

COURT OF APPEAL FOR ONTARIO

CITATION: Elzayat v. Rogers Communications, 2025 ONCA 336

DATE: 20250429

DOCKET: M55582 (COA-24-CV-1022)

Zarnett, Monahan and Madsen JJ.A.

BETWEEN

Haytham Elzayat

Plaintiff (Appellant)

and

Rogers Communications

Defendant (Respondent)

Haytham Elzayat, acting in person

Leslie A. Frattolin and Stephanie C. Kolla, for the respondent

Heard: in writing

On review of the order of Justice Lois B. Roberts of the Court of Appeal for Ontario, dated November 13, 2024.

REASONS FOR DECISION

[1] The appellant moves, under s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, to review an order of Roberts J.A. Her order denied the appellant's request for permission to include, in his appeal materials, a transcript of the oral argument in the court below.

[2] The appeal seeks to set aside a summary judgment that dismissed the appellant's action against the respondent. That action, commenced in 2022, claimed relief arising out of conduct and statements by representatives of the respondent during two employment related interviews that took place in 2015. The summary judgment judge found that there was no "tort of discrimination" as alleged by the appellant and that the limitation period had expired before the action was started. In the latter regard, he rejected the appellant's claim that the limitation period was tolled due to incapacity. He found that the incapacity claim "falls well short of the incapacity exemption because [the appellant] was able to sue and defend suits throughout the entire interval between 2015 and the 2022 start of this action".

[3] Roberts J.A. dismissed the request to include the transcript from the hearing as it was not necessary or relevant for the fair hearing of the appeal. She noted that the summary judgment motion below proceeded on a paper record with no *viva voce* evidence, and the submissions made before the summary judgment judge were not evidence. Nor had the appellant properly demonstrated that there would be any issue on the appeal relating to the fairness of the hearing conducted by the summary judgment judge that required the transcript for its adjudication.

[4] A panel reviewing a discretionary order of a single judge does so on a deferential basis. A panel may only interfere if the judge failed to identify the

applicable principles, erred in principle or reached an unreasonable result: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 18.

[5] We see no such error. Roberts J.A. reviewed the relevant factors and reached a reasonable result.

[6] The appellant has provided, for this motion, both detailed written submissions and a further affidavit that elaborate on why he wants the transcript. The reasons he advances as to why the transcript is needed are not materially different than those that Roberts J.A. considered. As well, although the appellant points to a supplementary notice of appeal, it was filed after the hearing before Roberts J.A. and does not justify interfering with her decision.

[7] The motion is dismissed.

[8] The respondent is entitled to its costs of this motion payable by the appellant fixed in the sum of \$3,500, inclusive of disbursements and applicable taxes.

“B. Zarnett J.A.”
“P.J. Monahan J.A.”
“L. Madsen J.A.”