

COURT OF APPEAL FOR ONTARIO

CITATION: SPM Charters Inc. v. Flightpath Charter Airways Inc., 2026 ONCA
471

DATE: 20260630

DOCKET: COA-25-CV-0950

Tulloch C.J.O., Lauwers and Miller JJ.A.

BETWEEN

SPM Charters Inc.

Plaintiff (Respondent)

and

Flightpath Charter Airways Inc.*, Flite Line Services Inc. and Flite Line
Maintenance Inc.**

Defendants (Appellant**/Respondent*)

AND BETWEEN

Flite Line Maintenance Inc. and Flite Line Services Kitchener Inc.

Plaintiffs by Counterclaim (Appellants)

and

SPM Charters Inc.

Defendant by Counterclaim (Respondent)

AND BETWEEN

Flite Line Maintenance Inc. and Flite Line Services Kitchener Inc.

Plaintiffs by Crossclaim (Appellants)

and

Flightpath Charter Airways Inc.

Defendant by Crossclaim (Respondent)

Yuxi (Wendy) Sun and Christopher Liang, for the appellants¹

Carol Dirks, for the respondent SPM Charters Inc.

Dessa Booth, for the respondent Flightpath Charter Airways Inc.²

Heard: June 10, 2026

On appeal from the order of Justice Michael J. Valente of the Superior Court of Justice, dated May 27, 2025, with reasons at 2025 ONSC 3054 and 2025 ONSC 4013.

REASONS FOR DECISION

[1] This was a summary judgment motion in which the motion judge used the enhanced powers under r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Having heard argument over some ten days and having reviewed the extensive paper record, he found that he could not grant summary judgment because there was factual evidence missing and because there were credibility issues that could not be resolved without *viva voce* evidence. This outcome is a logical concomitant of the exercise of the enhanced r. 20 powers, albeit quite rare.

¹ As noted by the motion judge in para. 2 of his reasons, Flite Line Services Kitchener Inc. was incorrectly described by SPM Charters Inc. as “Flite Line Services Inc.”

² Ms. Booth appeared but made no written or oral submissions on behalf of the respondent.

[2] Since the order under appeal did not resolve the case or dispose of any substantive grounds but remains extant, the order is interlocutory, not final. The appeal therefore properly lies to the Divisional Court under s. 19 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. However, to avoid the waste of judicial and party resources that would attend argument of this appeal before the Divisional Court, we reconstituted as a panel of the Divisional Court under s. 13 of the *Courts of Justice Act*, with the permission of the Chief Justice of Ontario and the concurrence of the Acting Chief Justice of the Superior Court of Justice: *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 839, 148 O.R. (3d) 433, at para. 13.

[3] The issue of first impression is what should happen next given the undecided outcome. The motion judge did not exercise his responsibility under r. 20.05, which provides:

(1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously.

(2) If an action is ordered to proceed to trial under subrule (1), the court may give such directions or impose such terms as are just...

[4] The motion judge did not advert to the principles set out by the Supreme Court in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 74-79. It would have been more consistent with the summary judgment principles for the motion judge to have directed a full trial before him. This step was not presented by either party because the motion judge did not invite further submissions after

concluding that he could not resolve the outstanding issues summarily and in declining to remain seized. He erred in not inviting further submissions. That said, the object of further submissions should not have been, as the appellants suggest, to urge the motion judge to overcome his reluctance to rule summarily. Further submissions would have been appropriate but only on next steps in the litigation.

[5] It falls to this panel to consider those next steps. Consistent with summary judgment principles, we affirm the order but remit the case to the motion judge or another judge as the Regional Senior Judge might direct as a matter of discretion.

[6] The appellant sought an order requiring the motion judge or another judge to try the action without permitting any new evidence to be adduced. Because the motion judge needed more evidence and *viva voce* evidence to resolve credibility issues, this was not a tenable position. We agree with the respondent that the evidentiary shortfalls must be remedied by additional evidence. The appointed trial judge will determine how to structure the trial in light of the evidence already received in a case management meeting with the parties.

[7] In light of the mixed outcome, the costs of the appeal will be in the cause fixed at the amount of \$10,000 all-inclusive.

“M. Tulloch C.J.O.”
“P. Lauwers J.A.”
“B.W. Miller J.A.”