



[Full Text]

**(1) PETER FIELDMAN (2) LUCIA FIELDMAN v (1) MARKOVITCH (2) MILICIA SIMOVIC (2001)**

**Ch.D (Sir Andrew Morritt V-C) 4/7/2001**

CIVIL PROCEDURE - CPR - LANDLORD AND TENANT  
LIMITED PERMISSION TO APPEAL : ORAL HEARINGS : SUBSTANTIVE APPEALS :  
DIFFERENT COURTS : COVENANTS : ALTERATIONS : DEMISED PREMISES :  
CONVERSION : SUB-DIVISION : PARA.4.18 CPR PD 52 : CPR PART 52 : CIVIL  
PROCEDURE RULES 1998 SI 1998/3132 : ACCESS TO JUSTICE ACT 1999

**Where one appeal court had granted limited permission to appeal at an oral hearing, the appeal court hearing the substantive appeal could not revisit the permission granted and consider issues for which permission had not been given. The conversion of a single rented flat into three lettable units involved works which constituted alterations undertaken in breach of covenant.**

Appeal by the second defendant ('T') from orders of HH Judge Simpson by which: (i) he ordered T to reinstate certain premises which had been let to her by the claimants ('the demised premises') to their condition before certain works that she had carried out in breach of covenant; and (ii) after her failure to do so, he directed an assessment of damages. The demised premises were the ground floor and basement of a residential property. The lease contained a covenant on the part of T "not at any time...to make...any alterations in or additions to the demised premises...without the previous consent in writing of the lessors". T carried out works to the demised premises of which the result was to subdivide the demised premises into three lettable units of accommodation. T subsequently sublet two of those units. The judge below held that: (a) the works carried out by T clearly altered the form and structure of the premises, so as to constitute "alterations" for the purposes of the covenant against alterations; and (b) the alterations had been carried out without consent. T contended that the judge was wrong to conclude that the alterations he found to have been made were capable of being alterations prohibited by the lease. The trial judge had refused T permission to appeal, so T applied on paper to the appellate court, which was the high court, for permission. This too was refused so T applied to have her application heard in open court. At that hearing she was granted limited permission to appeal. However, at the hearing of the appeal T made it clear that she wished to broaden the issues beyond those that had been permitted.

HELD: (1) Neither the Access to Justice Act 1999 nor the Civil Procedure Rules 1998 SI 1998/3132 allowed T to seek the court's permission to raise issues not included in the permission to appeal. An appellant who obtained only limited permission at an oral hearing could not invite the court to revisit the decision made at the earlier hearing. Paragraph 4.18 of Practice Direction 52 reflected the position provided for by the Rules, so that if a lower court had refused permission, or granted permission subject to limitations, then that order could be revisited by an application to an appeal court and the decision of that appeal court could be revisited if it had been an application on paper, but not if it had been in open court. (2) The judge had correctly directed himself about the law by reference to Bickmore v Dimmer (1903) 1 Ch 158 and applying this to the facts had found that the works carried out altered the form and structure of the premises. He had correctly identified the material facts. In those circumstances there was no basis for challenging his conclusion on those facts.

Appeal dismissed.

Charles Salter instructed by Wilson Barca for T. Alan Tunkel instructed by Alan Edwards & Co for the claimants.

**TLR 31/7/2001 : ILR 15/10/2001 : LTL 15/10/2001**

Judgment Official

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