

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 SERVICE

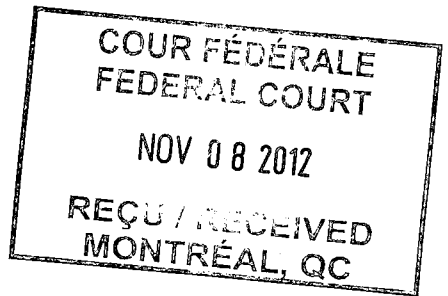
I, Nagib Tajdin, of the City of Montreal, in the province of Quebec, MAKE OATH AS FOLLOWS:

- 1. On November 8, 2012, I served the plaintiff with the defendant Nagib Tajdin and the defendant Alnaz Jiwa's Notice of Motion by sending a copy by fax to (416) 216-3930 to Brian W. Gray, the lawyers for the Plaintiff.

SWORN at the City of Montreal)
in the Province of Quebec)
this 8th day of November, 2012.)

[Signature of Nagib Tajdin]
Nagib Tajdin

[Signature of Maria Rosa Del Castillo]



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Plaintiff

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Defendants

NOTICE OF MOTION

TAKENOTICE THAT the defendants Nagib Tajdin ("Tajdin") and Alnaz Jiwa ("Jiwa") will make a motion on ~~Thursday~~ ^{MONDAY}, December ~~6~~ ³, 2012, at ~~10:00~~ ^{9:30} a.m. at the Federal Court, 30 McGill Street, Montreal, Quebec. The estimated duration of the motion is 2 hours.

THE MOTION IS FOR:

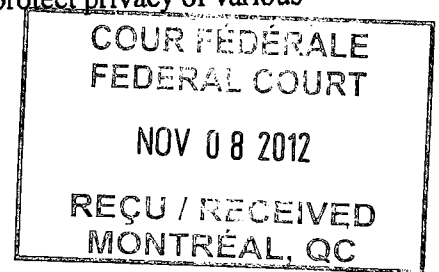
1. An Order staying the Order of Madam Prothonotary Milczynski rendered on 29th October 2012;
2. An Order setting aside the Order of Madam Prothonotary Milczynski rendered on 29th October 2012;
3. An Order in accordance with the Notices of Motion filed by the defendants Tajdin and Jiwa, for hearing before Madam Prothonotary Milczynski;

In the alternative,

4. An Order for disclosure of relevant documents and information be made "For Counsel eyes only" and may only be disclosed upon obtaining a further order of this court;

In the further alternative,

5. An Order that names and addresses of individuals disclosed pursuant to a disclosure order sought by the named plaintiff be subject to a Confidentiality Order, and that any information released and/or filed in the court be with names and addresses redacted to protect privacy of various



individuals;

6. That the names and addresses of individuals can be released and/or published in court materials only after obtaining an order justifying the invasion of individual privacy by serving upon such individuals providing them an opportunity to contest the issue of invasion of their privacy;
7. An Order to restrict the reference to strictly financial analysis for determining the profits earned by the defendants;
8. Such further and other relief as these defendants may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiff obtained a judgment declaring that the defendants infringed the copyright of the plaintiff and chose to seek profits and a Reference was order to determine the profits made by these defendants;
2. The infringing Judgment did not require the copies sold or otherwise given away by the defendants be returned or accounted for, but only required the defendants to deliver copies in their possession and/or control. Tajdin and Jiwa complied with the Judgment;
3. The plaintiff served its Statement of Issues on March 29, 2011, and as such the relevancy of the disclosure required to be disclosed is hence governed by the Statement of Issues;
4. Jiwa and Tajdin amended their position as set out in their Response to the Statement of Issues by stating that they would not seek to deduct from the revenues the substantial number of books given away for free, or for any other expenses save the following three items:
 - a. the actual cost paid to the publisher for publishing the books;
 - b. for payment to manufacturer of MP3s (which were given away with each book);

- c. and for books returned to the plaintiff pursuant to the Judgment,
- which would determine the profits notionally earned by the defendants and would negate the need to infringe on the invasion of privacy of the various individuals who bought books from these defendants;
5. In response to the plaintiff's motion before Madam Prothonotary Milczynski, both Jiwa and Tajdin brought motions to deal with the issues, *inter alia*, of relevancy and confidentiality. Madam Prothonotary Milczynski simply proceeded to make the impugned Order without considering these defendants' motions;
 6. The nature of the disclosure is conducted for ulterior purposes not related to the issue of determining the profits earned by these defendants;
 7. Tajdin has disclosed full particulars of the printer who published the books for Tajdin and given full authority to the plaintiff from obtaining information from the printer to verify the number of books printed and the monies paid to them for the deduction of printing costs. The information being sought is not relevant and is in the nature of a fishing expedition;
 8. For example, the plaintiff's counsel has submitted that he needs to determine the selling price of the books although his own allegation in the Statement of Claim alleges that the book including the MP3 was being sold by the defendants for \$50.00 each, and evidence previously disclosed by counsel as his part of the case proved that the books were being sold for \$50.00 each;
 9. Documents and information demanded on disclosure need only be disclosed for unadmitted facts, while the Order made goes well beyond what is just and proper under the circumstances;


10. The plaintiff's counsel has not given any evidence to contradict the "admitted" sale price of the books, and because the printing project was undertaken as a religious project and not a commercial project, no commercial accounting has been kept by these defendants;
11. Madam Prothonotary Milczynski in making her order, in addition to not hearing these defendants' motions, has ignored well established case law which requires that disclosure ordered be relevant; that information sought is not being requested in the nature of a fishing expedition; that there must be a clear nexus between the information being requested and the positions in dispute between the parties; that information sought is sufficiently particularized to avoid fishing expedition; that information sought advances the legal debate between the parties; that even if information is relevant, if the probative value of the information is de minimis and violates privacy issues such information need not be ordered disclosed;
12. The impugned Order violates the privacy right of dozens of individuals whose names and addresses do not go to establish profits made by these defendants;
13. Rules 51, 152 and 153 of the *Federal Court Rules*; and
14. Such further grounds that this Honourable Court may permit.

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

1. Motion Records filed by the parties before Madam Prothonotary Milczynski;
2. Affidavits of Tajdin and Jiwa to be sworn; and

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

Dated at Montreal, in the Province of Quebec, November 8, 2012


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Fax: (416) 216-3930
Solicitors for the Plaintiff

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

NOTICE OF MOTION

(of the defendants Nagib Tajdin and Alnaz Jiwa
returnable December 6, 2012)

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HP LaserJet 3050

Fax Call Report

HP LASERJET FAX

8-Nov-2012 16:28

Job	Date	Time	Type	Identification	Duration	Pages	Result
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