COURT OF APPEAL FOR ONTARIO

Winkler C.J.O., LaForme J.A. and Cunningham A.C.J. (*ad hoc*)

BETWEEN

Andrea Oslyn Sandy

Plaintiff (Appellant)

and

Ursula Lovering and ARI Financial Services Inc.

Defendants (Respondents)

Osborne G. Barnwell, for the appellant

Gail Willoughby, for the respondents

Heard and released orally: September 13, 2012

On appeal from the order of Justice Katherine B. Corrick of the Superior Court of Justice, dated January 28, 2011.

ENDORSEMENT

[1]   The first issue raised by the appellant is that the trial judge erred by commenting or suggesting that the expected evidence from the Town official Mr. Caderilli regarding the timing of the lights was expert opinion. We disagree. Whether or not it was expert opinion, is of no consequence for the purposes of this appeal. It is clear from the record that the trial judge repeatedly informed the

appellant that she was obliged to call a witness, and that she was not and had not ruled on the admissibility of the evidence. The fact is that the appellant failed to call any witnesses in respect of the video or the traffic lights. Accordingly, this ground of appeal fails.

[2]   On the second issue, we find no error in the procedure followed by Corrick J. in dealing with the issue of the initial verdict. Without question, based upon the evidence, the answer to question number two, that Ms. Lovering "may have had an opportunity to avoid colliding with Ms. Sandy's car", does not meet the legal definition of negligence. Accordingly, it was proper for the trial judge to recall and recharge the jury. We find no error or misdirection in her recharge. She drew the jury's attention to the relevant evidence and applicable legal principles. This ground of appeal fails as well.

[3]   Accordingly, the appeal is dismissed. Costs to the respondents fixed at $10,000, inclusive of disbursements and applicable taxes.

"W.K. Winkler C.J.O."
"H.S. LaForme J.A."
"J.D. Cunningham A.C.J. S.C.J. (*ad hoc*)"