

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH  
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2024] SC EDIN 30

PIC-PN3578/22

JUDGMENT OF SHERIFF K J CAMPBELL KC

in the cause

NICOLA BRUFF

Pursuer

against

ROYAL & SUN ALLIANCE INSURANCE LIMITED

Defender

**Pursuer: Party**

**Defender: Richardson (BTO Solicitors, Glasgow)**

EDINBURGH, 15 MAY 2024

**Findings in fact**

1. The pursuer is Nicola Bruff. The defender is the motor insurer of Robert Clugston.
2. On 13 July 2022, roadworks were being carried out on Gleddoch Road, Glasgow, on a stretch of road adjacent to Penilee community centre. One lane was closed to vehicular traffic, with all traffic using the remaining lane. The traffic on this stretch of Gleddoch Road was controlled by temporary traffic lights at each end of the roadworks and also for traffic joining at the junction between Rosshill Road and Gleddoch Road. The traffic lights were sequenced in such a way that traffic on Gleddoch Road could only come in in one direction at a time, whether from either end of the roadwork or from Rosshill Road.
3. On 13 January 2022, at around 12.00, Robert Clugston drove his Renault car to the 101 Convenience Store on Gleddoch Road. He parked in a parking area adjacent to the

store. The store was adjacent to a point at which the closed section of Gleddoch Road began. A set of temporary traffic lights was located at the start of the roadworks there, immediately adjacent to the exit from the parking area at the 101 convenience store.

4. Robert Clugston slowly emerged from the parking area in his car intending to turn left to pass through the roadworks. Having emerged from the parking area, he required to cross one lane and turn left onto the open lane. As he did so, the traffic light controlling the flow of traffic in the direction in which he was travelling turned from green to amber.

Robert Clugston continued along Gleddoch Road.

5. The distance from the temporary traffic lights passed by Robert Clugston to the junction between Gleddoch Road and Rosshill Road is 90 metres.

6. On 13 July 2022, the pursuer was driving her MG motor car on Rosshill Road, Glasgow, at about 12.00-12.15pm. The pursuer approached the temporary traffic lights at the junction of Rosshill Road and Gleddoch Road. The temporary traffic lights on Rosshill Road were positioned a number of metres up Rosshill Road from the actual junction. The pursuer passed the temporary traffic lights and turned right onto Gleddoch Road. She did not stop at the junction between Rosshill Road and Gleddoch Road.

7. The pursuer did not look left whilst entering Gleddoch Road.

8. The pursuer's car collided with Robert Clugston's car on Gleddoch Road, at the junction between Rosshill Road and Gleddoch Road. The passenger side front wing of the pursuer's car collided with the driver's side rear passenger door of Robert Clugston's car.

9. After the collision, both cars were driven beyond the end of the roadworks and parked to the side of the road. The pursuer and Robert Clugston spoke to each other and exchanged personal and insurance details.

10. The pursuer's partner, Daniel Geddes, and her mother, Aileen Bruff, attended at the locus shortly after the collision. Robert Clugston did not admit causing the accident to either of them.

11. The traffic light on Rosshill Road is unlikely to have been green at the point in time when the pursuer passed it and turned right onto Gleddoch Road.

12. The pursuer was wearing a seatbelt at the time of the accident. She suffered soft tissue injuries to her cervical spine, lumber spine and paraspinal muscles. These were symptomatic for around six months.

### **Findings in fact and in law**

1. The accident on 13 July 2022 was caused by the fault and negligence of the pursuer.

2. The accident on 13 July 2022 was not caused or contributed to by the fault and negligence of Robert Clugston.

### **NOTE**

#### **Introductory**

[1] This action arises out of a road traffic accident which occurred on 13 July 2022, when the pursuer's car collided with a car driven by the defender's insured, Robert Clugston. For the purposes of the proof, damages were agreed in the sum of £11,500, and the issues for the court were therefore confined to liability and contributory negligence. I heard proof on 26 and 27 March 2024. The pursuer gave evidence, and led evidence from Daniel Geddes and Aileen Bruff. The defender led evidence from its insured driver, Robert Clugston, who gave evidence by webex video-conference. The pursuer represented herself at the proof. She previously had legal representation. When she was represented, a joint bundle of

documents was prepared, and I refer to documents in the case by reference to the joint bundle page numbers.

### **The pursuer's evidence**

#### *The pursuer*

[2] Because the pursuer was representing herself, with parties' agreement, I asked her a series of open questions to help establish the primary facts, and thereafter offered her the opportunity to add any additional information if she wished to do so. The pursuer, Nicola Bruff (37) is a shop manager. On 13 July 2022, she was driving on Rosshill Road in the Penilee area of Glasgow at about 12.00-12.15pm. She came to the junction with Gleddoch Road where there were temporary traffic lights because of roadworks being carried out on Gleddoch Road. As a consequence of the roadworks, Gleddoch Road was down to one lane and there were temporary lights on Gleddoch Road as well as Rosshill Road, a four-way temporary traffic light system.

[3] There was a car in front of her at the temporary lights as she approached. The lights went from red to green, and the other car went forward and turned right. The pursuer followed, also turning right. As she was turning into Gleddoch Road, another car came from her left-hand side and crashed into the pursuer's vehicle as she was turning. Her car spun round. The pursuer was able to move her car and pulled over to the left-hand side beyond the roadworks so as not to block Gleddoch Road. Prior to the collision, the pursuer had her right turn indicator on. The pursuer had just started to turn right at the time of the collision. The headlight of the other vehicle on the passenger side impacted with the pursuer's car. Her car impacted on the driver's side of the other car. The pursuer first saw the other car as she was turning. She tried to brake, but it was too late. The force of the

other car pulled her car round onto Gleddoch Road. The pursuer estimated that at the point of collision, her car was sufficiently far into Gleddoch Road for the front wheel on the passenger side to be in that road. Both vehicles stopped on Gleddoch Road beyond the roadworks. Both drivers got out of their vehicles. The pursuer checked that her young son who was in the rear of the car was unharmed and phoned for her partner to come. The pursuer spoke to the other driver, Mr Clugston. She said to him that her light was at green. Mr Clugston then admitted he went through an amber red light and it was his fault and he was taking responsibility. The pursuer took pictures of her car and of Mr Clugston's car. The pursuer's mother arrived at the scene as her partner had to leave to go to work. There was also a witness at the scene who said he saw that the pursuer's light was green when she went. This witness was named Ahmed and gave he gave her his mobile number; however when she tried to contact him it was the wrong number. The pursuer and Mr Clugston exchanged details.

[4] The pursuer was wearing a seatbelt at the time of the collision. The pursuer was not aware of having suffered any injuries immediately at the scene. The following day she woke up with pain in her lower back and left shoulder. The pursuer phoned her GP on the day of the accident regarding her son and explained what had happened whilst she was on the phone. The pursuer was pregnant at the time of the collision and accordingly her GP was not able to give her medication. The pursuer experienced pain in her back and shoulder for about eight weeks but it was more in the nature of a twinge every so often.

[5] In cross-examination, the pursuer confirmed that she was familiar with the operation of temporary traffic lights. She was aware of the need to take extra care when negotiating roadworks. The pursuer was not able to say what speed the other car was doing but he was going fast, fast enough to pull her car round. The pursuer did not accept that she required

to stop at the give-way line at the junction between Rosshill Road and Gleddoch Road. The traffic light was green for her and therefore she was entitled to go. The pursuer did look before turning and saw the other car and hit the other car. So far as the pursuer was concerned the cause of the accident was that the other car went through an amber red light. The other driver had admitted that. The pursuer did not accept the other driver had right of way; her light was green, and in her view she did not require to stop if the light was green. If the junction had been a junction she would have classed it as a give-way and would have stopped. She did not stop the car because she was on a green light. This was not a give-way junction but traffic lights. The pursuer did not accept that Mr Clugston was almost past the junction at the time of impact. That was because she would have hit the back of his car which she said she did not. The pursuer accepted that JB295 was a photo of Mr Clugston's car with significant damage to the rear door, but there was also damage to the driver's door. She said there was still damage to the forward part of the car as well. She did not imagine that her traffic light would be green and someone else's light be green as well. Mr Clugston had admitted going through a red light to the pursuer's mother and also to her partner.

[6] The pursuer instructed a solicitor shortly after the accident. She instructed Friends Legal who intimated a claim on 18 July 2022. The pursuer changed agency to Thompsons Solicitors in August 2022. On 26 August 2022, the defender denied liability which the pursuer thought she had been told, but was not certain. The pursuer agreed it was important to be truthful with one's solicitor in a case of this kind. On 16 November 2022, her agents precognosced Daniel Donlin, and the precognition was JB280. Mr Donlin was someone that the pursuer knew of; he was a colleague of her partner. She later found out that he had laid a patio in her garden. The pursuer confirmed that at a court hearing on 27 February 2024, she had told the court that what Mr Donlin said on precognition was not

true and that he had lied to Thompsons solicitors and to the defender's agents. At this point I directed the pursuer that she need not answer questions which might tend to incriminate her. The pursuer was asked a series of questions about Mr Donlin's involvement and tending to suggest that he had been invited to give false evidence and that the pursuer was aware of that. The pursuer declined to answer those questions in accordance with the warning which I had administered.

*Daniel Geddes*

[7] Daniel Geddes (40) is the pursuer's partner and is employed as a bus driver. Mr Geddes was not an eye-witness to the accident on 13 July 2022. He had been on his way to work when he received a call from the pursuer in a panicky state advising she had been in a car crash and reporting the location. He drove to the locus and noted that the cars were badly damaged. Mr Geddes had spoken to the other driver and asked what happened. The other driver admitted he went through a red light and hit the pursuer, he said "it's my fault; I put my hands up". Mr Geddes had said that was no problem just as long as the other driver admitted that.

[8] In cross-examination, Mr Geddes agreed that JB332 was a picture of the pursuer's car. Because of the damage to her car, he thought that the other driver hit the pursuer. Mr Geddes agreed that JB295 is a picture of the other driver's car. He did not accept that the damage shown there suggested the pursuer had hit the other car. While Mr Geddes had not witnessed the accident, it was quite obvious to him, in his view, that the other driver was speeding. Mr Geddes said he had seen a lot of accidents in the course of his employment, and in his opinion the damage indicated speeding. Mr Geddes understood the importance of telling the truth in evidence, that was how he was brought up. If the pursuer was not

telling the truth about the accident he would tell her to tell the truth and she was telling the truth. Mr Geddes was then asked questions about Daniel Donlin, and I administered him a direction about self-incrimination. Mr Geddes said he did not know Mr Donlin and did not know he was a witness in the case. Mr Geddes was not aware that the pursuer now accepted Mr Donlin's evidence was untruthful. Mr Geddes had not at any time asked Mr Donlin to give untruthful evidence.

*Aileen Bruff*

[9] Aileen Bruff (60) is a home carer. She is the pursuer's mother. She was not an eye witness to the accident on 13 July 2022 but attended the locus afterwards. The pursuer had phoned Mrs Bruff to say that she had had an accident and that a man had driven into her car. By the time she arrived at the locus, the cars had been moved from the point of collision. Mrs Bruff spoke to the man involved. He said "If you play with fire this is the consequence you get". He had been coming from the 101 Shop where there was an ATM. He appeared more concerned about getting to the seaside with his wife and sister and his wife's friend. He said "that's that caboobed". Mrs Bruff asked if the police were involved. He said "No I don't need the police, it's my fault. If you play with fire this is the consequence".

[10] In cross-examination, Mrs Bruff disputed that she had not spoken to Mr Clugston. She agreed she supported her daughter's position. Mrs Bruff saw the way the pursuer was at the locus, and her evidence about what was said after the accident was the truth. Mrs Bruff was asked questions about Mr Donlin, and again I gave her a direction about self-incrimination. Mrs Bruff knew of Mr Donlin, but did not know him. She said that the content of his evidence was between her daughter and him. The pursuer had told her after

the previous court hearing that Mr Donlin had not been telling the truth in earlier witness statements. Mrs Bruff had had no involvement in that.

### **The defender's evidence**

#### *Robert Clugston*

[11] Robert Clugston (83) is a retired fisherman. On 13 July 2022, he had been at the 101 Shop in Gleddoch Road, which is shown in the photo JB271. There were temporary traffic lights adjacent to the shop, and their position is shown in the photo, there appeared to be as it had been on the day of the accident. Mr Clugston drove to the 101 Shop regularly, sometimes as often as two to three times a day. On this particular occasion he had driven the shop for a newspaper. He had not driven anywhere else that morning, and intended going back to the house after he had been to the shop. He was not going to the seaside with his wife; his wife had been dead for ten years. Coming out of the car park at the 101 Shop he would turn left. It was necessary to move almost fully into the lane which remained open to traffic and then turn. Just as he was passing the traffic light it changed to amber, and Mr Clugston carried on. He was creeping out from the carpark into the lane, travelling in first gear. He was trying to get a full view down the road. It was very difficult to see the full distance. By the time he was on Gleddoch Road, and travelling through the works, Mr Clugston estimated that he was doing between 15-17mph. He was aware of the side road, Rosshill Road, joining Gleddoch Road. He was three quarters of the way past the road end of Rosshill Road and was struck by another car. The other car struck the rear door on the driver side. He confirmed that JB295 is a picture of his car showing the damage from the accident.

[12] After the accident Mr Clugston stopped just beyond the barrier around the road works. It was not that far from the point of collision. The pursuer's vehicle came to the same place and stopped behind him. There was a child in the pursuer's car. The pursuer said that she had come on a green light. Mr Clugston said he had come out on an amber light. He did not say he had come out on a "red amber" light. The pursuer's mother appeared at the scene. She did not say much. Mr Clugston did not say to the pursuer's mother that he had gone through a red light. He did not say that if you play with fire you get burned. A male appeared, who Mr Clugston assumed was her brother. Mr Clugston did not tell him that he had run a red light, nor did he accept liability for the accident. As nobody had been injured, Mr Clugston did not think it was necessary to call the police. The parties had exchanged details with each other.

[13] In cross-examination, Mr Clugston said he was watching the light all the way as he was turning, that is why he came out slowly. He understood that when the amber light was showing he was able to proceed with caution. He considered that if he had stopped at the light he would have blocked the road. He was almost past the junction at the time of the collision. He had never admitted fault to anyone. The pursuer had said the light was green and Mr Clugston said the light was amber. In re-examination, Mr Clugston said he had driven across the pavement at the 101 store and was on the road at the time the light changed to amber. He was approaching the centre line of the road at that point.

### **Pursuer's submissions**

[14] The pursuer submitted that on the evidence, the circumstances were clear. Mr Clugston saw the amber light before he went into the turning lane, which meant he should stop. The pursuer submitted that an amber traffic light means "stop" unless it is

unsafe to do so, and it would have been safe for Mr Clugston to have stopped. The pursuer submitted that her light was green. She accepted that was dependent on her evidence being preferred. She accepted she had a responsibility to keep a lookout, and said that she did look. She did not stop at the junction because she was on a green light, which meant she should proceed. She was not driving over the speed limit.

[15] In relation to the conversation between the pursuer and her witnesses on the one hand, and Mr Clugston on the other, the pursuer submitted that her partner (Mr Geddes) and her mother (Mrs Bruff) were not part of the accident and had come to give evidence of what had happened between them and Mr Clugston. She accepted their accounts were not identical, but they had been there at separate times. Mr Clugston had admitted liability to her, the pursuer, before anyone else had arrived. The pursuer submitted Mr Clugston was not telling the truth, because parties had been present at the locus for about 20-25 minutes. He had conversations with each of the pursuer, her partner and mother. If he had not had conversations with her mother why would he say that her mother had told him that her partner was her brother. The pursuer submitted that she should succeed in the action.

### **Defender's submissions**

[16] For the defender, Mr Richardson invited me to grant absolvitor and to reserve the question of expenses. In summary, the defender's position was that the accident was caused by the sole fault of the pursuer. There were two strands to the defender's position about this:

1. The circumstances of the accident itself. The pursuer's evidence was that her light was green which means "go" and she therefore turned right. The pursuer had failed on her duty of care in the circumstances, because she put herself in the junction

without concern for other road users and that was therefore the sole cause of the accident.

2. The position in relation to Mr Donlin's evidence. It was a matter of concession that he had been untruthful on two occasions. No explanation had been offered, and the only inference which could be drawn was that on those occasions he had been acting on the request of the pursuer. That was a serious matter which tainted the pursuer's whole case. For that reason the defender invited the court to reject the pursuer's evidence. The defender had further submissions to make about a self-standing ground that Mr Donlin's evidence and the pursuer's treatment of it amounted to an abuse of process.

[17] Turning to the witness evidence, the defender's solicitor submitted the pursuer was incredible and her evidence should be rejected. The pursuer accepted Mr Donlin had told lies, and it was a reasonable inference that he did so at her instance. Further, the manner of her own evidence was evasive and combative. She refused to make reasonable concessions, especially in relation to her obligation to keep a lookout. There was also some contradiction in her evidence about whether Mr Clugston was going too fast. The pursuer averred on record that Mr Clugston had gone through a red light, however her evidence was he said that he was going through an amber red light. If that were true, the light was turning green and the pursuer's light would be red. In any event, the pursuer's evidence was she was hit by the front of Mr Clugston's car. That was clearly contradicted by the photos, which showed the majority of the damage was to the rear of Mr Clugston's vehicle. The defender submitted that indicates the pursuer hit Mr Clugston rather than the other way round. The pursuer's evidence about there being a car in front of her did not sit well with the rest of the

circumstances. If there had been another car it would have been extremely close to Mr Clugston and there was no clear evidence that such a car was there.

[18] Turning to the evidence of Mr Geddes, the defender submitted that he was not an independent witness because he is the pursuer's partner. In any event, some of his evidence was contradictory and, it was submitted, unreliable. For example, his evidence about where the vehicles were parked which was a minor point; but more significantly his evidence about the damage to the pursuer's vehicle was exaggerated. He said it was badly damaged; while that is subjective, on the evidence of the photos it was hard to say that the damage was significant. There was also a contradiction in his evidence about Daniel Donlin as compared with Mrs Elaine Bruff; she said she had heard his name, the inference being that was in the context of the litigation, however, Mr Geddes denied all knowledge of Daniel Donlin. The defender submitted it would be unlikely that Mrs Bruff would hear of him and the pursuer's partner would not.

[19] The defender submitted Mrs Bruff was also not an independent witness because she is the pursuer's mother. It was submitted that she would likely look to support her daughter. There was some confusion in her evidence about the post-accident resting place of the vehicles and who contacted her. Her evidence should be treated with caution. Further, the pursuer asked the court to accept that Mr Clugston went around making admissions in different terms to different people: what he said to her and admitted to Mrs Bruff was different from what he had said to Mr Eddis and different again from what he had said to the pursuer. It was submitted that was inherently unlikely.

[20] In relation to Mr Clugston's evidence, it was submitted he was a straightforward witness. There had been some confusion in his evidence about whether Mr Geddes was the pursuer's brother or partner, however that was on the basis of an interaction lasting

between 15 and 20 minutes altogether and it was not reasonable to expect him to recall the precise relationship. In any event he accepted he had spoken to both but denied making any admission of liability. The accident was a year and a half ago and Mr Clugston was doing his best to assist the court. The defender submitted that if Mr Clugston was going to tell an untruth, he might have said he was going through a green light, rather than making a concession about an amber light.

[21] Turning to the position of the defender based on the accident circumstances. This is a case about a driver turning from a minor road into a major road and who has responsibility for the accident. The pursuer's case is that this was a traffic light controlled junction, and that a green light is a green light. However, the defender's submission was that the pursuer still failed in her duty of care. These were temporary traffic lights to deal with the roadworks on Gleddoch Road, which was important because the traffic could come from either direction on Gleddoch Road in the same lane. It was submitted that went to the care which required to be taken because this was not a simple two-way temporary traffic light, but a series of lights which controlled traffic from a number of directions. Further, the amount of road controlled by the traffic lights on Gleddoch Road was longer than usual: 90m from the light which Mr Clugston passed to the junction with Rosshill Road. It was submitted that distinguished this case somewhat from a more usual traffic light situation. Further, the view down Gleddoch Road from Rosshill Road was obscured until one was about to enter the road from Rosshill Road. Mr Clugston's vehicle was established on Gleddoch Road and had almost passed the Rosshill Road junction when the accident occurred. The damage to the vehicle supported that position. The court only had the pursuer's evidence that her light was green. It appeared on her evidence that it had just

changed to green, which was important because if that was correct, it increased the possibility of vehicles still being in the junction.

[22] Mr Richardson referred to *Radburn v Kemp* [1972] RTR 92 and *Cullen v Coggins* [2000] EWCA civ. The defender submitted that the pursuer, as the driver turning into the junction, needed to take care for other vehicles lawfully there. That is an important part of the lights turning to green, and the driver turning into the junction on a green light should be taking reasonable care to be alive to the potential for other vehicles being there in circumstances where the junction is part of temporary traffic lights with an extended stretch of road. The pursuer said she entered the junction at 15-20mph, which was submitted to be fast for the circumstances. The pursuer's suggestion that going any slower or stopping at the junction would be dangerous should be rejected (a) because there were no vehicles behind her, and (b) in any event she should not allow vehicles behind her to pressure her into doing something dangerous. Mr Clugston was permitted to be in the junction at the time of the accident, because the evidence was he had gone through on an amber light, which he was permitted to do so in certain circumstances. His evidence was he had turned slowly out of the parking area at the 101 Shop, had reached the midpoint of the road and had made a judgement that stopping there would block traffic and had proceeded down Gleddoch Road. It was submitted that that was a reasonable decision for him to have made.

[23] In relation to the character of the junction, and whether it was to be treated as a straightforward junction or a traffic light-controlled junction was perhaps a question of degree. One factor was the position of the traffic lights on Rosshill Road and the proximity to the entrance to Gleddoch Road. Even on the pursuer's evidence, the lights were not exactly at the junction, even if they were slightly further forward than appeared in the photos. If the pursuer had to proceed around the traffic lights to get to the junction, it was

submitted that at that point the normal rules of the road applied, which meant the pursuer should take additional care exiting a minor road onto a major road, even though she had a green light. The pursuer accepted that if there had not been a traffic light, she would have stopped and looked. Had she done so the accident would have been avoided.

[24] Mr Richardson referred to *Raspin v Taylor* [2023] RTR 19, and *Hernandez v Acar* [2019] EWHC 72 (QB). For the reasons set out in those cases, the pursuer was at fault. She had entered the major road, Gleddoch Road, from the minor without fulfilling her duty of care. The fact that the junction was controlled by traffic lights did not change the outcome in the defender's submission. A green light is not a licence to proceed; reasonable care must still be taken by the driver. What that will involve will be a matter of circumstances. In the present case the fact of the temporary traffic lights was significant. On Mr Clugston's evidence he was taking a cautious approach because of the roadworks, and it was submitted that was correct. It was possible that the temporary traffic lights were not reliable. In the vast majority of cases there might be no danger relying on the lights, but this was not one of those cases. In any event, where temporary traffic lights are present, it was submitted there was a high risk of someone being within the junction. In this case that had to be considered along with the length of the stretch of Gleddoch Road which was controlled by lights, namely 90m from the point Mr Clugston joined the roadworks to the junction with Rosshill Road. It was submitted that imposed a higher duty on drivers turning into Gleddoch Road. All the more so because the pursuer could not see what was on Gleddoch Road until she was actually at the junction. Mr Richardson referred to *Radburn v Kemp* and *Cullen v Coggins* (*supra*). Even if Mr Clugston ought not to have been on Gleddoch Road, there were other factors in the defender's favour. The pursuer ought to have taken reasonable care in

entering the junction, and the accident had been caused by her sole fault. The defender should be assoiled accordingly.

[25] The defender had a separate strand based on abuse of process. Mr Richardson explained that this strand was separate from the defence based on the evidence about the accident, and related to the circumstances surrounding the evidence the pursuer had proposed to lead from Daniel Donlin (“DD”). At the diet on 27 February 2024, the pursuer conceded what DD said to her former solicitor and to the defender’s agents about the accident was a lie. No explanation for that state of affairs had been offered; the pursuer had exercised her privilege against self-incrimination. The defender accepted no adverse inference could be drawn from the fact of invoking the privilege; however, the court was left with no explanation to set against that. Mr Richardson submitted the consequence was that the court could look at the other evidence, and draw such inferences as I thought fit. He submitted the following facts were relevant: (i) DD gave false statements; (ii) DD had no financial interest in the case; (iii) DD was known to the pursuer; (iv) the pursuer has a direct financial interest in the case. The defender’s submission was the reasonable inference from those facts was that DD was asked to give false statements by the pursuer. There was no other rational explanation why someone outside scope of the accident would offer that off their own bat. DD appeared to be willing to give evidence, until the defender was able to demonstrate the untruth. The defender submitted the length of time this situation had endured was an aggravating feature. DD provided a precognition between August-December 2022. The defender had no information about how he came to do so; but the reasonable inference was this was at the instance of the pursuer. From that date, a position was maintained that DD was an independent witness, a position persisted in after October 2023, after evidence was presented to the pursuer’s agents that there was in fact a

connection between the pursuer and DD (namely a social media profile JB341-345). It had initially been maintained that despite that evidence, this was a coincidence, and he was a genuine witness. That lie was only stopped when the defender obtained the letter of 23 January 2024 from DD's employer (6/17), which, it was submitted, showed objectively that DD untruthful about his reason for non-attendance at court in October 2023, and that DD's employer had not carried out work to the pursuer's patio work. That position had been maintained by the pursuer till her concession at the bar of court at the diet on 27 February 2024. The defender submitted that led inevitably to the conclusion that there was an attempt to lead false evidence. That amounts to an abuse of process. This was not on a collateral matter; rather it was on the question whether Mr Clugston went through a red light. In the absence of direct evidence, the pursuer had to rely on inference and from competing evidence from the drivers. It was a reasonable inference DD was asked to provide evidence to strengthen the pursuer's case.

[26] Abuse of process was considered by the First Division in *Grubb v Finlay* 2018 SLT 463. At paragraph 34, the court affirmed the inherent power to dismiss summarily. It was to be used only in rare and exceptional cases. The defender here accepted that principle and also that where the issue is raised, it would be hard to deal with such an application without hearing evidence. However, it was submitted that this case does fall into this extraordinary category. It was rare to find witness giving false evidence to support a party's case. In *Macphail Sheriff Court Practice* paragraph 2.23 the range of procedural sanctions is considered. These include dismissal, findings of expenses, and findings of contempt. The present case was one such exceptional case, and the action should be dismissed.

[27] Finally, in relation to contributory negligence, Mr Richardson submitted that if the court found in favour of the pursuer, the issue of contributory negligence still remained live.

The defender's submission was that the court should find contributory negligence at 75% against the pursuer. The pursuer had entered the junction without looking and the defender's vehicle was almost past the junction at the point of impact, which strongly indicated the accident was largely the pursuer's fault.

### **Pursuer's reply**

[28] In a brief reply, the pursuer submitted that the case was not about speed but about the colour of the traffic lights faced by each of the drivers. In relation to contributory negligence she submitted that if the court was dealing with that question, liability should be attributed 50/50. There was no proof that her light was at green and his was at amber, it was her word against his.

### **Analysis and decision**

[29] In this case there is no dispute that on 13 July 2022 a collision occurred on Gleddoch Road between the pursuer's vehicle and the defender's insured vehicle driven by Mr Clugston. The issue for the court is how that came to pass, and it will be evident from the summary of the evidence and parties' submissions above that issues of credibility and reliability are central to this case, given the widely differing accounts of events provided by the witnesses.

[30] I do not accept the pursuer's evidence about the circumstances of the accident. There are several reasons for that. First, her account of the impact is not consistent with the photographic evidence of the damage to her car and to the car driven by Mr Clugston. Whilst I am not in a position to judge speed at impact, because that would require evidence from a skilled witness, I consider I am in a position to judge the point of impact and to draw

inferences from that. I am able to do so based on the photographs of the cars involved at JB295 (defender) and JB332 (pursuer). I conclude that the pursuer's car struck the defender's insured car, and not the other way round. That is the best explanation of the damage to front passenger side wing of the pursuer's car, and the rear passenger door side of the defender's insured car. Secondly, the pursuer's account of there being a vehicle ahead of her at the temporary traffic lights which she followed round to the right does not sit with the evidence of Mr Clugston. He said nothing about such a vehicle, which he would have been bound to have seen, as it would have been in front of his car, and likely very close to it. The pursuer provided no detail about this vehicle, nor about its driver, nor about where it went after the impact between the pursuer and Mr Clugston. Thirdly, I do not accept the evidence of Daniel Geddes or Aileen Bruff, for reasons to which I will come. These two witnesses were led with the express purpose of bolstering the pursuer's case that Robert Clugston admitted liability. Rejecting the evidence of corroborating witnesses does not, of course, prove the contrary. However, because of the reasons for rejecting those witnesses, the pursuer's case is, in this instance, very significantly undermined.

[31] Neither Daniel Geddes nor Aileen Bruff witnessed the accident. They each gave evidence about attending the locus in the aftermath, and in particular admissions which were said to have been made to each of them by Robert Clugston. On the important matters, and in particular their accounts of their interactions with Mr Clugston, I do not accept the evidence of Mr Geddes or Mrs Bruff. Both witnesses had an interest in the case by virtue of their relationship with the pursuer. That is not sufficient on its own to undermine their evidence. However, a number of additional points taken with that fact are sufficient to do so. First, there is a wide discrepancy in the terms reported to have been used by Mr Clugston to admit fault. Now it would not be surprising for there to be some variance of

words used, but the accounts are so different as to draw attention. Secondly, it was not clear to me if Mrs Bruff was asserting that there was more than one person in Mr Clugston's car, which would be remarkable, as no-one else mentioned that. I let that pass. However, her account that Mr Clugston was focussed on an outing with his wife, sister and wife's friend cannot stand, given Mr Clugston's clear negation of it being possible he was going on an outing with his wife. Thirdly, Mr Geddes said that Daniel Donlin was unknown to him. The pursuer said Daniel Donlin was a colleague of Mr Geddes. Mrs Bruff said she knew of him, though she did not know him. It is impossible to reconcile those positions. Finally, Mr Geddes offered the opinion that the accident was caused by the speed of the defender's insured vehicle. Leaving to one side Mr Geddes not being vouched as an expert witness, there was simply no evidence in the photographs, which were put to him, that speed was a factor, let alone that the speed of Mr Clugston was the cause.

[32] Given that combination of reasons for rejecting the evidence, I am consider that neither the pursuer nor her supporting witnesses were credible or reliable in their account of the key facts.

[33] I found Robert Clugston to be a credible and largely reliable witness. He was direct in his answers, and was largely calm and straightforward in his demeanour. He appeared to have a good recollection of events. He conceded he had gone through a traffic light which turned to amber as he approached. His explanation for not stopping, namely that he might block the road, was plausible, given the evidence I heard about the layout of the road, even if it was not the only decision he might have taken. He said he thought the pursuer's partner was her brother, but as neither of the parties were known to each other, and that seemed to me to be explicable as a mistake or misremembrance. Perhaps most telling was his response when the account given by Aileen Bruff of speaking to him and Mr Clugston

being more concerned about missing a trip to the seaside with his wife and her sister and wife's friend. Mr Clugston spontaneously replied that would be a surprise as his wife had been dead for 10 years. I consider the manner of his response had the ring of truth.

[34] Accordingly, I accept the account of the accident given by Mr Clugston. He emerged from the parking area at the 101 Shop, crossed the lane blocked by the road works at a point adjacent to the temporary traffic light. On the balance of probabilities, the light turned to amber as he reached it. I accept his account that to have stopped there would have blocked the road, causing inconvenience, and, potentially, danger to other road users. I accept his evidence that he proceeded along Gleddoch Road, and that he was almost clear of the junction with Rosshill Road, when his car was struck by the pursuer's car. I do not accept the pursuer's account that there was a vehicle in front of her, which was at the temporary lights in Rosshill Road, and that the light changed and she followed the vehicle to the right.

[35] It was not disputed that the distance from the traffic light at the 101 Shop to the junction with Rosshill Road is 90 metres. Robert Clugston's evidence was that he was travelling at about 15mph, which is 6.7m/sec, and accordingly he would have covered that distance in approximately 13.4 seconds. Had he been travelling at 10mph, which is 4.47m/sec, he would have covered the distance in approximately 20.1 seconds. I heard no evidence about the functioning of the temporary traffic lights, in particular timing and sequencing, it being recalled this was a 3 or 4-way temporary light system. Accordingly I am unable to reach a definitive view about whether the light in Rosshill Road was green when the pursuer turned into Gleddoch Road. However, it seems unlikely, and on the evidence available I can put it no higher, that, given about the layout of the roadworks, the pause before a change of the traffic lights facing other directions would have elapsed and

the lights gone through the sequence of red, red and amber, and green in less than 14 seconds or indeed 20 seconds.

[36] As I have accepted the defender's account of events, accordingly the pursuer's action fails, and the defender is entitled to absolvitor.

[37] Mr Richardson advanced a separate line of defence based on abuse of process. I accept that the court has a power in exceptional circumstances to dismiss an action summarily as an abuse of process: see *Grubb v Finlay* 2018 SLT 463. Given the conclusion I have reached on the basis of the witness evidence, I prefer to reserve my opinion on the alternative line of defence based on abuse of process.

[38] Given the conclusion which I have reached, it is not strictly necessary for me to deal with the question of contributory negligence. If the issue had been live, on the premise that the accident occurred on some basis closer to the pursuer's version of events, I would have found there was contributory negligence. That would have been on the basis that even if the pursuer's light was green, the pursuer, as the driver of a car turning from a minor road into a major road, was subject to a continuing duty to proceed with care through the traffic lights, and a continuing duty to keep a proper lookout. I would have attributed liability 50-50 in that event.

[39] The pursuer claims damages for solatium for soft tissue injuries to her cervical spine, lumbar spine, and para spinal muscles. These were symptomatic for around 6 months. She received necessary services from her partner and her mother. She incurred hire charges for a temporary replacement car. As I noted at the outset, parties had helpfully agreed damages at £11,500.

**Conclusion**

[40] I will pronounce decree of absolver. The defender's agent invited me to fix a hearing on all questions of expenses, and I will do that.