts of the discovery has not been subject of any motion nor filed on the record. Attached hereto as Exhibit "D" is a copy of one the transcript posted by vancouverite.com.
55. In May 2010, Mr Gray sent us an "Affirmation" purportedly signed by is His Highness The Aga Khan against us with an email threatening that he has been told by the Aga Khan to circulate it widely if we do not settle the action, and in fact within a few days circulated it to Vancouverite.com for posting on its website.
56. However, Mr. Gray himself later told me and Jiwa in August of 2010 that circulating of the Affirmation was his own idea, and that he was not told so by the Aga Khan to do so despite his earlier written comments to us in his email.
57. Mr. Grays comments to the websites and the manner in which the information is used create a lot of hatred towards us in the community.
58. These mass emailing of the Claim, and releasing the discovery transcript, giving the affirmation, etc., are all made with intent to create problems for us, to defame us and to incite our community against us. Mr. Gray had asked Prothonotary Tabib, after he had released the transcripts to vancouverite a week or so earlier, that he wanted to file the transcripts on the record for the motions for summary judgment, but was not permitted to do. Attached hereto as Exhibit "E" is a copy of the CMC Minutes dated November 18, 2010.
59. These activities encourage hate propaganda against us, calls for excommunication against us and physical threats which were also posted on web sites. Attached hereto as Exhibit "F" are a few copies of such hate postings against us.
60. On 12th of October 2010, at the hearing in Ottawa in front of Justice Boivin, one Mehboob

Kamadia who regularly posts derogatory material against the defendant on lawsuit2010.com, came all the way from Toronto and attended the hearing with his 3 friends and accomplices. After the hearing, I saw him having a conversation with Mr. Gray as I left the courtroom, and a short time later he and his accomplices surrounded me outside the courtroom and Mr Kamadia started insulting to me, and assaulted me in public.

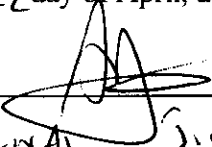
61. Mr Jiwa, my co-defendant, has also given evidence that he too was assaulted in a prayer hall.
62. It is not surprising to me that before the litigation commenced, Sachedina had threatened me that he would destroy and ruin me. His threats have become reality. Attached hereto as Exhibit "G" is a copy of my letter sent to Sachedina after the said telephone conversation with him.
63. There are a few names that were identified during the litigation, such as of Karim Alibhay, and Meheub Chatur. Mr Alibhai received many threatening calls after he submitted his Affidavit in support of the Defendants, and Mr Chatur whose name came into the limelight for paying the Costs ordered by the Court, without even knowing the Defendants, has also been threatened. Furthermore, defamatory and highly inflammatory writings and threats against Mr. Chatur have appeared on websites such as lawsuit2010.com and circulated by emails.
64. The lawsuit2010.com, which I believe is established by or on behalf of Kamadia, lists names of all those of my friends and family members who support me, and the comments are highly inflammatory and aimed at provoking hate towards my family and friends, thereby triggering threats of harm, petitions for our excommunication from the community and death threats. Attached hereto as Exhibit "H" is a copy of two such postings.
65. The printer could be also subject to threats and even reprisals by Kamadia whom I have known since we were children and is a very vindictive person. For instance, after the litigation commenced, Kamadia has written many emails condemning Jiwa and me and has been inciting people against us. He sent mass emails to other Muslim community with intent that the larger community also go after me, and a person traveled from Congo to Kenya to meet me and to give me threats in person.

66. There is no other ulterior motive by me not to disclose the documents other than that once the names of individuals who bought the books, or those who helped me in this projects becomes public, they will also be subject of ridicule by these websites, will be subject to threats, and perhaps even assaults.
67. Justice Harrington had ordered costs of \$30,000 (on consent), and was paid (before the appeal was even finalized or heard) with a stipulation that if we won the appeal this amount not to be returned to us but be used for any purpose the Imam determines (such as paying to the Aga Khan Foundation). A cheque payable to the Aga Khan was forwarded to him and to date it has not been cashed. The Federal Court of Appeal dismissed our appeal on January 16, 2012, with costs, and to date Mr. Gray has not even submitted his Bill of Costs.
68. Knowing our Imam, knowing that this project was not for profit, knowing we did not make a profit, knowing that the cheque of \$30,000 is not cashed, and knowing that we published this book only to help the congregation become better acquainted with their faith, I believe that the Imam does not want any costs, or profit or damages from us.
69. It is only Manji and/or Sachedina who wants to identify who are the people who are our supporters so that can be marginalized by them in our community, as both of them, and in particular Sachedina is in charge of the institutions of the community with wide reaching powers.
70. Mr. Gray indicates that I post articles to my web sites. I would have preferred no to, but however all the mass emails and web sites dedicated against us necessitates me to place the record straight on the web sites and to neutralize the negative and misleading comments posted against us. My posting is done without identifying any individuals and has stemmed the tide against us and has given a balanced and accurate reporting of what is happening.
71. I have attempted many times to settle the issue of Profit to the benefit of His Highness. I truly believe that by appointing a neutral party to verify the accounting information related to profit in the publication of the Golden Edition, the reference can be resolved very fast while keeping a perfect balance between the respect of privacy and public interest and the protection from

harm of any person whose names would be found in the documents unless they are consulted by a neutral third party.

72. The reference is strictly to resolve the issues of monetary nature (profits, revenue, and expense) not to extract information about defendant's clients or suppliers or business partner or social friends or others who they have come in contact with. No breach of privacy should be allowed. No additional documents containing any names should be divulged nor any information which can be verified through neutral qualified or independent person.

SWORN at the City of Toronto
in the Province of Ontario
this 22 day of April, 2012



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)Nagib Tajdin
