



Neutral citation [2024] CAT 52

Case No: 1415/5/7/21 (T)

IN THE COMPETITION

APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

2 August 2024

Before:

ANDREW LENON K.C.
(Chair)
PROFESSOR ANTHONY NEUBERGER
PAUL LOMAS

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE
- (2) THE NATIONAL HEALTH SERVICE BUSINESS AUTHORITY
- (3) THE WELSH MINISTERS
- (4) SWANSEA BAY UNIVERSITY HEALTH BOARD
- (5) CWM TAF MORGANNWG UNIVERSITY HEALTH BOARD
- (6) ANEURIN BEVAN UNIVERSITY HEALTH BOARD
- (7) HYWEL DDA UNIVERSITY HEALTH BOARD
- (8) BETSI CADWALADR UNIVERSITY HEALTH BOARD
- (9) POWYS TEACHING HEALTH BOARD
- (10) CARDIFF & VALE UNIVERSITY HEALTH BOARD

Claimants/ Respondents

- v -

- (1) LUNDBECK LIMITED
- (2) H. LUNDBECK A/S
- (3) GENERICS (U.K.) LIMITED
- (4) MERCK KGAA
- (5) ARROW GENERICS LIMITED
- (6) ARROW GROUP APS
- (7) RESOLUTION CHEMICALS LIMITED
- (8) XELLIA PHARMACEUTICALS APS

(9) ALPHARMA LLC
(10) A.L. INDUSTRIER AS
(11) SUN PHARMACEUTICAL INDUSTRIES LIMITED
(12) SUN PHARMA UK LIMITED

Defendants/ Applicants

RULING (PERMISSION TO APPEAL)

A. INTRODUCTION

1. The Defendants seek permission to appeal in respect of the Tribunal's Judgment on the preliminary issue of limitation dated 21 June 2024 ([2024] CAT 42), in which the Tribunal dismissed the Defendants' contention that the claim in these proceedings is time-barred.
2. The proposed grounds of appeal concern the Tribunal's approach to the construction of the Competition Appeal Tribunal Rules 2015 ("the 2015 Rules") and the application of the doctrine of contractual estoppel to these proceedings which were transferred from the High Court to the Tribunal by order of Deputy Master Linwood made on 2 July 2021 (the "Transfer Order").
3. The application for permission to appeal has been responded to by the Claimant.

B. THE GROUNDS OF APPEAL

4. The grounds on which permission are sought are as follows.

(1) Ground 1: Error in law

- (i) That the Tribunal erred in concluding that the claim in these proceedings is one to which the limitation period under Rule 31 of the 2015 Rules applies and that the proceedings are therefore not time-barred, as per paragraph 52 of the Judgment.
- (ii) That the Tribunal erred in concluding that the Claimant is not contractually estopped by the parties' agreement contained in the Transfer Order dated 2 July 2021 from relying on Rule 119 and Rule 31 of the 2015 Rules, as per paragraph 62 of the Judgment.

(2) Ground 2: Compelling reason

5. That it is important to ensure clarity in the construction of the provisions concerning limitation, in particular as between the construction of the 2015

Rules set out in the Judgment of Barling J in *Sainsbury's Supermarkets Ltd v Mastercard Inc and others* [2015] EWHC 3472 (Ch) and the approach adopted by the Tribunal in its Judgment.

C. DISPOSITION

6. The appeal raises points of law as to the correct construction of the 2015 Rules and the effect of the Transfer Order, in relation to which the appeal has, in the view of the Tribunal, a reasonable prospect of success within the meaning of CPR 52.3(6).
7. The Tribunal therefore grants the Defendants permission to appeal.
8. This Ruling is unanimous.

Andrew Lenon K.C.
Chair

Professor Anthony
Neuberger

Paul Lomas

Charles Dhanowa O.B.E., K.C. (Hon)
Registrar

Date: 2 August 2024