

CANADA / JUDGMENT

Sanofi-Aventis v. Apotex Inc.

2015 SCC 20

COURT

Supreme Court of Canada

DECIDED

21 April 2015

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Sanofi-Aventis v. Apotex Inc. Collection Supreme Court Judgments Date 2015-04-21 Neutral citation 2015 SCC 20 Report

- [2015] 2 SCR 136 Case number 35886 Judges McLachlin, Beverley; Abella, Rosalie Silberman; Rothstein, Marshall; Cromwell, Thomas Albert; Moldaver, Michael J.; Karakatsanis, Andromache; Wagner, Richard; Gascon, Clément; Côté, Suzanne On appeal from Federal Court of Appeal Subjects Intellectual property Notes SCC Case Information: 35886 Decision Content SUPREME COURT OF CANADA Citation: Sanofi-Aventis v. Apotex Inc., 2015 SCC 20, [2015] 2 S.C.R. 136 Date: 20150420 Docket: 35886 Between: Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants and Apotex Inc. Respondent
- and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants and Apotex Inc. Respondent
 - and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants and Apotex Inc. Respondent
 - and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants and Apotex Inc. Respondent and Canadian Generic Pharmaceutical Association and Canada's Research-Based Pharmaceutical Companies Interveners Coram: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. Reasons for Judgment: (paras. 1 and 2) McLachlin C.J. (Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. concurring) Sanofi-Aventis v. Apotex Inc., 2015 SCC 20, [2015] 2 S.C.R. 136 Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants v. Apotex Inc. Respondent
 - and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants v. Apotex Inc. Respondent
 - and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants v. Apotex Inc. Respondent

- and - Sanofi-Aventis, Sanofi-Aventis Deutschland GmbH and Sanofi-Aventis Canada Inc. Appellants v. Apotex Inc. Respondent and Canadian Generic Pharmaceutical Association and Canada's Research-Based Pharmaceutical Companies Interveners Indexed as: Sanofi-Aventis v. Apotex Inc. 2015 SCC 20 File No.: 35886. 2015: April 20. Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. on appeal from the federal court of appeal Intellectual property — Patents — Medicines — Manufacturer applied to market generic version of drug — Patentees of drug applied for prohibition orders that triggered statutory stay under Patented Medicines (Notice of Compliance) Regulations and prevented manufacturer from selling generic for 24 months — Action for damages brought under s. 8 of Regulations for delayed market entry — Court of Appeal holding that trial judge did not err in determining liability period of 24 months, in determining that patentees' authorized generic version would have entered market within three months and achieved 30 percent share of hypothetical market within liability period, or in determining that manufacturer entitled to compensation for lost sales of its generic version associated with unapproved indications — Patented Medicines (Notice of Compliance) Regulations, SOR/93-133. APPEAL from a judgment of the Federal Court of Appeal (Sharlow, Pelletier and Mainville JJ.A.), 2014 FCA 68, 456 N.R. 279, 125 C.P.R. (4th) 403, [2014] F.C.J. No. 295 (QL), 2014 CarswellNat 700 (WL Can.), setting aside in part the judgment of Snider J., 2012 FC 553, 410 F.T.R. 78, [2012] F.C.J. No. 620 (QL), 2012 CarswellNat 1646 (WL Can.). Appeal dismissed. Andrew J. Reddon, Steven G. Mason, David Tait and Sanjaya Mendis, for the appellants. Harry B. Radomski, Andrew Brodtkin, David Scrimger and Benjamin Hackett, for the respondent. Jonathan Stainsby, David W. Aitken and Devin Doyle, for the intervener the Canadian Generic Pharmaceutical Association. Allyson Whyte Nowak and Jason Markwell, for the intervener the Canada's Research-Based Pharmaceutical Companies. The judgment of the Court was delivered orally by
- [1] The Chief Justice — We are all of the view to dismiss the appeal substantially for the reasons of the majority of the Court of Appeal.
- [2] The appeal is dismissed with costs. Judgment accordingly. Solicitors for the appellants: McCarthy Tétrault, Toronto. Solicitors for the respondent: Goodmans, Toronto. Solicitors for the intervener the Canadian Generic Pharmaceutical Association: Aitken Klee, Toronto and Ottawa. Solicitors for the intervener the Canada's Research-Based Pharmaceutical Companies: Norton Rose Fulbright Canada, Toronto.

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