

Federal Court



Cour fédérale

Date: 20111209

Docket: T-1844-07

Citation: 2011 FC 1442

Ottawa, Ontario, December 9, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

TEVA CANADA LIMITED

Plaintiff

and

WYETH LLC and PFIZER CANADA INC.

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Defendants have brought a motion for an Order dismissing this action and for directions as to costs. The motion is a consequence of my Judgment in this action dated November 17, 2011, together with Reasons cited as 2011 FC 1169. In that Judgment, I allowed the motion before me to proceed as a summary trial and held that the Plaintiff Teva was not entitled to continue ratiopharm's claim for damages under section 8 of the *NOC Regulations*. Costs in a fixed sum were awarded to the Defendants. The terms of that Order were drafted in a manner so as to be consistent with the relief requested by the Defendants in the motion.

[2] The Defendants now come before me to have the action dismissed (the Counterclaim has been discontinued) and for costs. The Plaintiff agrees that, subject to any Judgment or Order of an appellate Court, dismissal of the action is appropriate. The Plaintiff argues, however, that a Judgment dismissing the action should not be given at this time because it has filed an appeal from my Judgment and is endeavouring to have that appeal expedited. The Plaintiff would like to retain the trial date, fixed as February 11, 2013, for twenty-five (25) days in the event that it is successful in the Court of Appeal.

[3] I am sceptical that the parties can exhaust their appellate rights and still have time to complete preparation for a trial date of February 11, 2013. Even if the Court of Appeal were to grant Judgment in favour of Teva, one would expect that Wyeth, et al. may seek leave to appeal to the Supreme Court of Canada. It is unrealistic to expect that all appellate remedies would be concluded in time for a trial commencing February 11, 2013.

[4] A second reason respecting the trial date is that consideration must be given to the pressures on this Court to find trial dates for other litigants in other cases. Even now, some litigants are not expecting trial dates until 2015.

[5] Accordingly, it is appropriate now to grant Judgment dismissing the action and releasing the trial date. I will include as a term of the Order a provision that either party may, if it is then appropriate, apply again for an expedited trial date.

[6] As to costs, I will award costs of the action to the Defendants, but only those costs and reasonable disbursements arising after the date of the merger between ratiopharm and Teva/Novopharm, that is, after August 10, 2010. This is appropriate, since I have found, as expressed in my earlier Reasons, that ratiopharm had a valid cause of action until that date.

[7] The Defendants are entitled to their costs, calculated at the upper level of Column IV, together with reasonable disbursements incurred after August 20, 2010, but not before. No costs or disbursements are awarded in respect of the Counterclaim, now discontinued, or in respect of the summary trial for which costs have already been awarded. Costs that have otherwise been awarded by any other Order in this action shall be unaffected. Costs of the present motion are awarded to the Defendants, fixed in the sum of \$1,000.00.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. This action is dismissed;

2. The trial date previously fixed to begin on February 11, 2013 is released; subject however, to the provision that either of the parties may seek a new trial date on an expedited basis should that be required after all appeal remedies have been exhausted or determined.

3. The Defendants are awarded costs of this motion fixed at \$1,000.00. The Defendants are otherwise entitled to costs to be assessed, if not agreed upon, consistent with the Reasons herein.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1844-07

STYLE OF CAUSE: TEVA CANADA LIMITED v WYETH LLC and
PFIZER CANADA INC.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 8, 2011

REASONS FOR JUDGMENT: HUGHES J.

DATED: December 9, 2011

APPEARANCES:

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FOR THE PLAINTIFF

Brian Daley

FOR THE DEFENDANTS

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