



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 101

CA43/25

OPINION OF LORD LAKE

In the cause

HFD GLASGOW 3 LIMITED

Pursuer

against

STUDENT LOANS COMPANY LIMITED

Defender

Pursuer: Walker KC, Horn; CMS Cameron McKenna Nabarro Olswang LLP

Defender: Garrity; Morton Fraser MacRoberts LLP

4 November 2025

Introduction

[1] The pursuer owns commercial property in Bothwell Street, Glasgow. Until December 2023, the defender was the tenant of the property. As would be expected, the lease imposed various repairing and maintenance obligations on the tenant. The lease having ended, the parties are in dispute concerning these obligations and the tenant's liability to the landlords as a result.

[2] The clause at the heart of the dispute is paragraph 12 of Part 4 of the Schedule to the lease. The relevant parts of it are in the following terms:

“At the expiry or sooner determination of this Lease to surrender and yield possession to the Landlord of the Premises leaving the same void and redd ... and

that in such state and condition as shall in all respects be consistent with full and due performance by the Tenant of the obligations contained in the Lease. ... Provided that if at such expiration or sooner determination the Premises shall not be in such state and condition as shall in all respects be consistent with a diligent performance by the Tenant of the obligations contained in the Lease then except where the provisions of Clause 17 of the Lease apply, the Landlord's only remedy shall be to require the Tenant to pay to the Landlord the sum certified by the Landlords Surveyors acting reasonably or in the event of dispute or disagreement, as certified by the Building Surveyor appointed in accordance with the provisions of Clause 16 of this Lease as being equal to the cost (including a reasonable fee for a surveyor project managing the repair, reinstatement and redecoration) of carrying out such work as is required to put the Premises in such state and condition as shall in all respects be consistent with a diligent performance by the Tenant of the obligations contained in this Lease and if the Tenant shall pay to the Landlord the sum as certified together with the Surveyor's fees of and in connection with such Certificate within Fourteen days of demand the Landlord shall accept the same in full satisfaction of the Tenant's liability under this Lease quoad the work referred to in this proviso."

[3] Of the other clauses of the lease referred to there, Clause 16 states that in the event of a dispute between the parties in respect of various provisions including paragraph 12, the dispute is to be referred to the decision of a building surveyor appointed by the parties or nominated at the request of them by the Scottish Branch of the Royal Institution of Chartered Surveyors. The parties clearly are in dispute, but I was informed at the debate that there is agreement that Clause 16 has been disapplied. I have not been provided with the emails by which this was achieved so I am not aware of the terms by which this has been achieved or any consequences they might have. There was agreement, however, that it was not necessary that there has been a decision made by a surveyor appointed under Clause 16 for liability to exist. Clause 17 of the lease states that the landlord shall not enforce the payment term of paragraph 12 of Part 4 of the Schedule if there is to be a wholesale redevelopment of the building. I consider this below.

[4] In this action the landlords have six conclusions seeking payment. As the summons is drafted, all six represent sums of damages which the tenant must pay the pursuer in

respect of breach to the lease in not complying with the repairing and maintenance obligations – that is the only basis of action in the pleas in law. It was made clear by the pursuer, however, in both their note of arguments and submissions at the debate, that the first conclusion – seeking payment of £9,143,010.39 – seeks implement of a payment obligation in terms of the lease. That sum represents the costs of carrying out works to put the premises in the desired state as certified by the pursuer’s surveyor. I consider the significance of this in more detail below.

[5] The remaining conclusions seek payment of sums said to represent:

- (a) Loss of rent for the full period during which the property is unlettable £3,032,268.42;
- (b) Insurance costs of £41,523.04 incurred for the same period;
- (c) Rates of £875,098.03 incurred for the same period;
- (d) Service charge in the sum of £519,037.98 for the same period; and
- (e) Legal fees in the sum of £31,551.40.

Items (a) to (d) are claimed for the period when it was said that the building was unlettable due to the tenants not having complied with the repairing obligations. These sums would represent damages for breach of lease obligations. Paragraph (e) seeks implement of a term of the lease requiring the tenants to indemnify that landlord for, putting it broadly, enforcing other terms of the lease (Clause 32).

Legal background

[6] The issue that arises is one of construction of a contract. The parties were in agreement that the correct approach to this entails applying the following overlapping propositions:

1. Contractual interpretation is a unitary and iterative process.
2. What one is looking for is what a reasonable person having all of the background knowledge that would have been available to the parties would have understood the words of the contract to mean.
3. It involves looking for the objective meaning of the language of a contract, in its documentary, factual, and commercial context.
4. The court should give effect to the natural and ordinary meaning of the words.
5. The contract requires to be read as a whole.
6. If the language of a contract contains no ambiguity, the court must apply it and should guard against any temptation to rewrite what some might perceive as a bad bargain for one side or the other.
7. If the language of a contract does contain some form of ambiguity, the court can prefer the interpretation which most accords with business common sense or can test any competing constructions with reference to business common sense.

[7] I was referred to various authorities from the Supreme Court and the Inner House to vouch these propositions and also recent examples of the same issues being considered at first instance (*Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, *Arnold v Britton* [2015] UKSC 36, *@SIPP Pension Trustees v Insight Travel Services Ltd* [2015] CSIH 91, *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, *Ashtead Plant Hire Co Ltd v Granton Central Developments Ltd* [2020] CSIH 2, *Network Rail Infrastructure Ltd v Fern Trustee 1 Ltd* [2022] CSIH 32, *Paterson v Angelline (Scotland) Ltd* [2022] CSIH 33, *Lagan Construction Group Ltd v Scot Roads Partnership Project Ltd* [2023] CSIH 28, *FES Limited v HFD Construction Group Ltd* [2024] CSIH 37, and *Glenfiddich Wind Ltd v Dorenell Windfarm Ltd* [2025] CSOH 62). I have taken

these decisions into account. However, as the parties were agreed as to the approach that should be taken, it is not necessary that I review them in this Opinion.

Submissions for the parties

[8] In summary, the defender (tenants) submitted that the effect of paragraph 12 was that payment of the sums certified was the sole remedy to the exclusion of other heads of damage / claim. It was submitted that this was apparent as a matter of the plain meaning of the words used. Clause 12 does not introduce any new obligations but “rolls up” the other obligations into a single remedy. This interpretation makes commercial sense as it means that the parties would be aware of their rights and obligations at the end of the lease in a way that was straightforward and could avoid litigation. Wiping the slate clean of breaches prior to the end of the lease was the whole purpose of the clause. The proviso at the end of the paragraph regarding time for payment does not qualify the statement that it is the sole remedy. If payment was not made in the stipulated time, the sum due in term of paragraph 12 would have to be quantified some other way.

[9] In outline, the pursuer (landlords) submitted that it was necessary to have in mind that other clauses in Part 4 of the Schedule and in the main part of the lease imposed obligations and created liabilities. There was reference in the summons to the clauses which has been breached during the term of the lease. The obligation in paragraph 12 was an additional and separate obligation over and above those clauses. The wording in paragraph 12 was not sufficiently wide and sufficiently clear to exclude accrued liabilities under these other clauses. The wording of paragraph 12 makes it clear that it is in satisfaction only of “the work referred to in this proviso”. In addition to the express wording, the placing of this provision in paragraph 12 indicates that it is not intended to

remove liabilities that exist under other provisions in the lease. It was not commercially sensible to exclude liability under the various provisions of the lease and leave only a claim for want of repair. It would be arbitrary to exclude these liabilities at the outset of the lease at a time when the parties would have no idea of their extent. By way of a particular illustration, the tenant's interpretation would exclude liabilities under Clause 32 of the lease for the costs incurred by the landlord in enforcing it during the term. This would not make sense.

Analysis and decision

[10] I start with the wording of paragraph 12 and its ordinary meaning. The description of the obligation to pay the sums certified by surveyors as "the only remedy" is easily understood. It means that this is the sole means by which the landlord may obtain payment/relief due. The question is then, for what is it the sole remedy? The closing words of the paragraph refer to it as being the tenant's liability "quoad the work referred to in this proviso". Reading the paragraph as a whole, it is clear that the "work" referred to there is that which was referred to a few lines above:

"such work as is required to put the Premises in such state and condition as shall in all respects be consistent with a diligent performance by the Tenant of the obligations contained in this Lease".

This means that reading paragraph 12 in isolation, the payment of the certified sum is in lieu of carrying out work to put the premises in the stipulated condition. It therefore excludes only liability that may exist for prior breaches of other provisions of the lease and Part 4 of the Schedule which have contributed to the premises not being in that condition.

[11] It was accepted during the debate that much of what Lord Hoffman once described as the old "baggage" of interpretation has been abandoned. It is no longer necessary to

carry out interpretation *contra proferentem* and instead, for commercial agreements at least, the focus should be on the words used to determine what the parties intended. The parties have clearly agreed in the lease to a mechanism to value the cost of carrying out works to put the premises in the condition they would have been in had all the repairing and maintenance obligations been implemented.

[12] To the extent the repairing and maintenance obligations have not been implemented, the tenant would be in breach of the lease. In such a situation, the costs of putting the premises into the correct condition is one of the commonly used measures of loss for such a breach. This would have been known to the parties at the outset of the lease. The parties have therefore agreed in paragraph 12 the measure of loss for the breach and how it is to be quantified. Understood in that way, it is not an exclusion clause. It does not exclude a liability. It records an agreement as to how a liability is to be quantified and ascertained. At the end of the lease term, the condition of the premises will reflect all prior breaches of the tenant's obligations. Paragraph 12 does not make the earlier breaches disappear, it provides a single aggregate remedy for them. It would make no sense if Clause 12 required payment of the certified sum but left it open to the landlord to pursue a remedy in respect of each of the breaches of obligation that had led to the condition of the premises.

[13] Clause 17 of the lease supports this interpretation. It excludes the operation of paragraph 12 of Part 4 where there is to be comprehensive redevelopment of the premises at the end of the lease. This is a common source of disputes at the end of lease terms. Can the landlord recover costs of dilapidations if the intention is to demolish and redevelop? The parties have addressed that issue expressly. The landlord cannot use the certification method to ascertain the tenant's liability in that situation. If the argument being advanced by the landlord was to be accepted, the result would be that, although in a comprehensive

redevelopment situation they could not recover the payment referred to in paragraph 12, they could nonetheless enforce individually each of the tenant's other obligations regarding the condition of the premises. That would make Clause 17 pointless. The court should be slow to adopt an interpretation that had that effect.

[14] As is common, both parties contend that their preferred interpretation is the one that is more commercially sensible. On the basis outlined above, it does not appear to me that there is ambiguity in the lease terms so this issue may be academic, but I consider the submissions for completeness. The question of the condition of commercial premises at the end of full repairing and insuring leases is another common source of disputes. In those circumstances there is the difficulty referred to during the debate that, once the lease is at an end, it is not possible to obtain specific implement (*PIK Facilities Ltd v Shell UK Ltd* 2005 SCLR 958). So, while it was correct for the pursuer to say that parties would not know what the tenant's liability would be at the end of the lease, they would have been aware it might well be an issue and, as a matter of providing certainty and avoiding litigation, it is understandable that both parties would want a simple procedure to determine that liability when the time came. I consider that that is what they have done in the lease. At the end of the term of the lease, the various obligations to clean, to paint, to keep in good and working order, to repair any anything else that relates to the condition of the premises is aggregated into an obligation to hand over the premises in a state consistent with all the obligations having been performed. That simplifies the position. There is only one matter to be ascertained. Then, to streamline determination of the liability, they have provided for the certification approach with, at the time of drafting, the possibility of having a surveyor appointed to adjudicate. These provisions only work to simplify matters if payment of the sum certified is the only entitlement that the landlord has and the only obligation that the

tenant has *in respect of the condition of the premises*. The words in italics are important. The pursuers are correct to draw attention to the wording in paragraph 12 which means that the payment is the only remedy in respect of “the Tenant's liability under this Lease quoad the work referred to in this proviso”. As I note in para [10] above, the liability under that proviso is for all obligations contained in the lease in so far as they bear upon the condition of the premises. Where an obligation does not relate to the condition of the premises – such as the one in Clause 32 of the lease – is it not covered by the “only remedy” provision. Those claims remain.

Disposal

[15] The contents of the pleadings and the arguments presented mean that there remains some question as to how this decision is to be given practical effect. It is not all or nothing. In addition, as a claim for damages, the first conclusion is irrelevant but, presented as being in implement of paragraph 12, as the pursuers said it was intended to be, it may be relevant.

[16] Although the Inner House has deprecated the practice of putting cases out By Order to consider how a decision should be applied, I consider that to do so here would in keeping with the ethos and purpose of commercial procedure and preferable to the alternative. If I am wrong and both parties wish me to apply the decision to the pleadings as they stand, they can apply by the court by motion for me to do so.