



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 43
CA24/23

Lord President
Lady Wise
Lord Ericht

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD PRESIDENT

in the reclaiming motion

by

NICOL'S WORSTEDS LIMITED

Pursuer and Reclaimer

Against

HLT STAKIS OPERATOR LIMITED

Defender and Respondent

Appellant: McClelland KC, Ford (sol adv); Brodies LLP

Respondent: Walker KC, R Anderson; CMS Cameron McKenna Nabarro Olswang LLP

8 September 2026

Introduction

[1] This reclaiming motion (appeal) concerns the interpretation of repairing and decorating obligations in a sub-lease of the Grosvenor Hilton Hotel in the west end of Glasgow. The main issue relates to the condition in which the respondent, the tenant under the sub lease, was bound to yield up the hotel to the reclaimer, the landlord, at the expiry of the sub-lease on 31 December 2021. It is accepted on both sides that the hotel had to be yielded up in a condition of good and substantial repair. What is in dispute is whether this

means that the hotel had to be handed back to the landlord in a state of good repair judged objectively as at the date of expiry or alternatively in no better condition than it was in at the commencement of the sub-lease. The reclaimer contends for the first alternative, the respondent for the latter. There is a secondary issue concerning interpretation of the decorating obligation in the sub-lease.

The leasing structure

[2] The sub-lease was created as part of a sale and lease back transaction entered into on 6 March 2001. On that date Stakis PLC granted a 175-year head lease of the hotel to RBS Hotel Investments Limited and RBS granted a sub-lease of the hotel to Stakis. The respondent became the tenant under the sub-lease by virtue of an assignation in its favour by Stakis Limited (formerly Stakis PLC) dated 6 November 2007. As assignee, the respondent became liable to perform the tenant's obligations in the sub-lease. The reclaimer became the tenant under the head-lease and consequently the landlord under the sub-lease by virtue of an assignation by RBS in September 2011.

The relevant terms of the sub-lease

[3] To understand the dispute between the parties it is necessary to set out some of the provisions of the sub-lease.

[4] The hotel was defined as follows:

“all that property situate and known as The Grosvenor Hilton Hotel, Grosvenor Terrace, Glasgow as the same is registered in the Land Register of Scotland under Title Number GLA29399 together with the Chattels and any Services Conducting Media in on over or under the Hotel and exclusively serving the Hotel and all Landlord's fixtures fixed plant machinery operating equipment now or at any time on the Hotel”.

[5] The Schedule of Condition was defined to mean:

“...the video and accompanying explanatory statement prepared by Messrs Robert Brown Associates a copy of which has been initialed (*sic*) by the parties and marked ‘Schedule of Condition dated March 2001’ referred to in a lease made between (1) RBS Hotel Investments Limited (2) Stakis PLC and (3) Hilton Group plc”.

Hilton Group plc was the Guarantor under the sub-lease.

[6] “Services Conducting Media” was defined as meaning:

“... drains, sewers, conduits, flues, gutters, gullies, channels, ducts, shafts, watercourses, pipes, cables, heating and ventilation equipment, wires and mains”.

[7] The Term Commencement Date was 6 March 2001. The sub-lease was to expire on 31 December 2021.

[8] Clause 3 set out the Tenant’s Covenants. Clause 3.5 dealt with Repair and decoration. Clause 3.5.1 provided as follows:

“To keep the Hotel in good and substantial repair and condition and to remedy any inherent defects in the design or construction of the Hotel howsoever arising (fair wear and tear as defined below in paragraph (b) excepted and damage by any of the Insured Risks excepted to the extent that the insurance moneys are irrecoverable through any act of default of the Landlord) Provided that:

- (a) without prejudice to Clauses 3.5.3 and 3.5.4 nothing herein shall require the Tenant to deliver up the Hotel in a better state of repair and condition than that evidenced by the Schedule of Condition
- (b) damage will be deemed to be caused by fair wear and tear if any one or more items taken in aggregate would not be sufficient to prevent the Hotel from being used for the Permitted Use and in compliance with Clause 3.21 (Gross Turnover) having regard to the residue of the economic life of the relevant asset”.

[9] Clause 3.5.2 was in the following terms:

“To decorate or otherwise treat the Hotel (where appropriate in accordance with manufacturers’ recommendations) in accordance with the Operating Standards.”

[10] The Operating Standards were defined to mean the Hilton Standards or such Operating Standards as might be reasonably required to enable the hotel to be operated as a first-class hotel.

[11] Clause 3.5.4.2 provided that the tenant: “accepts the hotel in its current condition”.

[12] Clause 3.19 dealt with yielding up. It provided that upon the expiration or sooner determination of the Term the tenant shall:

“3.19.1 yield up the Hotel with all additions and improvements thereto in a state and condition consistent with due compliance by the Tenant with its covenants and obligations under this Sub-Lease

3.19.2 where reasonably required by the Landlord remove all of the Tenant’s furniture and chattels (other than any Chattels belonging to the Landlord) and as soon as reasonably possible make good any damage to the Hotel caused by such removal to the reasonable satisfaction of the Landlord

3.19.3 give all keys of the Hotel to the Landlord”.

[13] There was a proviso to this clause in the following terms:

“Provided always that nothing herein shall require the Tenant to deliver up the Hotel in a state and condition better than that evidenced by the Schedule of Condition”.

The present action

[14] No authenticated copy of the Schedule of Condition was available at the time of expiry of the sub-lease. In 2023 the claimer raised an action in the commercial court concluding first for declarator that (i) in the absence of the Schedule of Condition the limitations on the respondent’s repairing obligations in the sub-lease were of no effect; (ii) that enforcement of the repairing obligations need not account for a Schedule of Condition; and (iii) that the repairing obligations were not limited by reference to the condition of the hotel at commencement of the sub-lease.

[15] Following investigations, the respondent had, however, identified a report prepared by Robert Brown Associates entitled “Overview Report on Video Schedules of Condition on Hilton Hotels (11 No.)” dated March 2001. Furthermore, shortly before a diet of preliminary proof was due to be heard in the commercial court, the respondent also found in its

possession two VHS cassettes both labelled "Hilton Hotel Glasgow Grosvenor Survey 6/3/01". Before these cassettes were discovered, the only evidence which either party had in respect of any video prepared by Robert Brown Associates was some corrupted video footage extracted from two DVDs.

[16] The reclaimer also sought declarator that the video footage and report by Robert Brown Associates did not constitute the Schedule of Condition and was not to be taken into account when applying the respondent's repairing obligations under the sub-lease.

[17] In the summons, the reclaimer averred that at the expiry of the sub-lease the hotel was not in a state and condition consistent with the due compliance by the respondent with its covenants and obligations in breach of clause 3.19. The hotel was alleged to be in a substantial state of disrepair, as detailed in a Scott Schedule incorporated in the pleadings. The reclaimer sought damages in excess of £7 million for construction costs and professional fees and further damages of more than £1 million arising from the need to close the hotel while the necessary works were carried out.

[18] In its defences, the respondent averred that on a proper construction of the sub-lease the tenant's repairing and yielding up obligations required only that the tenant should keep the hotel in the condition in which it was at the commencement of the sub-lease and that it should yield up the hotel at the expiry of the sub-lease in a like condition. It averred that at the commencement of the sub-lease the hotel was not in good and substantial repair. It suffered from various wants of repair detailed in the report by Robert Brown Associates and was in a dilapidated condition.

The findings by the commercial judge

[19] Following the preliminary proof the commercial judge made several factual findings. He held that the Schedule of Condition as defined in the sub-lease comprised a video survey and accompanying explanatory statement prepared by Robert Brown Associates on 6 and 7 March 2001 and that a copy of the video and statement were provided to RBS and Hilton. Production 7/7 was a copy of the explanatory statement and the VHS cassettes, productions 7/25 and 7/22 were copies of the video survey.

[20] The commercial judge also held that, properly construed, the tenant's repairing obligations did not require the hotel to be delivered up in a better state of repair and condition than existed in March 2001 when the video survey which constituted the Schedule of Condition was carried out. The sub-lease did not include an obligation to replace, renew or rebuild. The Schedule of Condition evidenced the relevant state of repair and condition rather than creating or constituting it.

[21] The tenant's decorating obligation under clause 3.5.2 was qualified by reference to the Schedule of Condition. The landlord's interpretation did not take account of the proviso set out in clause 3.19. The tenant was required to deliver up the hotel at the end of the sub-lease in a condition no better than that evidenced by the Schedule of Condition.

[22] The commercial judge dismissed the declaratory conclusions in the summons. He put the case out for a By Order hearing on further procedure. At the By Order hearing, he granted leave to reclaim.

The Schedule of Condition and the Scott Schedule

[23] Before this court there was no dispute that the Schedule of Condition comprised the video survey and the accompanying report entitled “Overview Report on Video Schedules of Condition on Hilton Hotels (11 No.)” dated 6 and 7 March 2001.

[24] The video contains 2 hours and 6 minutes of footage showing the general condition of the hotel. The accompanying report records the instructions given to the surveyors to prepare Schedules of Condition on eleven Hilton hotels in different parts of the UK. The Schedules of Condition were to be recorded on video to reflect the “general condition” of the hotels at the time of the survey. This remit was understood to be connected with the proposed sale and lease back of the properties.

[25] The videos were to give a reasonable overview of the condition of the hotels. They would not provide a full list of every single element of construction and finishes, which, as the accompanying report clarified, “one would have with a traditional written Schedule of Condition”. Not all areas of the hotels were inspected. In particular, only a limited number of bedrooms were inspected. Furthermore, the presence of floor coverings, storage, fittings, plant etc. would generally restrict the scope of inspection. Mechanical, electrical, water, drainage, air conditioning, lifts or other services and plant rooms installations were not recorded.

[26] In the Grosvenor Hilton, Glasgow only five bedrooms “of varying standards” were selected for inspection. Each of them was stated to be in an “extremely good standard of finish throughout”. There was commentary on some other aspects of the hotel, including the roofs, elevations, external doors and areas, and back of house. The purpose of the survey was stated to be to give “a reasonable overview of the ... Hotel’s condition”. It was not to provide a full list of every element.

[27] The Scott Schedule, recording the parties' respective positions on the various wants of repair, has yet to be updated to reflect developments in the case and is accordingly incomplete. We note, however, that a significant portion of the claim advanced by the reclaimer in relation to the mechanical, electrical, plumbing and other service installations remains unanswered by the respondent's surveyor.

The arguments on appeal

Summary of reclaimer's submissions

[28] By the time of the Summar Roll hearing the reclaimer no longer challenged any of the commercial judge's factual findings. It restricted its arguments to contending that the respondent's averments in the defences as to the interpretation of the repairing, maintenance and decoration covenants were irrelevant. It also challenged the commercial judge's finding that the tenant's decorating obligation was qualified and limited by the Schedule of Condition.

[29] Properly construed, the lease required the respondent to deliver up the hotel in a state of good and substantial repair, limited only by the contents of the Schedule of Condition. It was not open to the respondent to lead evidence of the condition of the hotel at commencement of the sub-lease beyond that recorded in the Schedule of Condition, nor was it necessary for the reclaimer to prove the condition of any item at commencement.

[30] An objective standard of repair, such as "good and substantial repair", typically precluded a construction that the obligation was merely to return the premises to their condition at commencement of the lease (*@SIPP Pension Trs v Insight Travel Services* [2015] CSIH 91; 2016 SC 243, paras [19] – [20]). The repair obligation was triggered by the subjects being out of the chosen standard of condition and not by comparison with their condition at

commencement. Comparison with condition at commencement might be appropriate where the express terms of the repairing clause required this, such as the provisions in *McCall's Entertainments v South Ayrshire Council (No 2)* 1998 SLT 1421 and *Dem-Master Demolition Limited v Healthcare Environmental Services Limited* [2017] CSOH 14.

[31] There was no express reference in the sub-lease to the condition of the hotel at commencement. The most natural meaning of the repairing provisions was that the Schedule of Condition was to be the definitive and only source of the hotel's condition at commencement. Other evidence of condition at commencement, not recorded in the Schedule, was irrelevant.

[32] The repair obligation was triggered by the hotel being out of good and substantial condition and required that the tenant should put it into that condition. If a lower condition was recorded in the Schedule, the obligation was only to put it into that lower condition. The tenant could not insist on the landlord proving what the hotel's condition was at commencement. The tenant's obligation to repair was, therefore, limited by reference to the condition of the hotel at commencement, but only to the extent that such condition was recorded in the Schedule.

[33] To limit the repair obligation on yielding up to the condition of the hotel at commencement failed to give due weight to the parties' choices of an objective standard of repair and which particular features of condition at commencement to record in the Schedule of Condition.

[34] An obligation to keep premises in a specified condition included an obligation to put them into that condition (@SIPP Pension Trs, paragraph [20]).

[35] There was commercial benefit in a long lease in defining a repair obligation by reference to an objective standard. Evidence of condition at outset might be difficult to

obtain at termination. There might be different parties to the lease by then, as had occurred in this case.

[36] It could be inferred that aspects of condition not recorded in the Schedule were considered by the parties to have been irrelevant to their obligations.

[37] Professional drafters were to be taken as being aware of the law on contractual interpretation when preparing commercial leases. The court required to read the words chosen by the parties in that context. The omission of reference to the hotel's condition at commencement could be understood as a deliberate choice in light of the decision in *McCall's Entertainments*.

[38] The decorating obligation in clause 3.5.2 was distinct from the general repairing obligation. The standard set by the decorating clause was unqualified. The hotel had to be decorated to the standard of a first-class hotel throughout the duration of the sub-lease, unqualified by any lesser decorative standard recorded in the Schedule of Condition. The specific decoration clause could be taken to have been intended to take priority over the more general repair and condition clause. The yielding up obligation implied, in the case of decoration, compliance with the Operating Standards.

[39] The decorative standard was qualified at yielding up but not during the term of the lease until that point. That was surprising and did not make much sense. It was unlikely to have been intended. Much more likely (and as reflected in clause 3.19.1) was that the sub-tenant was expected at expiry to hand over the hotel in a condition consistent with it having complied with its repair obligations throughout.

[40] The court might conclude that the proviso to clause 3.19 was intended to do no more than reflect the qualification to clause 3.5.1.

Summary of respondent's submissions

[41] Properly construed, the tenant's obligations under clauses 3.5.1(a) and 3.19 were to deliver up the hotel in the state of its condition at the commencement of the sub-lease. The Schedule of Condition was merely evidence of that condition.

[42] The action was based on the condition of the hotel at the expiry of the lease. That was governed solely by clauses 3.5.1(a) and 3.19. It was unnecessary to construe what the agreed repairing standard was during the currency of the sub-lease. There were different obligations incumbent on the tenant at different stages of the sub-lease.

[43] Properly understood, the intention of the parties was to capture the condition of the hotel at the commencement of the sub-lease in a Schedule of Condition. Clauses 3.5.1(a) and 3.19 put that intention into contractual effect. It would be commercially absurd for the parties to have agreed two separate standards of repair at expiry of the sub-lease, one governing those items captured by the Schedule of Condition and another for those excluded. That there were items excluded from the Schedule, deliberately or otherwise, did not detract from what the parties were trying to achieve, namely, to identify the condition of the hotel at commencement.

[44] Reading clauses 3.5.1(a) and 3.19 in their totality, with the background and information that would have been available to the parties when the sub-lease was executed, it could not be said that the Schedule of Condition was intended to be the definitive and sole statement of the hotel's condition at commencement. The words "evidenced by" meant what they said. The reclaimer's suggested construction applied an unduly restrictive interpretation of those words. When read in the context of the parties' intention to limit the repairing and maintenance obligation at yielding up to the condition of the hotel at commencement of the sub-lease, it was obvious that parties were not contractually

precluded from leading supplementary evidence about that state of condition, particularly when it was known that the Schedule of Condition was non-exhaustive.

[45] Further aids to construction supported the respondent's position. The sub-lease did not follow standard full repairing and insuring terms and did not include an obligation to replace, renew, reinstate or rebuild the premises (@*SIPP Pension Trs* at [19] – [20] and [21]; *Kilmac Properties Ltd v Tesco Stores Ltd* [2021] CSOH 70; 2021 Hous LR 61, Lord Clark at [14] - [20] and [25]). The commercial judge was correct to note that the lease in *McCall's Entertainments* was broadly similar, albeit not identical to the terms of the sub-lease.

Clause 3.5.4.2 confirmed that the tenant accepted the hotel in its "current condition" at commencement of the lease.

[46] The commercial judge was also correct to hold that the decorating obligation under clause 3.5.2 of the sub-lease was qualified by the limitations in clauses 3.5.1(a) and 3.19.

Clause 3.5.1(a) was stated to be without prejudice to two specified clauses in the sub-lease and not to clause 3.5.2. It was made plain from the words used in clause 3.19 that they were intended to refer to the condition of the hotel as a whole at yielding up.

Analysis and decision

[47] The well-established general principles applicable to contractual construction were summarised in *Ashtead Plant Hire v Granton Central Developments* [2020] CSIH 2; 2020 SC 244, paras [9]-[17]. There is no need to set them out again in detail. The court's aim is to determine what the parties meant by the language used by ascertaining what a reasonable person would have understood them to have meant (*Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; [2011] 1 WLR 2900, para 14). The interpretation of a repairing obligation in a commercial lease is subject to these general rules of contractual interpretation (@ *Sipp Pension Trs v Insight Travel*

Services [2015] CSIH 91; 2016 SC 243, para [17]). Each case must turn on interpretation of the provisions in the lease. Previous case law, in which different contractual provisions were considered is, therefore, of limited assistance. There are, however, two Scottish authorities of some interest in the present context.

[48] In *McCall's Entertainments v South Ayrshire Council (No 2)* 1998 SLT 1421 a lease of commercial premises provided that the tenants accepted the subjects, which were in a dilapidated state, in "their present condition as evidenced by the Schedules of Condition subscribed as relative hereto". During the currency of the lease the tenants were obliged to keep the subjects "in good repair, condition and decoration" in every respect. The tenants were also bound to leave the subjects in a condition no less good "than their present condition".

[49] The Lord Ordinary (Hamilton) held (at 1427A-E) that while the effect of the acceptance of the subjects in good condition was to relieve the landlords of the obligation which would have been imposed on them under the common law to put the subjects into a tenantable condition, the absolving of the landlords of such an obligation did not of itself impose that obligation on the tenants (*Crédit Suisse v Beegas Nominees*, [1994] 4 All ER 803). The obligation to leave the subjects in no less good a condition than their present condition would be discharged by the tenants giving up possession of the subjects in the same general state as they were at the outset of the lease. The words were inconsistent with an obligation to leave the subjects in a state of overall improvement compared with their state at the outset. There were no express obligations of replacement, renewal or rebuilding. It was in that context that the obligation to keep in good repair had to be construed. The question of construction was unaffected by the fact that the Schedules of Condition had never been completed.

[50] In *@SIPP Pension Trs* a question arose as to whether the tenant's obligations at termination were limited to putting the leased premises into the condition in which they were accepted at the commencement of the lease. An Extra Division of the Inner House held that the language used showed that the parties' intention was that the subjects should be put into a state of "good and substantial repair" at termination. The court observed (para [19]) that the parties had not appended a schedule or other record of the condition of the subjects at the commencement of the lease. Their failure to do so weighed heavily against construing the repairing obligation as being limited to the condition of the premises at commencement. While the balance of authority supported the conclusion that an obligation to put the subjects into good and substantial repair carried an obligation to put them into that state of repair, if there was no obligation to renew, replace and rebuild as necessary, a different conclusion might be drawn (para [20]).

[51] We consider that the commercial judge correctly construed the sub-lease. Reading it as a whole, it is clear that the parties' intention was to record the condition of the hotel as it stood at the commencement of the sub-lease. That is the obvious reason for their agreement to make provision for a Schedule of Condition. In terms of clause 3.5.1(a) nothing in the sub-lease was to require the tenant to deliver up the hotel in a better state of repair and condition than that evidenced in the Schedule of Condition. The specific provisions dealing with yielding up were essentially to the same effect (clause 3.19 and its proviso). The clear and obvious purpose of these provisions read together (as they must be) was to ensure that the tenant was not placed under any greater liability than to return the hotel in a state of repair no better than its condition at the time of commencement of the sub-lease. Insofar as the condition of the hotel was recorded in the Schedule of Condition that would constitute evidence of the hotel's condition at commencement. There is, however, nothing in the

provisions to suggest that the Schedule of Condition was intended to be a comprehensive and exclusive source of evidence of the hotel's condition at the outset of the sub-lease.

While an express intention to agree a method of establishing twenty years later what the hotel's condition was at commencement made commercial sense, the provision did not impose the standard in which the tenant would be required to yield up the hotel; it was merely an evidential tool to facilitate proof of that standard at expiry of the sub-lease.

[52] The fact that the contents of the Schedule of Condition turned out to be limited in scope cannot detract from the clear import of the contractual provisions, as the court held in *McCall's Entertainments*. There is nothing to suggest that the parties intended there to be two radically different standards of repair at the expiry of the sub-lease: one for the items covered in the Schedule of Condition and a markedly different standard for items not so covered. The meaning of the words used in the sub-lease and the intentions they reflect cannot change as a result of *ex post facto* events (*Westbury Estates Ltd v The Royal Bank of Scotland PLC* [2006] CSOH 177; 2006 SLT 1143, the Lord Ordinary (Reed) at paras [38] and [39]).

[53] This interpretation is supported by the terms of clause 3.5.4.2 which makes clear that the tenant accepted the hotel in the condition it was in at the commencement of the sub-lease. While this provision may have been intended to displace the landlord's common law obligation to put the premises into a habitable condition, it also fits with the overall scheme of the repairing obligations whereby the tenant was under no obligation to improve or renew the hotel beyond the condition it was in at the outset of the sub-lease.

[54] It is important also to note that the language used in clauses 3.5.1(a) and the proviso to clause 3.19 refers to the tenant not being required to deliver up the hotel in a "condition better than that *evidenced* by the Schedule of Condition" (emphasis added). This implies that the Schedule of Condition was intended to be *a* source of evidence of the hotel's condition at

the commencement of the sub-lease. It was not to be *the* exclusive source of such evidence. That could come from other sources. We see no reason why the state of repair of the hotel at the commencement of the sub-lease should not be capable of being shown by any evidence apt to throw light on that issue. Any such limitation as contended for by the reclaimer would be highly artificial.

[55] We do not consider that the points advanced by the reclaimer about the practicalities of obtaining evidence as to the hotel's state of repair at the outset of the sub-lease are relevant when it comes to ascertaining the meaning of the contractual provisions. It is conceivable, as the reclaimer submitted, that this might prove to be a significant task, but that is nothing to the point. Such possible difficulties can have no bearing on the intentions of the parties to the sub-lease at the time it was entered into. It should be noted too that at the preliminary proof the reclaimer's evidence was that it had not seen the Schedule of Condition at the time it acquired the landlord's interest in the sub-lease (Opinion para [68]). The Schedule of Condition was apparently of no importance to the reclaimer when it became party to the sub-lease.

[56] It is notable also that the sub-lease did not impose any obligation on the tenant to replace, renew, reinstate or rebuild the hotel. As the Extra Division observed in *@SIPP Pension Trs*, the absence of such language may be significant in supporting the conclusion that the tenant's obligation was limited by reference to the condition of the hotel at commencement. The absence of obligations to replace, renew, reinstate or rebuild in the sub-lease is a further factor pointing in favour of the respondent's construction.

[57] For these reasons we consider that the reclaimer's attack on the relevancy of the respondent's averments relative to the meaning and effect of the tenant's repairing and yielding up obligation fails.

[58] That leaves the reclaimer's argument about the meaning of the decorating clause. It will be recalled that the sub-lease provided in clause 3.5.2 that the tenant undertook to decorate or otherwise treat the hotel in accordance with the Operating Standards. The proviso to the yielding up provisions stated that "nothing herein" was to require the tenant to deliver up the hotel in a state and condition "better than that evidenced by the Schedule of Condition". It is important to note that clause 3.5.1(a) is not made subject to clause 3.2. Moreover, clause 3.19 deals comprehensively with the tenant's obligations at the stage when the hotel is to be yielded up. There is no basis for the proposition advanced by the reclaimer that clause 3.19 somehow implies in the case of decoration that at yielding up the Operating Standards required to be complied with. At yielding up the respondent did not require to deliver up the hotel in a state or condition relative to decoration better than that evidenced by the Schedule of Condition. It would make no practical sense for there to be an obligation on the tenant to yield up the hotel as a Hilton hotel when the sub-lease had come to an end. It is accordingly the yielding up obligation in clause 3.19 which governs the dilapidations claims. The decorating obligation set out in clause 3.5.2 was linked to "Operating Standards". By their nature such standards regulated the operation of the hotel during the currency of the sub-lease.

[59] It follows that we reject the reclaimer's motion to exclude from probation the respondent's averments in Answers 14, 15 and 16 set out in the appendix to the reclaimer's note of argument.

[60] The reclaiming motion is refused.

[61] We noted that the commercial judge's interlocutor of 11 December 2025 did not identify the averments in the summons to be excluded from probation in view of his decision to sustain the respondent's second and third pleas-in-law and dismiss the two

declaratory conclusions. We invited parties to agree on the averments which should be refused probation and they helpfully did so. We have reflected this in our interlocutor refusing the reclaiming motion. We shall remit the case to the commercial judge to proceed as accords.