

Federal Court



Cour fédérale

Date: 20121029

Docket: T-514-10

Toronto, Ontario, October 29, 2012

PRESENT: Madam Prothonotary Milczynski

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,
PROMOTING AND/OR AUTHORIZING THE
REPRODUCTION AND PROMOTION OF
THE INFRINGING MATERIALS**

Defendants

ORDER

UPON MOTION filed on April 19, 2012 on behalf of the Plaintiff for:

- (a) an Order requiring the Defendants to deliver answers to questions refused or taken under advisement as identified at Schedules “A” and “B” attached to the Notice of Motion dated April 19, 2012, and all proper questions arising therefrom, within thirty (30) days of the Order of this Court;

- (b) Costs of this motion fixed at \$8,000; and
- (c) Such further or other relief as counsel may advise and as to this Honourable Court may seem just.

AND UPON reading the Plaintiff's Revised undertakings and refusals charts, as delivered to the Defendants on April 27, 2012, and to the Court on May 10, 2012, pursuant to the Direction of Madam Prothonotary Milczynski dated April 25, 2012.

AND UPON reading the Defendant Mr. Jiwa's Response to the Plaintiff's Revised undertakings and refusals charts.

AND UPON reading the Defendant Mr. Tajdin's Response to the Plaintiff's Revised undertakings and refusals charts.

AND UPON hearing submissions of counsel for the Plaintiff and from the Defendants themselves.

THIS COURT ORDERS that:

Questions ordered answered

1. The Defendant Mr. Tajdin shall answer the question represented by Item No. 1 on the Revised summary chart of undertakings by producing an unredacted copy of the screen capture e-mail dated November 21, 2009 (Exhibit 2, Tab 1 of the Discovery Transcript of

Mr. Tajdin taken November 8, 2011). Mr. Tajdin answered at the hearing that he searched for and was unable to locate the entire e-mail string.

2. The Defendant Mr. Tajdin shall answer the question represented by Item No. 2 on the Revised summary chart of undertakings by producing an unredacted copy of the e-mail dated November 24, 2009 (Exhibit 2, Tab 2 of the Discovery Transcript of Mr. Tajdin taken November 8, 2011).
3. The Defendant Mr. Tajdin shall answer the question represented by Item No. 5 on the Revised summary chart of undertakings by obtaining from the printer the original documents identifying the printing cost of the book.
4. The Defendant Mr. Tajdin shall answer the question represented by Item No. 6 on the Revised summary chart of undertakings by producing the original unredacted invoices from the shipping company for the amounts referenced in the spreadsheet where the invoice contains a reference to a unit number of books.
5. The Defendant Mr. Tajdin shall answer the question represented by Item No. 8 on the Revised summary chart of undertakings by producing the unredacted PayPal documents showing the customer names, without prejudice to Mr. Tajdin's right to seek a Rule 151 order at trial.

6. The Defendant Mr. Tajdin shall answer the questions represented by Item Nos. 14 to 22 on the Revised summary chart of refusals by producing the names of ten people who ordered books, as indicated on the “Golden Edition Shipping Spreadsheet” (Exhibit 2, Tab 8 of the Discovery Transcript of Mr. Tajdin taken November 8, 2011). The Plaintiff is entitled to select the ten names it wishes to have produced by Mr. Tajdin from this spreadsheet. If Mr. Tajdin does not have names in connection with the shipping orders identified by the Plaintiff, then Mr. Tajdin is to produce any customer names he has in connection with this spreadsheet.

7. The Defendant Mr. Tajdin shall answer the questions represented by Item Nos. 24 and 25 on the Revised summary chart of refusals with respect to his personal bank account and personal line of credit, and shall produce bank records from these two accounts only limited to the period of November 2009 to March 2011, without prejudice to the Plaintiff’s right to later pursue information from other accounts.

8. The Defendant Mr. Tajdin shall answer the question represented by Item No. 28 on the Revised summary chart of refusals by obtaining from the printer and producing the invoices referenced in the Printer’s Statement of Account for account no. 03417 (Exhibit 1, Tab B-8/A-19 of the Discovery Transcript of Mr. Tajdin taken November 8, 2011).

9. The Defendant Mr. Jiwa shall answer the questions represented by Item Nos. 1 to 6 on the Revised summary chart of undertakings by producing unredacted copies of all redacted documents produced.

10. The Defendant Mr. Jiwa shall answer the questions represented by Item Nos. 4 to 9 on the Revised summary chart of refusals on the identification of book distributors and information on free books.

Questions agreed upon between the Plaintiff and the Defendants at the hearing of the motion

Questions answered by the Defendant Mr. Tajdin at the hearing

11. The Defendant Mr. Tajdin answered the questions represented by Item Nos. 10 to 13 on the Revised summary chart of refusals by confirming at the hearing that he searched the requested e-mail accounts and was unable to locate other relevant information.
12. The Defendant Mr. Tajdin answered the question represented by Item No. 27 on the Revised summary chart of refusals concerning the identity of the printer by producing the unredacted document requested at the hearing of the motion.
13. The Defendant Mr. Tajdin answered the question represented by Item No. 31 on the Revised summary chart of refusals by producing the unredacted invoices identifying the name and address of the company that produced the bookmarks at the hearing of the motion.
14. The Defendant Mr. Tajdin answered the question represented by Item No. 32 on the Revised summary chart of refusals by confirming at the hearing that no other original documents exist.

15. The Defendant Mr. Tajdin agreed to answer the question represented by Item No. 33 on the Revised summary chart of refusals by producing original documents for those expenses that he seeks to claim.
16. The Defendant Mr. Tajdin agreed to answer the questions represented by Item Nos. 34 to 36 on the Revised summary chart of refusals if he decides to claim expenses for any free books.

Questions agreed to be withdrawn by the Plaintiff

17. The Plaintiff agreed to withdraw the question represented by Item No. 26 on Mr. Tajdin's Revised summary chart of refusals on the basis that Mr. Tajdin has been ordered to answer the question represented by Item No. 2 on the Revised summary chart of undertakings.
18. The Plaintiff agreed to withdraw the questions represented by Item Nos. 29 and 30 on Mr. Tajdin's Revised summary chart of refusals on the basis that Mr. Tajdin has been ordered to answer the question represented by Item No. 6 on the Revised summary chart of undertakings.
19. The Plaintiff agreed to withdraw the questions represented by Item Nos. 37 and 38 on Mr. Tajdin's Revised summary chart of refusals on the basis that Mr. Tajdin has provided an answer to these questions on his responding chart.

20. The Plaintiff agreed to withdraw the question represented by Item No. 39 on Mr. Tajdin's Revised summary chart of refusals on the basis that Mr. Tajdin has been ordered to answer the question represented by Item No. 8 on the Revised summary chart of undertakings.
21. The Plaintiff agreed to withdraw the question represented by Item No. 42 on Mr. Tajdin's Revised summary chart of refusals on the basis that Mr. Tajdin has already been ordered to produce the requested unredacted documents.

Questions agreed to be deferred by the Plaintiff

22. The Plaintiff agreed to defer the questions represented by Item Nos. 40 and 41 on Mr. Tajdin's Revised summary chart of refusals pending review of the other information that Mr. Tajdin has been ordered, or has agreed, to produce.
23. The Plaintiff agreed to defer the questions represented by Item Nos. 1 to 3 on Mr. Jiwa's Revised summary chart of refusals pending review of the unredacted documents that Mr. Jiwa has been ordered to produce with respect to the questions represented by Item Nos. 1 to 6 of Mr. Jiwa's Revised summary chart of undertakings.

Questions not ordered answered

24. The Defendant Mr. Tajdin need not answer the question represented by Item No. 23 on the Revised summary chart of refusals.

25. The Defendants are ordered to deliver all answers within thirty (30) days of this Order.

26. To the extent that Mr. Tajdin has been ordered to deliver answers that are subject to the outcome of his pending appeal in Federal Court of Appeal File No. A-421-11, Mr. Tajdin may defer the delivery of those answers until a decision in A-421-11 has been rendered.

27. Costs are payable in the amount of \$1,500.00.

"Martha Milczynski"

Prothonotary