

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151208

Docket: A-154-15

Citation: 2015 FCA 280

**CORAM: NOËL C.J.
NADON J.A.
STRATAS J.A.**

BETWEEN:

TEVA CANADA LIMITED

Appellant

and

**PFIZER CANADA INC., PFIZER INC.,
PFIZER IRELAND PHARMACEUTICALS,
and PFIZER PRODUCTIONS INC.**

Respondents

Heard at Ottawa, Ontario, on December 8, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on December 8, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on December 8, 2015).

STRATAS J.A.

[1] This is an appeal from the Federal Court (*per* Strickland J.) (2015 FC 306), who dismissed an appeal from the order of Prothonotary Aronovitch dated August 12, 2014. The Prothonotary dismissed Teva Canada Limited's motion to strike certain paragraphs in the respondents' statement of defence and counterclaim.

[2] Before us, Teva emphasized that the Federal Court erred in law in failing to consider this Court's decision in *AstraZeneca Canada Inc. v. Apotex Inc.*, 2013 FCA 77 (*Omeprazole*). In our view, there is uncertainty regarding the state of the law as expressed in that case and other cases and also uncertainty regarding the interpretation of section 8 of the *Patented Medicine (Notice of Compliance) Regulations*, SOR 93-133 as amended; this uncertainty suggests that Teva's motion to strike should not have been granted.

[3] Put another way, both the Prothonotary and the Federal Court held that the issues before them were not plainly and obviously devoid of merit and so they declined to grant the motion to strike. We decline to interfere with that finding.

[4] Accordingly, despite Mr. Norrie's able submissions, we shall dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-154-15

**APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE
STRICKLAND DATED MARCH 11, 2015, DOCKET NO. T-2280-12**

STYLE OF CAUSE: **TEVA CANADA LIMITED v.
PFIZER CANADA INC., PFIZER
INC., PFIZER IRELAND
PHARMACEUTICALS, and
PFIZER PRODUCTIONS INC.**

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: DECEMBER 8, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
NADON J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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FOR THE RESPONDENTS

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FOR THE RESPONDENTS