

**Date: 20081015**

**Docket: A-488-07**

**Citation: 2008 FCA 309**

**CORAM: LÉTOURNEAU J.A.  
SHARLOW J.A.  
PELLETIER J.A.**

**BETWEEN:**

**BAYER HEALTHCARE AG and  
BAYER INC.**

**Appellants  
(Plaintiffs/Defendants  
by Counterclaim)**

**and**

**SANDOZ CANADA INCORPORATED**

**Respondent  
(Defendant/Plaintiff  
by Counterclaim)**

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

Judgment delivered at Toronto, Ontario, on October 15, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on October 15, 2008)

**SHARLOW J.A.**

[1] Bayer appeals the order of Justice Barnes (2007 FC 1068) dismissing its motion to strike paragraphs 46 to 56 of the Amended Statement of Defence and Counterclaim. We note that in certain respects Justice Barnes' reasons may disclose some misunderstanding of the pleadings. However, despite the able submissions of counsel for Bayer, we are not persuaded that it is plain

and obvious that the pleadings must fail. Therefore, the appeal will be dismissed with costs in the cause.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-488-07

**APPEAL FROM THE REASONS FOR ORDER AND ORDER OF THE FEDERAL COURT (BARNES, J.), DATED OCTOBER 17, 2007, DOCKET NO. T-762-06**

**STYLE OF CAUSE:** *BAYER HEALTHCARE AG and BAYER INC. v. SANDOZ CANADA INCORPORATED*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 15, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** (LÉTOURNEAU, SHARLOW & PELLETIER JJ.A.)

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

Peter Choe FOR THE APPELLANT

Warren Springings, Robert Shapiro, Paula Bremner FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Toronto, ON