

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120625

Dockets: A-480-11
A-481-11

Citation: 2012 FCA 195

CORAM: NOËL J.A.
EVANS J.A.
SHARLOW J.A.

A-480-11

BETWEEN:

**NYCOMED CANADA INC., NYCOMED GMBH and
NYCOMED INTERNATIONAL MANAGEMENT GMBH**

Appellants

and

TEVA CANADA LIMITED

Respondent

A-481-11

BETWEEN:

NYCOMED CANADA INC

Appellant

and

APOTEX INC.

Respondent

AND BETWEEN:

NYCOMED CANADA INC. and NYCOMED GMBH

Appellants

and

APOTEX INC.

Respondent

Heard at Toronto, Ontario, on June 25, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on June 25, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court
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Appellant

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APOTEX INC.

Respondent

AND BETWEEN:

NYCOMED CANADA INC. and NYCOMED GMBH

Appellants

and

APOTEX INC.

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on June 25, 2012)

NOËL J.A.

[1] There are two appeals from decisions of Simpson J. of the Federal Court who dismissed the appellants appeals from earlier decisions by Prothonotary Milczynski based on a single set of reasons. Simpson J. after conducting a *de novo* review, agreed with Prothonotary Milczynski that the plea of “contributory infringement” in the statements of defence and counterclaim filed by the appellants had to be struck as it was plain and obvious that it would fail.

[2] These reasons dispose of both appeals, the original being filed in Court file A-480-11, and a copy thereof being filed in Court file A-481-11 as reasons for judgment in that matter.

[3] Despite the able submissions by Counsel for the appellants, we can detect no error in the decision reached by Simpson J. In particular, we adopt the reasoning set out at paragraph 27 of her reasons for holding that the decision of the Supreme Court in *Monsanto Canada Inc. v. Schmeiser*, 2004 SCC 34, is not indicative of an intention to depart from the existing precedents and to recognize “contributory infringement” as a cause of action under the Canadian law.

[4] The appeals will be dismissed with costs in each instance.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-480-11

**(APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE SIMPSON OF THE
FEDERAL COURT DATED DECEMBER 9, 2011, DOCKET NO. T-368-08)**

STYLE OF CAUSE: NYCOMED CANADA INC.
NYCOMED GMBH AND
NYCOMED INTERNATIONAL
MANAGEMENT GMBH AND
TEVA CANADA LIMITED

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 25, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (NOËL, EVANS & SHARLOW
J.J.A.)

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-481-11

**(APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE SIMPSON OF THE
FEDERAL COURT DATED DECEMBER 9, 2011, DOCKET NO. T-1786-08)**

STYLE OF CAUSE: NYCOMED CANADA INC. AND
APOTEX INC. AND NYCOMED
CANADA INC. AND NYCOMED
GMBH AND APOTEX INC.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 25, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (NOËL, EVANS & SHARLOW
JJ.A.)

DELIVERED FROM THE BENCH BY: NOËL J.A.

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