

Date: 20070620

Docket: A-109-07

Citation: 2007 FCA 244

**CORAM: LINDEN J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

RANBAXY LABORATORIES LIMITED

Appellant

and

**PFIZER CANADA INC.,
WARNER-LAMBERT COMPANY, LLC and
THE MINISTER OF HEALTH**

Respondents

Heard at Ottawa, Ontario, on June 20, 2007.

Judgment delivered from the Bench at Ottawa, Ontario, on June 20, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Date: 20070620

Docket: A-109-07

Citation: 2007 FCA 244

**CORAM: LINDEN J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

RANBAXY LABORATORIES LIMITED

Appellant

and

**PFIZER CANADA INC.
WARNER-LAMBERT COMPANY, LLC and
THE MINISTER OF HEALTH**

Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 20, 2007)

PELLETIER J.A.

[1] Despite Mr. Dimock's ingenious argument, this appeal should be dismissed.

[2] The amendments allowed by the prothonotary, and confirmed by the order of the motions judge, were fully justified by the record before the prothonotary unless there was some legal impediment to the making of such an order.

[3] Two such impediments were suggested to us. The first is that the 45 day limitation period in subsection 6(1) of the *Patented Medicines (Notice of Compliance) Regulations* (the Regulations)

prohibits the revival of the proceedings in relation to the patents in question. Whatever may be the case where no such proceedings have been commenced within the statutory time limits, in this case an application was launched within the 45 day period and was still in place at the time of the amendment. Had the appellant not given Pfizer the erroneous information, the latter would not have amended its original application to discontinue proceedings in relation to the '018 and '455 patents. The amendments in question simply place Pfizer in the position in which it would have been but for the misleading information.

[4] The second impediment is that the 24 month stay provided for in paragraph 7(1)(e) of the Regulations has ceased to apply in relation to the '018 and '455 patents because of the discontinuance. In *Abbot Laboratories v. Canada (Minister of Health)*, 2007 FCA 187, this Court decided that the Court's jurisdiction with respect to an application for prohibition was not dependent upon the currency of the statutory stay. In the circumstances, the inapplicability of that stay, if indeed that is the case, in relation to these two patents does not preclude the granting of the amendments in question.

[5] With respect to the order extending the statutory stay, that was a discretionary order which was fully justified by the record before the prothonotary.

[6] For those reasons, the appeal will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-109-07

**APPEAL FROM A JUDGMENT OR ORDER OF THE FEDERAL COURT DATED
FEBRUARY 22, 2007, DOCKET NO. T-507-05**

STYLE OF CAUSE: *RANBAXY LABORATORIES LIMITED and PFIZER CANADA INC. ET AL*

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 20, 2007

REASONS FOR JUDGMENT OF THE COURT BY: Linden, Pelletier, Ryer JJ.A.

DELIVERED FROM THE BENCH BY: Pelletier J.A.

APPEARANCES:

Ronald E. Dimock
Angela M. Furlanetto

FOR THE APPELLANT

John B. Laskin
Grant Worden

FOR THE RESPONDENTS, PFIZER
CANADA INC., and WARNER-
LAMBERT COMPANY, LLC

SOLICITORS OF RECORD:

Dimock Stratton LLP
Toronto, Ontario

FOR THE APPELLANT

Torys LLP
Toronto, Ontario

FOR THE RESPONDENTS, PFIZER
CANADA INC., and WARNER-
LAMBERT COMPANY, LLC

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT, THE
MINISTER OF HEALTH