SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY
AT AIRDRIE

[2026] SC AIR 12

AIR-A198-16

JUDGMENT OF SHERIFF ANTHONY MCGLENNAN

following debate in the cause

ANGELA SINGH AND SUNITA MARWAHA
TRADING AS J & M PROPERTIES

Pursuer

against

GEORGE WEIGHTMAN & COMPANY

Defender

Pursuer: Forster
Defender: Manson, advocate

AIRDRIE, 20 January 2026

The sheriff, having resumed consideration of the debate:

1. sustains the defender's first and second pleas-in-law; thereafter
2. repels the pursuer's first and second pleas-in-law;
3. dismisses the pursuer's first and second craves; and
4. finds the pursuer liable to the defender in the expenses of the cause allows an account to be given in and remits the account thereof to the Auditor of Court to tax and to report.

NOTE

Summary

[1] This note accounts my decision following debate on preliminary pleas insisted upon by the defender in an action where payment was sought for loss suffered following their averred negligence. As is required I approached matters on the basis that the pursuer's pleadings should be treated as pro veritate.

[2] I have sustained the defender's pleas. I have done so upon the basis that; the specification of causation of loss was so lacking as to render the pleadings on that matter irrelevant and deny the defender fair notice of their case in that regard; and the specification of the quantum of damages was likewise so lacking as to deny the defender fair notice of the pursuer's case.

The pursuer's case

[3] The pursuer is a partnership whose business includes owning, and renting out, commercial property. One such property was Unit 8, Block 2, Larkhall Industrial Estate, Larkhall, ML9 2PA ("the property"). The defender meantime is an insurance brokerage. For the year 2013/14 the defender had arranged insurance for the property upon the pursuer's instruction. The insurers were AIG. At the conclusion of that period of cover the defender was engaged to have the policy renewed. The defender accepted the instruction, but AIG were not prepared to provide insurance for the property. The defender reported this to the pursuer on 16 January 2014. The terms of the letter were:

> "Your insurers have advised us that they are no longer in the market for risks such as yours. Under the circumstances they will not be offering terms for the 2014/15 period".

[4] The letter imparted false information. It conveyed that AIG were no longer providing insurance in the sector in which the pursuer's business operated. That was a misstatement of AIG's position. In fact, AIG were still offering cover for business in the pursuer's sector. They were refusing to insure the property for a different reason. AIG were not willing to provide cover because repairs which required to be made to the property were outstanding. Further, the defects identified by AIG had in fact been remedied at that point. Had the true reason for AIG's declinature of providing cover been given, the pursuer would have made representations to AIG to that effect and "probably" would have had their policy renewed.

[5] As it was, faced with an absence of insurance cover for the property the pursuer proceeded to engage a different brokerage, Greenwood Insurance Consultants Limited ("Greenwood"). AVIVA were identified as a potential new insurer. A proposal form for insurance cover with AVIVA was completed with assistance from Greenwood. In doing so, relying on the terms of the letter of 16 January 2014 and unaware of the true reason for AIG's declinature, the pursuer declared that AIG had withdrawn from offering insurance for the class of business in which they were engaged. A policy was duly issued by AVIVA in respect of the property. The policy included damage by fire. It provided cover to the value of the property and also for loss of rental.

[6] Sometime later there was a fire at the property. The pursuer does not aver when that fire occurred. The pleadings do aver that AVIVA were insuring the property at the time. The cause of the fire is not explained in the pleadings. What is said is that the property was damaged so extensively that it was no longer wind and watertight. The pursuer then faced potential claims from neighbouring properties for flooding caused by the fire damaged condition of the property. A claim upon the policy held with AVIVA was made by the

pursuer. The pleadings do not state the date upon which the claim was made but do advise that AVIVA "declined to honour their policy taking the view that there was a material misdeclaration by the Pursuers in their proposal form". Payment was never made. On 10 August 2020 the pursuer sold the property to the owner of a neighbouring property for "a fraction" of its former value. The bargain struck also included agreement that there would be no further litigation related to damage caused to the neighbouring property due to the derelict state of the property.

[7] The pursuer seemingly accepted that AVIVA were not at fault in repudiating liability. Neither was litigation entered into with Greenwood. The action raised against the defender predicated itself on the defender having provided false information concerning the reason why AIG would no longer insure the property. At Article 3 of condescendence, it was averred that it was reasonably foreseeable that the pursuer would present this information to a new insurer or broker, and that thereafter it was reasonably foreseeable that a new insurer would rely upon the fact that false information had been presented as a basis to repudiate liability were a claim to be made.

[8] Parties' respective pleadings on the issue of loss prefigure the central issue at debate. Article 5 of condescendence contains this averment:

> "The buildings were fully destroyed by fire. The insured value of the buildings was £850,000 Which is the sum first craved. 9 units within the premises were at the time rented out by the Pursuers and a total sum by way or annual rentals of £80,580. The sum, second craved, represents lost rental for one year. Pursuers have called upon the Defenders to make reparation but they have refused or delayed to do so. This action is accordingly necessary."

In answer to that averment the defender, inter alia, averred:

> "…the insured value of the buildings does not represent the Pursuers' loss (if any). The insured value of the buildings under Aviva policy no… was in any event £800,000. The Pursuers would not be paid the sum insured under the policy. Rather,

the Pursuers would be indemnified for the loss they suffered up to the value of the sum insured (should their losses reach or exceed that)."

Motion to discharge the diet of debate

[9] It is salient to explain that when the debate first called before me the pursuer moved that it be discharged. The motion was predicated on the pursuer's wish to draft and thereafter lodge a minute of amendment. The motion was opposed. I refused the motion. I took the view that there had been ample opportunity for both parties to have ensured that their pleadings were in order. By way of further detail:

Lodging and NID

a) The writ was lodged in October 2016.

b) The notice of intention to defend was lodged on 1 November 2016.

Sists and recalls of sists

c) On 14 December 2016, the cause was sisted on the defender's motion for investigations to be conducted and discussion to take place between the parties.

d) On 17 May 2017, once more upon the defender's motion, the sist was recalled to allow a specification of documents to be granted. The cause was immediately thereafter sisted for negotiations to take place.

e) The same process took place on 19 July 2017 to allow a further specification.

f) On 1 February 2018, the sist was again recalled, on this occasion to allow a confidential envelope on behalf of AIG to be opened up. It was sisted immediately thereafter.

g) On 19 July 2018 the sist was recalled once more on the defender's motion to allow further specification to be considered. Once this was granted the action was sisted.

h) On 13 February 2019 the sist was recalled to allow the pursuer to amend. It was, as before, the sisted.

Procedure following sist

i) On 22 April 2024 the sist was recalled following the withdrawal of the pursuer's solicitor. A peremptory diet assigned.

j) On 8 May 2024 the peremptory diet was discharged. A solicitor had been instructed by the pursuer. A new timetable for adjustment of pleadings was issued, and a procedural hearing was assigned.

k) Following sundry procedure an options hearing was assigned for 31 October 2024; parties being allowed to further adjust their pleadings until 17 October 2024.

l) On 31 October 2025 a continuation of the options hearing was allowed until 12 December 2024.

m) On that date the cause was ordered to continue on the additional procedural roll, and a further adjustment period of 8 weeks was allowed.

n) On 27 February 2025 the record was closed and a further procedural hearing assigned.

o) On 3 April 2025 a debate was assigned.

p) The assigned diet was discharged on defender's motion and the first day of the debate which I heard was assigned.

The defender's preliminary pleas

[10] The defender's first plea-in-law sought dismissal of the action, the pleadings being irrelevant and lacking in specification. Its second sought that the averments not be admitted to probation for those reasons. These pleas were insisted upon in a Rule 22 note. They were resisted. Further preliminary issues were identified in the Rule 22 note. The defender reserved their consideration to a proof before answer, should the action survive the debate.

The defender's submissions at debate

[11] The defender's submissions focussed on two propositions. Firstly, that the pursuer had no relevant case in causation of loss. Secondly that specification of quantum was so lacking as to deny the defender fair notice of the pursuer's case. The pursuer asked that I reject both submissions.

[12] The defender had a third proposition that averments in terms of the Financial Service and Markets Act 2000 were not relevant. This was conceded by the pursuer. The defender in turn accepted that the effect of the concession was limited to removing averments addressing that basis of the claim. It could not lead to dismissal of the pursuer's craves for payment. Ultimately it became an academic issue.

Causation of loss

[13] The defender's principal submission was that the pursuer's pleadings if entirely proved would not establish that but for the defender's wrongful act AVIVA would have made payments in terms of the policy - whether for the sums craved or indeed any sum.

There was an absence of averments addressing what would have obtained had the defender advised that AIG's refusal to provide cover was based on repairs required.

[14] This omission was fatal. In order to succeed the pursuer would require to secure finding in facts that set out how the wrongful act caused the loss. That would in turn require averments to the effect that; (i) had AVIVA been informed in the proposal that AIG had refused cover because of the repairs required, AVIVA would nevertheless have provided insurance cover; and (ii) that thereafter AVIVA would have conferred the benefits of that policy upon the pursuer when the fire occurred. As matters stood on the pleadings those findings could not be made.

Absence of specification of quantum

[15] Separately, it was submitted that the pleadings on quantum were lacking in specification. As concerned damage to the building the pursuer had pled quantum on the insured amount. That was fatally insufficient. The defender relied upon certain precepts of insurance law and referred me to *MacGillivray on Insurance Law* 15th Edition at paragraphs 19.001,19.014, 19.015, 19.017, and 19.018. The quantum of the payment craved was merely the maximum amount which AVIVA would pay out. There were no pleadings that the AVIVA policy was a valued policy. This was crucial. A valued policy is one which contains an agreed value. Other than in the instance of a valued policy an insurer will only indemnify with reference to value at the date of the loss. If there was a total loss, the amount payable to the insured would be the value at the time of destruction. If there was partial loss, it would be the difference between the value of the property before and after the damage. There were no averments regarding these crucial facts. There was accordingly no basis upon which the court could calculate quantum.

The pursuer's submissions at debate

Causation of loss

[16] The pursuer maintained that the pleadings did set out that the provision of the false information concerning AIG's declinature had caused the losses claimed. They pointed to Article 4 of condescendence and the following averments (**my emphasis applied**):

> "It is not the case that ALG (*sic*) 'are no longer in the market for risks such as yours ' AIG continued and continue to offer Insurance for such risks. The Defenders knew or ought to have known in not advising the Pursuers of the true reason for AIG declining to Insure the premises further that the Pursuers would be likely to fail to declare the true reason on any subsequent proposal form. **In misadvising the Pursuers as herein before condescended upon the Defenders were negligent. Their negligence has led to the losses hereinafter condescended upon**"

[17] Beyond that, the pursuer had averred insurance cover with AVIVA up to certain figures. They had averred an event which was covered by the policy. Nothing had been paid out upon the policy of insurance because of the negligence of the defenders. The absence of any payment constituted a loss even if they were not to receive the full amount craved. The defender's argument amounted to saying that although they had been negligent the pursuer could not be recompensed because it was not pled what would have happened if they had not been negligent. It was contrary to common sense and legal principle to proceed on the basis that no part of the loss suffered was attributable to the pursuer's fault. It was properly a matter for determination at proof before answer.

[18] The pursuer's submissions concluded by adding that although the pleadings properly read did not require amendment, if I disagreed then time could be allowed for amendment procedure without materially delaying matters and that I should follow that course. I was then taken to the judgment of Lady Wolffe in *Autauric Limited* v *Glasgow Stage Crew Ltd* 2020 SLT 331 for the purposes of distinguishing that case and the present matter.

All of this appeared to ignore that I had already refused a motion to discharge the debate to allow a minute of amendment to be drafted.

Specification of quantum

[19] The specification of quantum was also sufficient. The quantum was set out as being the sums available under the AVIVA policy. Whether the pursuer could establish the same as being the loss sustained was a matter for proof. I was directed to the opinion of the Lord Justice Clerk in *Chalmers and Chalmers* v *Diageo Scotland Limited* [2024] CSIH 2 at paragraph 23:

> "The whole point of a proof before answer is that after evidence the case may not be established as a matter of both fact and law; the simple question at the moment is whether the averments are sufficient for inquiry. It cannot be said that if the respondents succeeded on liability and causation they must necessarily lose on establishing or quantifying loss."

[20] In what appeared to be an esto argument I was also taken to *Esso Petroleum Company Limited* v *Scottish Ministers and others* [2015] CSOH 21, as an example of the court being satisfied upon liability and therefore allowing leave to amend what were insufficient averments on specification of loss.

Decision

Causation of loss

[21] It is fundamental to proving a defender's liability that a pursuer establish a causal link between the defender's alleged wrongdoing and the harm or loss suffered (Reid, *the Law of Delict in Scotland* paragraph 13.01). A pursuer must aver and prove that the wrongful act caused the harm complained of, or at least materially contributed to it (Walker, *The law of Delict* page 207; *McWilliams* v *Sir William Arrol & Co Lithgows Limited* Lord Reid at page 83).

[22] The test to be used in analysis of causation of loss is the "but for" test:

> "The usual starting point in determining factual causation is the so- called 'but for' test. This is satisfied if, on the balance of probabilities, the harm to the pursuer would not have occurred 'but for' the defender's wrongdoing…The test is counterfactual. In effect it requires the court to form a view, on the balance of probabilities, as to a set of events that did not occur, since a comparison must be attempted between what actually happened and a hypothetical alternative- what is likely to have happened had the defender not committed the alleged wrong" (Reid, ibid at paragraph 13.04).

[23] The harm (loss) for which the pursuer seeks payment is the maximum sum that could have been paid had AVIVA been prepared to make payment for the fire damage and loss of rental. The pleadings assert that AVIVA refused to make payment because of a material misdeclaration by the pursuer. Whilst it is not specified, the averments infer that the misdeclaration identified by AVIVA was the erroneous statement as to why AIG were no longer willing to provide insurance cover. It is pled that the misstatement was caused by the defender's provision of false information in the January 2014 letter. As such, the pleadings undoubtedly set out the wrongful act by the defender. The difficulty for the pursuer lies in what they offer to prove to establish that the defender's wrongful act caused the loss.

[24] What is pled in that regard is the previously identified passage from Article 4 of condescendence: "Their negligence has led to the losses hereinafter condescended upon". In his written submissions for the debate the pursuer's solicitor maintained that stance. His summary of the pursuer's case addressed the issues thus: "The provision of the false information was negligent and caused the losses claimed". The oral submission continued this theme that it was axiomatic that the loss was caused by the false information relayed. I did not accept that this was so.

[25] The commonly accepted true reason for AIG having refused to cover the property is crucial. AIG were not prepared to insure the property because of their view that required repairs remained outstanding. Causation of loss is not axiomatic in that circumstance. The "but for" test requires to be engaged. The pleadings need to set out the position the pursuer would have been in had the wrong not been committed by the defender. The pursuer requires to offer to prove that but for the false information provided AVIVA would nevertheless have provided an insurance policy for the property. The pursuer's pleadings do not do so. Merely averring that "negligence has led to the losses" is not sufficient. That averment fails the test of specifying sufficient facts to give the defender fair notice of what the pursuer hopes to establish in fact (see MacPhail *Sheriff Court Practice* 4th Edition paragraph 9.28). The deficiency is so profound as to render the pleadings on causation of loss irrelevant.

[26] The defender's counsel's submissions cast doubt on whether AVIVA or any other insurer would have insured the property. The pursuer's written submissions argued that the defender's own expert "effectively" agreed that a policy could be issued. The expert stating that special premiums would be required for such a policy and going so far as to estimate what those premiums might have been. What was said thereafter in the submission was this:

> "In consequence the Defenders cannot properly argue that there was no loss because no insurer would have accepted it in full knowledge of the reason why AIG had declined cover. If the Defenders were to insist on this issue, it would be one for proof".

[27] Examining the pursuer's submission I was unclear if what was being argued was that insurance cover would have been provided by AVIVA, or merely that there was a prospect that it would have. Leaving that to one side I was quite happy that it would have

been open to the pursuer to set out the factual basis, if they could, by which the court could be satisfied that AVIVA or another insurer would have issued a policy. The difficulty was that this had not been pled. The terms of the defender's expert's report had not made its' way into their pleadings, nor were there any other averments to that effect.

[28] Separately I also took account of the averment at Article 4 of condescendence which asserted that the repairs complained of by AIG as outstanding had in fact been carried out. The averment went on to address the duty that was thereafter incumbent on the defender:

> "Whilst the reasons for AIG declining to renew cover are correctly stated by the Defender, the defects which had prompted AIG to instruct a survey had been remedied and the Pursuers would have been able to (and would have) made representations to AIG pointing out that all issues which had caused concern had been remedied, but did not do so because the import of the false information provided by the Defender was that there was no point in doing so because AIG no longer provided such insurance. … There was a duty on the Defender to discover that the Pursuers had effected all repairs and improvements required by AIG and so to inform AIG (which probably would have caused AIG to renew cover."

[29] The averments at Article 4 of condescendence did not assist the pursuer. What appeared to be tentatively averred was that had it not been for the failings of the defender there would have been insurance cover provided by AIG. A basis for loss predicated on what would have been paid out upon a renewed AIG policy is quite distinct from the pursuer's case that the loss emanates from negligence which caused AVIVA to refuse to make payment in terms of their policy – as set out, inter alia, at Article 5 of condescendence. However, if the loss of the benefit of a renewed policy with AIG is a basis of the claim there are similar issues concerning causation of loss. The pleadings would require averment that AIG would have been satisfied by the repairs carried out and that they would have recanted from their previous refusal to insure the property. They would also require to set out to prove the terms of the renewed policy quoad both the coverage provided and the sum insured. There are no such pleadings.

[30] I looked to the test set out by Lord Normand in the case of *Jamieson* v *Jamieson* (1952) SC (HL) 44 at page 50, namely "It is well established that an action will not be dismissed as irrelevant unless, even if the pursuer proves all his averments, it must necessarily fail". I concluded that such was the lack of specification that in the event that the pursuer proved all of their averments, causation of loss would not be established. The defender's preliminary pleas required to be sustained.

Specification of quantum

[31] The pursuer's submission that sufficient notice had been given of quantum of loss effectively rested on the opinion of the court, given by the Lord Justice Clerk, in *Chalmers and Chalmers* v *Diageo Scotland Limited (*ibid*)*. I considered that case to be distinguishable from the present action. Whilst the Inner House decision does not address in detail the terms of the pleadings on quantum they were debated earlier before Lord Tyre (*Chalmers and Chalmers* v *Diageo Scotland Limited* 2019 SLT 1184). His Lordship allowed a proof upon them. Paragraph 4 of Lord Tyre's judgment sets out the quite detailed averments about the basis for quantum. The argument before his Lordship centred upon the prospect that claiming for both cleaning costs and diminution of value amounted to double counting and that notwithstanding the detailed figures in relation to the loss suffered it was nevertheless impossible to understand how the total amount of the loss was arrived at. Matters are materially different in this action. Quoad the damage to the property the pleadings amount only to averment as to the insured value of the same. It is not averred that the policy was a valued policy, nor was that argued at debate. Consequently, the limited finding in fact that could be made would be to find that the property was insured to a maximum of £850,000.00. The figure on its own tells the court nothing about the loss suffered. There were no

pleadings as to the value of property at the date of the loss. I concluded that the pursuer had failed to specify sufficient facts to provide the defender with fair notice of what the pursuer hoped to establish.

[32] I was narrowly satisfied that the pleadings upon lost rent contain sufficient specification. Had I been prepared to allow the action to go forward I would have allowed those averments of loss to proceed to probation.

Expenses

[33] I order that the expenses of the cause be awarded against the pursuer and in favour of the defender.