## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Mr. Justice Harrington (the "Motions Judge") dated January 7, 2011, and amended on January 13, 2011, by which the plaintiff's motion for summary judgment was allowed (T514-10).

**THE APPELLANT ASKS that:**

1. The order of the Motions Judge be set aside and an order be granted dismissing the plaintiff's motion for summary judgment.

**THE GROUNDS FOR THE APPEAL** are as follows:

1. The Motions Judge erred by granting summary judgment to the plaintiff.

**Background**

2. This lawsuit is for determining infringement of copyright in the publication of a book of Farmans titled "Kalam-e Imam-e Zaman Golden Edition, Farmans 1957-2008" and published on the Birthday of the Aga Khan on December 13th, 2009. Farmans are sayings of the Aga Khan as "Imam" to His followers. Farmans are made in His capacity of being the bearer of the Light of God and are disctinct from speeches or interviews made in His "civil" capacity. Defendant Tajdin has published 10 Farman books since the Aga Khan gave His order to continue this work in a religious ceremony called "Mehmani". The only book subject to this lawsuit is the last one which mostly incorporates the previous Farman publications of Tajdin. All publications were deficit projects undertaken during the last 18 years because of the instructions received in 1992 from the Aga Khan, as a duty and an obligation to follow His order, and also as an honor to spread the word of the Imam in His community. Mr Jiwa's name was included in this lawsuit by mistake as he has never published or contributed any material for any Farmans books. The lawsuit was filed, according to defendant Tajdin, to discredit him in the community after having found that Mr Sachedina, a person of far-reaching powers in the Aga Khan's office, had sent letters

with forged signatures to him. Three independent experts and five expertises have confirmed that someone has forged the Aga Khan's signature in this file. Contents of threatening phone calls by Sachedina to Tajdin prior to the lawsuit are also on record. Copyright lawsuit in this perspective is just an excuse from Sachedina to discredit the defendant. Because of the religious nature of Farmans, and implication on the credibility of His administration and stability of His community, the Aga Khan as Imam has to maintain a balance between the parties, all of whom are either working for Him like Sachedina, or are devoted and obedient unconditional followers in His service for decades like Tajdin and Jiwa. There is therefore no authentic direct evidence in this action from the Aga Khan, and He has not taken sides.

**Issues**

3. In the motion for summary judgment, there were issues of infringement of the copyright in the Aga Khan's Farmans and Talikas (Religious Pronouncements ) and the MP3 audio bookmark, issues of authorization and/or consent given by the Aga Khan in 1992 to the publication of His Farmans, issues of the interpretation of the Ismaili Constitution (the Constitution governing the affairs of the community) and of Farmans, and issues of implied consent on various grounds, with each party filing affidavits including affidavits from experts, with cross-examinations undertaken on some of the affidavits. There were serious disputes with respect to evidence, determining admissibility of evidence, credibility of witnesses, inferences to be drawn on contested facts, all of which precludes a motions judge from granting summary judgment.

**Standard of Review**

4. The Court in *Canadian Imperial Bank of Commerce v. F-1 Holdings & Investments Inc.*, 2007 CarswellOnt 8012, (O.S.C.J. Div. Crt.) at para. 5 held: "The standard of review from an appeal from a judge's decision is found in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 211 D.L.R. (4th) 577, [2002] S.C.J. No. 31 (S.C.C.) (cited to Q.L.). In summary it is: On a pure question of law, the basic rule with respect to the review of a trial judge's findings is that an appellate court is free to replace the opinion of the trial judge with its

own. Thus the standard of review on a question of law is that of correctness. (at para. 8)". At para. 6, the Court states: "The standard of review on a motion for summary judgment does not require an analysis of whether a palpable and overriding error has been made by the judge hearing the motion. It is strictly one of correctness." The appellant submits that errors of law made by the motions judge justifies intervention by an appellate court.

**Role of a motions judge**

5. The Motions Judge's erred in failing to determine that there were no genuine issues of facts requiring trial, and simply proceeding to determine credibility issues, finding facts on contested evidence, and making inferences on contested facts, contrary to the well established jurisprudence respecting the powers of a motions judge, which is to determine if the moving party has satisfied its onus that there are no material facts in dispute, and if so, then to determine if the respondents to the motion for summary judgment have filed sufficient evidence to establish that genuine issues for trial exist.

6. In the case of *Garford Pty Ltd. v. Dywidag Systems International Canada Ltd.*, 2010 FC 996, Justice James Russell states at paragraph 9: "A motion for summary judgment is not intended, and should not be treated, as a substitute for a trial. In determining whether a trial is unnecessary and would serve no purpose, the motions judge must guard against assuming the role of a trial judge and deciding the issues" and at paragraph 10, he states that, "... [summary judgment] should not be granted where, on the whole of the evidence, the judge cannot find the necessary facts or it would be unjust to do so. If there are serious factual or legal issues that must be resolved, the case is not appropriate for summary judgment."

7. The Motions Judge exceeded his authority and erred in law when he misinterpreted his limited role as a motions judge and expanded his authority to becoming a hearing judge and proceeded to weigh evidence, assess credibility, draw inferences on disputed facts, so as to make a determination as a trial judge as opposed to a motions judge, when weighing

evidence is a role reserved to a trial judge who is vested with authority to weigh evidence, make inferences or adverse inferences, and make assessments of credibility after hearing viva voce evidence.

**Evidence not on the Record**

8. The Motions Judge was obliged to look at the record for evidence and not go beyond the record. In *AMR Technology Inc. v. Novopharm Ltd.*, 2008 CarswellNat 2986, 2008 FC 970, the Court states at paragraph 22: "The jurisprudence on Rule 216 is clear that a motions judge should refrain from issuing summary judgment where the relevant evidence is unavailable on the record and involves a serious question of fact which turns on the drawing of inferences. (See *MacNeil Estate v. Canada (Department of Indian & Northern Affairs)*, 2004 FCA 50, [2004] 3 F.C.R. 3 (F.C.A.), *Apotex Inc. v. Merck & Co.*, 2002 FCA 210, [2003] 1 F.C. 242 (Fed. C.A.)). ... A trial judge deciding the main issue of infringement would benefit from having more evidence on Teva and Novopharm's intentions going into the contractual relationship with Dipharma." [Emphasis added]

9. The Court in *Apotex Inc. v. Merck & Co.* held: "Rather, my task is to assess the evidentiary record to determine whether I can conclude that no sale was made in Canada. The affidavits of the two professors outline a number of issues that, in their opinions, require further evidence before this key question is answered." The Federal Court of appeal also held in *Apotex Inc. v. Merck & Co.*, [2002] F.C.J. No. 811, 2002 FCA 210 (Fed. C.A.)., at paragraph 42: "Judges hearing motions for summary judgment can only make findings of fact or law where the relevant evidence is available on the record, and does not involve a serious question of fact or law which turns on the drawing of inferences. [Emphasis added]

10. The Motions Judge erred in making an adverse inference (at para. 62) for the defendants' not filing the transcript of the discovery held on October 15, 2010, "there were many off the record discussions, allegedly at the instance of the Aga Khan's lawyer, and so the transcript is said to be useless."

11. The issues concerning the discoveries held on October 15, 2010, were contested. Both parties were prohibited from filing further evidence of the discoveries for the motions for summary judgment and were given leave to bring a motion before Prothonotary Tabib for determination of whether any evidence from the discoveries could be filed for the motions. The defendants were not obliged to file all of their evidence they would have presented at trial of the matter at the hearing of the motions, and the motions judge's speculating what might have happened at discoveries, or drawing inferences without facts on the record of the discoveries is an error of law which requires intervention by an appellant court.

12. Numerous cases in the Federal Court, as well as the Superior Courts, have held that a party responding to a motion for summary judgment has no obligation to file all evidence in support of their case. The Federal Court of Appeal held in *MacNeil Estate v. Canada (Department of Indian & Northern Affairs)*, 2004 FCA 50 (F.C.A.), at para. 37 that, "Nowhere in the Rules is a responding party required to bring forward sufficient evidence so that genuine issues for trial may be resolved on a motion for summary judgment." The Court further states at paragraph 25, "... parties responding to a motion for summary judgment do not have the burden of proving all of the facts in their case; rather, they have only an evidentiary burden to put forward evidence showing that there is a genuine issue for trial" [Emphasis added]. This principle has recently been applied by Justice James Russell in the case of *Garford Pty Ltd. v. Dywidag Systems International Canada Ltd.*, 2010 FC 996.

**Rules of Hearsay: Reliability and Necessity**

13. The Motions Judge erred in refusing to apply cases submitted for consideration on the hearsay evidence which is only admissible as explained by Justice Nadon in *Merck Frosst Canada Inc. v. Canada (Minister of National Health & Welfare)*, 91 F.T.R. 260 at para. 15 and 16: "In other words, in the aftermath of *Khan* and *Smith*, the exceptions to the hearsay rule have been merged into one broad exception which allows for the

admission of proposed evidence that is reliable and necessary, with the appropriate weight to be given to such evidence to be determined by the trial judge."

14. The Court in *T.E.A.M. v. Manitoba Telecom Services Inc.*, 206 Man. R. (2d) 39 sternly stated at paragraph 10, concerning hearsay evidence: "A party should not rely on hearsay evidence in respect of contentious matters unless it can concurrently demonstrate the necessity and reliability of doing so. The Court should afford little or no weight to hearsay evidence that is justified by claims of expedience or by a transparent goal of avoiding cross examination. Reliance on hearsay evidence should be particularly discouraged in the context of a summary judgment motion."

15. The Motions Judge erred in relying on hearsay evidence to come to his conclusions. Entirely the whole evidence of the plaintiff was based on hearsay evidence - the two letters attached to Shafik Sachedina's ("Sachedina") affidavit purported to have been signed by Aga Khan dated January 16, 2010, and February 18, 2010; the Affirmation attached as an exhibit to the affidavits of Daniel Gleason and Jennifer Coleman; the affidavit evidence of Sachedina and Aziz Bhaloo ("Bhaloo") (when saying that the plaintiff did not authorize or approve of the publications) is based on hearsay evidence. The Motions Judge erred in not drawing an adverse inference when the plaintiff did not provide direct evidence, and further erred when he admitted and relied on hearsay evidence in coming to his conclusions without any evidence of the necessity and reliability of such hearsay to be admitted as evidence. The hearsay evidence was contested by the defendants and their expert's reports filed in response to the motion for summary judgment.

**Onus to Prove Consent**

16. The Motions Judge erred in holding that the onus is on the defendants to prove consent contrary to the holding made by the Federal Court of Appeal in *Positive Attitude Safety System Inc. v. Albian Sands Energy Inc.*, 2005 CarswellNat 3575, 2005 FCA 332 at para. 39. In *Canadian Law of Copyright & Industrial Design*, 4th Edition (Carswell), at page

21-7, the author states that, "In order to show infringement the plaintiff must provide proof of lack of consent". Justice Russel W. Zinn of this Court in the recent case of *Atomic Energy of Canada Ltd. v. Areva NP Canada Ltd.,* 2009 FC 980, also held that a plaintiff must prove, on a balance of probabilities "that there has been a copying from that work without its consent." Of significance is that even if the filed evidence is reviewed on the issue of consent and implied consents, the Aga Khan did not state that He did not give His authorization or consent to Karim Alibhay ("Alibhay") in 1992, nor did He seek to explain away the meaning of the words spoken by Him when giving His authorization to Alibhay (speculated by the motions judge), nor did he contest the evidence relied on by the defendants concerning the Ismaili Constitution, or implied consent based on relationship, etc.

17. The Motions Judge erred in holding, "I am unable to accept the defendants' tortuous, convoluted reasoning" respecting onus of proof, even though the defendants' arguments are fully supported by jurisprudence, and the appellants submit that the case of Positive Attitude, supra, is binding on the Motions Judge. On the contrary, these comments seem to highlight the motions judge's lack of objectivity in this matter.

**Consent/Authorization**

18. The Motions Judge stated that the only issues before the Court were direct consent, and two implied consents, as identified by him. The Motions Judge erred by failing to consider evidence concerning the defendants giving their Oath of Allegiance to the Aga Khan, who in return promised to Guide his followers. Furthermore, the Ismaili Constitution itself defines the binding relation between the Aga Khan and the Defendants. Such relationship is also capable of being implied consent. Justice Joyal in the case of *de Tervagne v. Beloeil (Town)*, [1993] 3 F.C. 227, at paras 42 and 44 stated that, "... it is possible to establish that a person has sanctioned, approved or countenanced an actual infringing activity ... if it is shown that certain relationships existed between the alleged authorizer and the actual infringer, or that the alleged authorizer conducted himself in a certain manner." [Emphasis added].

19. The law respecting Authorization does not preclude inferring authorization to be found on religious ceremonies, and/or relationship between the parties, and/or Farmans made by the Aga Khan, and therefore the Motions Judge erred when he made findings of fact, at para 11 of judgment: "I declare that the Aga Khan has never given the defendants permission to publish any Farman, much less the Golden Edition", in face of Alibhay's unchallenged evidence, and the Motions Judge's admission that he might have needed expert evidence to determine the issues which were of religious nature.

20. The Motions Judge allowed the motion for summary judgment although the question of "authorization" is both legally and factually complex. It is best described in *CCH Canadian Ltd. v. Law Society of Upper Canada,* [2004] 1 S.C.R. 339 at paragraph 38: "Authorize" means to "sanction, approve and countenance": *Muzak Corp. v. Composers, Authors and Publishers Association of Canada, Ltd.,* [1953] 2 S.C.R. 182, at p. 193; *De Tervagne v. Beloeil (Town),* [1993] 3 F.C. 227 (T.D.). Countenance in the context of authorizing copyright infringement must be understood in its strongest dictionary meaning, namely, "[g]ive approval to; sanction, permit; favour, encourage": see The New Shorter Oxford English Dictionary (1993), vol. 1, at p. 526. Authorization is a question of fact that depends on the circumstances of each particular case and can be inferred from acts that are less than direct and positive, including a sufficient degree of indifference ... These are determinations best left to a trial judge to weigh in the context of all of the evidence." [Emphasis added].

**Detrimental Reliance/Latches**

21. Authorization can only be revoked by the copyright owner, and expert evidence was led to show that the letters and affirmation filed on the record were not signed by the Aga Khan, hence the evidence was conflicting evidence (assuming the hearsay evidence is admitted) on this central issue. If the hearsay evidence is not admitted, then there is no evidence to challenge the evidence filed by the defendants. This then raises the complex issue that if The Aga Khan gave authorization in 1992, then has it been revoked by him

either based on the letters purportedly signed by the Aga Khan or by the filing of this litigation, and if so, what effect it can have on the books already published. The law of Detrimental Reliance will have to be considered in that, the Court in *Paul v. Vancouver International Airport Authority,* 2000 CarswellBC 561, 2000 BCSC 341, 5 B.L.R. (3d) 135, stated as follows: (i) Estoppel by Representation operates over a wide field of common law and equity. The basic principle is that a person who makes an unambiguous representation, by words, or conduct, or by silence, of an existing fact, and causes another party to act to his detriment in reliance on the representation will not be permitted subsequently to act inconsistently with that representation.

22. Justice Judith A. Sniderin of this Court in the case of *Wenzel Downhole Tools Ltd. v. National-Oilwell Canada Ltd.,* 2010 FC 966, at para. 29 referred to jurisprudence urging caution as follows: "Finally, one of the most recurring principles in the jurisprudence on summary judgments is the need for caution. As stated by Justice Mactavish in *Canada (Minister of Citizenship & Immigration) v. Laroche,* 2008 FC 528, [2008] F.C.J. No. 676 (F.C.) at para. 18: In making this determination, a motions judge must proceed with care, as the effect of the granting of summary judgment will be to preclude a party from presenting any evidence at trial with respect to the issue in dispute. In other words, the unsuccessful responding party will lose its "day in court": see *Apotex Inc. v. Merck & Co.*, 248 F.T.R. 82, at para. 12, aff'd [2004] F.C.J. No. 1495.

23. The motions judge erred in analysing the issue of latches when he made findings of fact based on contested facts.

**Interpretation of the Ismaili Constitution**

24. The Motions Judge erred by deciding a significant question of law involving the interpretation of the Ismaili Constitution, the Farmans, and the 1992 Mehmani ceremony when authorization was given regarding the publication of the Farman books, in the context of summary motion rules. The Ontario Court of Appeal in *Romano v. D'Onofrio,* 2005 CarswellOnt 6725, (O.C.A.), stated that: "This was not a case where the law was

settled and could be applied to admitted facts." The Court referred to *R.D. Belanger & Associates Ltd. v. Stadium Corp.* of Ontario Ltd. (1991), 5 O.R. (3d) 778 (Ont. C.A.), at 782, and stated: "Matters of law which have not been settled fully in our jurisprudence should not be disposed of at this [interlocutory] stage of the proceedings. See also *Bendix Foreign Exchange Corp. v. Integrated Payment Systems Canada Inc.* (Ont. C.A.) at para. 6 and *Jane Doe v. Manitoba*, [2005] M.J. No. 335 (Man. C.A.) at paras. 19-23."

25. Jurisprudence respecting these issues further state: "That type of interpretive analysis should only be done in the context of a full factual record, possibly including appropriate expert evidence: *Spasic Estate v. Imperial Tobacco Ltd.* (2000), 49 O.R. (3d) 699 (Ont. C.A.). at paras. 22-23, leave to appeal to S.C.C. refused, (S.C.C.); see also *Law Society of Upper Canada v. Ernst & Young* (2003), 65 O.R. (3d) 577 (Ont. C.A.) at para. 50, leave to appeal to S.C.C. refused, [2003] S.C.C.A. No. 358 (S.C.C.)."

**Errors of Credibility/Finding of Facts/Inferences**

26. The Motions Judge erred in making findings of fact and drawing inferences on contested facts (e.g. paragraphs 12, 14, 15, 17, 18, 19, 20, 23, 24, 41, 42, 43, 44, 46, 52, 54, 56) which is not within the domain of a judge hearing a motion for summary judgment.

27. The Motions Judge erred in granting the motion for summary judgment after holding that expert evidence was not provided to explain the ceremonial gestures (para. 45) but then goes on to make findings of fact, a role prohibited to a motions judge.

28. Alibhay (who was not cross-examined) gave evidence that in 1992 he presented the first Farman book published by this appellant to the Aga Khan, who after looking at the book responded to Alibhay's question on how to serve the Imamat, "Continue what you are doing, succeed in what you are doing and then we will see what we can do together." This appellant thereafter proceeded to publish several books over the course of the years and to distribute these Farman books to the congregation as of 1992 for a period of 18 years. The Motions Judge erred by speculating what the Aga Khan might have meant.

On the record, there is no evidence at all that the Aga Khan did not give this authorization, or what He meant by saying what He said. The Motions Judge erred by speculating what the Aga Khan might have meant by the above, and went on to make a finding that this was not authorization by the Aga Khan even though he identified that expert evidence was needed to address this issue.

29. The Motions Judge after holding that the expert evidence submitted by both parties was "conflicting" (para. 19) on the issue of forgery, erred in law by proceeding to make findings of fact based on conflicting experts evidence and decided the case based on such findings of fact (e.g. paragraphs 17, 18, 20, 23, 54, 56, 57) contrary to case law pertaining to summary motions. In the case of *Rivard Instruments Inc. v. Ideal Instruments Inc.*, 2007 FC 870, the Court discusses the problems with conflicting experts evidence as follows: "Clearly the two experts conflict. Both were cross-examined at some length. Neither resiled from his opinion. That seems to me is the classic circumstance in which the Court ought not to grant summary judgment and I would cite *Trojan Technologies Inc. v. Suntec Environmental Inc.* ( 2004), 31 C.P.R. ( 4th) 241 (F.C.A.), as a sufficient authority for that proposition."

30. The Motions Judge erred in finding that the experts reports are contradictory. The plaintiff's expert's opinion did not conflict with the defendants' expert's opinion, as he stated that he was not retained to consider and he did not consider if the purported signatures were in fact signed by the Aga Khan. He further admitted on cross-examination that despite asking for authentic signatures of the Aga Khan and original documents purportedly signed by the Aga Khan (Affirmation), the plaintiff's lawyer failed to deliver them to his own expert for inspection. The Motions Judge erred in not drawing an adverse inference on this ground.

31. The Motions Judge erred by misapprehending evidence. At paragraph 57 of his decision, the Motions Judge asks the rhetorical question, "Why would one suppose the Aga Khan had personal knowledge of what a handful of his followers were doing?". The Motions

Judge misapprehended evidence when he ignored the hearsay evidence of Sachedina that the Aga Khan knew in mid 90s of the activities complained of.

32. The Motions Judge also inappropriately makes a finding of fact when he states that, "That letter elicited a very strong reaction.." In effect, the Motions Judge made findings of fact in the face of expert evidence that that letter and other documents were not signed by the Aga Khan. It is an error of law for a judge hearing a motion for summary judgment proceeding to make findings of fact on conflicting evidence.

33. The Motions Judge erred in misapprehending evidence as stated by him at paragraph 59 of his reasons: "First of all, the defendants admit that the real Aga Khan showed up. That is proof positive that he authorized the current lawsuit and that if he had ever given his consent, which he had not, by instituting the lawsuit he withdrew it." But there was no evidence before the Motions Judge on this point at all by either party to support this finding. Neither was there any evidence to support an inference that the Aga Khan had authorised the current lawsuit or withdrawn his consent by filing this lawsuit. The Motions Judge speculated on this issue without any evidence on the record, which is an error of law, as it is an error of law for a motions judge to go beyond the record to make findings of fact, or making inferences (or speculating) without any evidence on the record.

34. The Motions Judge misapprehended evidence when he held that, "They say that if the Aga Khan is not pleased with what they are doing, all he has to do is amend the Ismaili Constitution, or simply issue a Farman, as a new Farman has the effect of overriding the Ismaili Constitution. However, it is not up to the defendants to dictate to the Aga Khan. He tried the religious route, without success." The Motions Judge failed to appreciate the arguments made by the defendants that none of the official prouncements made by the Aga Khan, including the Constitution, Farmans or Talikas, indicate that the activities complained of are not desired by Him, and the only evidence that purports to be from the Aga Khan concerning these activities is forged. The defendants were not seeking to

dictate to the Aga Khan, but are pointing to evidence that establishes that the Aga Khan's official pronouncements as set out in the Ismaili Constitution and all of his public Farmans support the defendants' activities. The defendants' evidence is that they have abided by what was expected of them, that in abiding with their Constitution and Farmans (which provides implied consent, authorization based on relationship, etc.) they are not in breach of their Constitution or any Farmans.

35. The Motions Judge erred in not considering that the Aga Khan has said of the community's religious institutions as follows: that they "posses real autonomy, which do not depend on the intervention, nor the thinking, nor the support of the Imam". The defendants' evidence is that it is the desire of a few powerful people in the Aga Khan's office to prevent the defendants from publishing the Farmans. Accordingly, the defendants pointed to the Farmans and the Constitution as evidence supporting their arguments that they have direct and implied authorization to publish Farmans and that they are not in breach of Farmans and their Ismaili Constitution.

36. The Motions Judge misapprehended evidence when he held at para. 12, "..in their devotion to him all he has to do is say the word and they will cease and desist. However they have placed so many conditions on this word that this lawsuit was taken in frustration." The only condition placed by the defendants is that the communication from the Aga Khan be authentic. There is no evidence of any other condition whatsoever. The defendants have provided experts' reports to show that the documents purportedly signed by the Aga Khan are forged. The Motions Judge made findings of fact, an error committed because the motion's judge usurped the function of the trial judge.

37. The Motions Judge erred when he found that Sachedina's evidence was credible. Sachedina's evidence was self serving, devoid of specific facts and particulars, and one not capable of being admitted as it is entirely based on hearsay evidence, and in any event, a self serving affidavit without specific facts and particulars cannot create a triable issue. Furthermore, his evidence was contradicted by this appellant and uncontested

evidence by Mohamed Tajdin who was part of the Aga Khan's leadership at the time of the said events, and the motions judge preferred Sachedina's hearsay evidence and rejected contrary evidence in order to support his findings of facts. The Motions Judge also erred by relying on Bhaloo's affidavit when his evidence was based on double hearsay, and although he was a senior leader for Canada during the relevant period, he did not give evidence that the Aga Khan desired the activities undertaken by the defendants to cease although he, as a senior leader, was the organizer of the Mehmani ceremony when Alibhay was given the authorization by the Aga Khan. Despite his multiple meetings with the Aga Khan during the years when Defendants were publishing Farmans in his jurisdiction Bhaloo was never told by the Aga Khan that he had any issues with the Farman publications by Defendants, and Bhaloo failed to produce a video recording made regarding the *Mehmani* of 1992 when Alibhay received instructions to continue with the work while presenting the first Farman book to the Aga Khan.

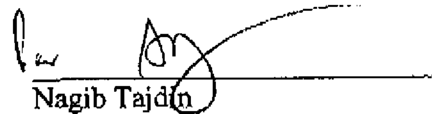
38. The Motions Judge erred in not taking into account evidence that in at least one other court case, employees and officers of the Aga Khan have committed fraud on the Dublin High Court hearing, and in not determining that the defendants' allegations of fraud have a precedent and ought to be taken seriously. In the Case of *Charlston v. H.H. The Aga Khan's Stud's Society Civile*, Dublin High Court, Case No. 11998.. No. 9515p, Justice Declan Budd said that his Court was defrauded by the defendant's officers: "Compounding and aggravating this deception of the Court by deleting relevant passages from the Coulton memo which included excisions which altered the meaning and excluded obviously significant and relevant passages from the memo."

39. The conflicting and/or the missing evidence in respect of authorization and/or consent, the interpretation of the Ismaili Constitution, the interpretation of Farmans and the issue of relationship are all complex matters and presented genuine issues for trial.

**Other Grounds**

40. Such other grounds as the evidence may disclose, counsel may advise, or this Honourable Court may permit.

February 7, 2011



Nagib Tajdin
c/o 37 Sandiford Drive
Unit 205
Stouffville, ON
L4A 7X5

nagib@tajdin.com
905- 640 - 3831

Court File No. __________

---

**FEDERAL COURT**

---

BETWEEN:

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

Appellants
(Defendants)

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent
(Plaintiff)

---

**NOTICE OF APPEAL**

by the Appellant (defendant) Nagib Tajdin

---

Nagib Tajdin
c/o 37 Sandiford Drive
Unit 205
Stouffville, ON
L4A 7X5

nagib@tajdin.com