

**Fontainebleau Hotel Corp., a Florida corporation, and Charnofree Corporation, a Florida corporation, Appellants,**

**v.**

**Forty-Five Twenty-Five, Inc., a Florida corporation, Appellee.**

District Court of Appeal of Florida, Third District.  
114 So. 2d 357; (1959)

[The Fontainebleau Hotel builds a tower that casts a shadow over the pool at the Eden Roc Hotel. The shadow is a negative externality. How will this negative externality be internalized? Who owns the right to the sunlight? Is it conferred upon whoever can build the highest tower or does it belong to whoever used it first? Should it matter that the Fontainebleau was built before the Eden Roc?

The decision mentions the English rule of "ancient lights." This light entitlement was defined in the English Prescription Act of 1832. The rule states that if you have had an unobstructed view of the sun from your window for the last 20 years, then you have a right to that light. The light from your window is an "ancient light."

Is this court determining property rights, changing property rights or reinforcing property rights that already exist? Does the rule it applies support economic efficiency?]

OPINION: PER CURIAM.

This is an interlocutory appeal from an order temporarily enjoining the appellants from continuing with the construction of a fourteen-story addition to the Fontainebleau Hotel, owned and operated by the appellants. Appellee, plaintiff below, owns the Eden Roc Hotel, which was constructed in 1955, about a year after the Fontainebleau, and adjoins the Fontainebleau on the north. .... During the winter months, from around two o'clock in the afternoon for the remainder of the day, the shadow of the addition will extend over the cabana, swimming pool, and sunbathing areas of the Eden Roc, which are located in the southern portion of its property.

In this action, plaintiff-appellee sought to enjoin the defendants-appellants from proceeding with the construction of the addition to the Fontainebleau ... alleging that the construction would interfere with the light and air on the beach in front of the Eden Roc and cast a shadow of such size as to render the beach wholly unfitted for the use and enjoyment of its guests, to the irreparable injury of the plaintiff; ... It was also alleged that the construction would interfere with the easements of light and air enjoyed by plaintiff and its predecessors in title for more than twenty years and "impliedly granted by virtue of the acts of the plaintiff's predecessors in title, as well as under the common law and the express recognition of such rights by virtue of Chapter 9837, Laws of Florida 1923 \* \* \*." ...

The chancellor ... entered a temporary injunction restraining the defendants from continuing with the construction of the addition. His reason for so doing was stated by him, in a memorandum opinion, as follows:

"In granting the temporary injunction in this case the Court wishes to make several things very clear. The ruling is not based on any alleged presumptive title nor prescriptive right of the plaintiff to light and air nor is it based on any deed restrictions nor recorded plats in the title of the plaintiff nor of the defendant nor of any plat of record. It is not based on any zoning ordinance nor on any provision of the building code of the City of Miami Beach nor on the decision of any court, nisi prius [forum of the trial court] or appellate. It is based solely on the proposition that no one has a right to use his property to the injury of another. In this case it is clear from the evidence that the proposed use by the Fontainebleau will materially damage the Eden Roc. There is evidence indicating that the construction of the proposed annex by the Fontainebleau is malicious or deliberate for the purpose of injuring the Eden Roc, but it is scarcely sufficient, standing alone, to afford a basis for equitable relief."

...

No American decision has been cited, and independent research has revealed none, in which it has been held that - in the absence of some contractual or statutory obligation - a landowner has a legal right to the free flow of light and air across the adjoining land of his neighbor. Even at common law, the landowner had no legal right, in the absence of an easement or uninterrupted use and enjoyment for a period of 20 years, to unobstructed light and air from the adjoining land. ...

There being, then, no legal right to the free flow of light and air from the adjoining land, it is universally held that where a structure serves a useful and beneficial purpose, it does not give rise to a cause of action, either for damages or for an injunction under the maxim *sic utere tuo ut alienum non laedas*, [[One should use his own property in such a manner as not to injure that of another ]] even though it causes injury to another by cutting off the light and air and interfering with the view that would otherwise be available over adjoining land in its natural state, regardless of the fact that the structure may have been erected partly for spite. ...

We see no reason for departing from this universal rule. If, as contended on behalf of plaintiff, public policy demands that a landowner in the Miami Beach area refrain from constructing buildings on his premises that will cast a shadow on the adjoining premises, an amendment of its comprehensive planning and zoning ordinance, applicable to the public as a whole, is the means by which such purpose should be achieved. ... But to change the universal rule - and the custom followed in this state since its inception - that adjoining landowners have an equal right under the law to build to the line of their respective tracts and to such a height as is desired by them (in absence, of course, of building restrictions or regulations) amounts, in our opinion, to judicial legislation. ...

...

The record affirmatively shows that no statutory basis for the right sought to be enforced

by plaintiff exists. .... It also affirmatively appears that there is no possible basis for holding that plaintiff has an easement for light and air, either express or implied, across defendants' property, nor any prescriptive right thereto - even if it be assumed, arguendo [for the purpose of argument], that the common-law right of prescription as to "ancient lights" is in effect in this state. And from what we have said heretofore in this opinion, it is perhaps superfluous to add that we have no desire to dissent from the unanimous holding in this country repudiating the English doctrine of ancient lights.

...

Since it affirmatively appears that the plaintiff has not established a cause of action against the defendants by reason of the structure here in question, the order granting a temporary injunction should be and it is hereby reversed with directions to dismiss the complaint.

Reversed with directions.

HORTON, C.J., and CARROLL, CHAS., J., and CABOT, TED, Associate Judge concur.

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## Questions

1. How do the courts determine who owns the right to the light and air? Why isn't a shadow nuisance a prohibited nuisance?
2. How is this decision likely to affect property values in Florida? Which properties may increase in value and which may decrease? Does this enhance or decrease the value of the property next to the beach?
3. How does this decision impact on the market for solar easements? How would we expect the solar rights to be allocated?
4. The court states that it is better to leave changes on solar rights to a zoning commission. Why would this decision be better left to a zoning commission?
5. Suppose that as a result of this decision the property value of the Fontainebleau were to rise by \$8 million and the property value of the Eden Rock were to fall by \$10 million, does this indicated an inefficient result?