

Date: 20080915

Docket: A-348-08

Citation: 2008 FCA 263

**CORAM: DESJARDINS J.A.
LINDEN J.A.
EVANS J.A.**

BETWEEN:

**PFIZER CANADA INC., PFIZER INC.,
PFIZER IRELAND PHARMACEUTICALS, and
PFIZER RESEARCH AND DEVELOPMENT COMPANY N.V./S.A.**

Appellants

and

**NOVOPHARM LIMITED and
THE MINISTER OF HEALTH**

Respondents

Heard at Toronto, Ontario, on September 15, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on September 15, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 15, 2008)

EVANS J.A.

[1] We are not persuaded that the Motions Judge, Deputy Judge Teitelbaum, exercised his discretion to dismiss the appellant's application for an order of prohibition for abuse of process in a manner that warrants our intervention. The Motions Judge's decision is reported as *Pfizer Canada Inc. v. Novopharm Ltd.*, 2008 FC 674.

[2] Counsel argues that the Motions Judge erred in characterizing the appellant's application for an order of prohibition against the respondent as a collateral attack on the earlier decision in *Pfizer Canada Inc. v. Apotex Inc.* (2007), 59 C.P.R. (4th) 183, 2007 FC 26, *aff'd*. 60 C.P.R. (4th) 177, 2007 FCA 195. In that decision, Justice O'Reilly dismissed Pfizer's application for an order of prohibition against Apotex, finding that Pfizer had failed to overcome Apotex's allegation that the patent in question in that case (and in this case) was invalid.

[3] Whether or not Justice Teitelbaum erred as alleged, the fact that, as a result of its own mistake, Pfizer failed in its application against Apotex to adduce relevant evidence, which it now wishes to rely on in its present application for a prohibition against Novopharm, is an inadequate basis for distinguishing the decision of this Court in *Sanofi-Aventis v. Novopharm Ltd.* (2007), 59 C.P.R. (4th) 416, 2007 FCA 163.

[4] For these reasons, the appeal will be dismissed with costs.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-348-08

**(APPEAL FROM AN ORDER OF THE HONOURABLE DEPUTY JUDGE TEITELBAUM
("MOTION JUDGE") DATED MAY 29, 2008, DOCKET NO. T-1566-07.)**

STYLE OF CAUSE: PFIZER CANADA INC., PFIZER INC., PFIZER
IRELAND PHARMACEUTICALS, and PFIZER
RESEARCH AND DEVELOPMENT COMPANY
N.V./S.A. v. NOVOPHARM LIMITED and THE
MINISTER OF HEALTH

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 15, 2008

**REASONS FOR JUDGMENT OF
THE COURT BY:** (DESJARDINS, LINDEN & EVANS
JJ.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

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