

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170314

Docket: A-65-16

Citation: 2017 FCA 51

**CORAM: GAUTHIER J.A.
DE MONTIGNY J.A.
GLEASON J.A.**

BETWEEN:

TEVA CANADA LIMITED

Appellant

and

LEO PHARMA INC. AND LEO PHARMA A/S

Respondents

and

THE MINISTER OF HEALTH

Respondent

Heard at Montréal, Quebec, on February 2, 2017.

Judgment delivered at Ottawa, Ontario, on March 14, 2017.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

DE MONTIGNY J.A.
GLEASON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] In the present appeal, the appellant, Teva Canada Limited, seeks to set aside the decision of the Federal Court (2016 FC 107) granting the respondent, Leo Pharma Inc., costs in the amount of \$419,729.92 in respect of its successful application under the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133. In its detailed reasons, the Federal Court disallowed a substantial portion of the amount claimed by Leo Pharma but it rejected the specific arguments raised before us by Teva in respect of additional deductions.

[2] Teva makes two alternative submissions. First, it requests that in the event its appeal on the merits of the Federal Court's prohibition application is successful the costs award should be set aside. Second, it submits in the alternative that even if its appeal on the merits of the decision on the prohibition application is dismissed, the costs award should be reduced to deduct some or all of the amounts awarded for certain fees paid to Leo Pharma's experts (Dr. Goldberg, Dr. Shear, and Dr. Blatter).

[3] As a discretionary decision, the Federal Court's decision on costs is reviewable under the usual appellate standard of review set out in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33: factual determinations and matters of mixed fact and law which do not contain an extricable legal issue may be set aside only if the Federal Court made a palpable and overriding error whereas legal errors are subject to review for correctness: *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paragraphs 74-79.

[4] The first of Teva's submission must be dismissed as its appeal on the merits of the Federal Court's prohibition application was unsuccessful on the merits (2017 FCA 50). I would also dismiss its alternative submission.

[5] Indeed, each of the impugned portions of the Federal Court's costs award involves a matter of fact or mixed fact and law from which no pure issue of law can be extricated. I do not see any error, much less a palpable and overriding one, having been made by the Federal Court in respect of any of the said portions of its costs award.

[6] I would therefore dismiss this appeal with costs that I would fix in the all-inclusive amount of \$500.00.

“Johanne Gauthier”

J.A.

“I agree
Yves de Montigny J.A.”

“I agree
Mary J.L. Gleason J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-65-16

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE LOCKE DATED
JANUARY 29, 2016, DOCKET NO. T-1791-13 (2016 FC 107)**

STYLE OF CAUSE: TEVA CANADA LIMITED v. LEO
PHARMA INC. AND LEO
PHARMA A/S and THE
MINISTER OF HEALTH

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 2, 2017

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
GLEASON J.A.

DATED: MARCH 14, 2017

APPEARANCES:

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FOR THE RESPONDENT
LEO PHARMA INC. AND LEO
PHARMA A/S

FOR THE RESPONDENT
THE MINISTER OF HEALTH