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FONTAINEBLEAU HOTEL CORP. v. FORTY-FIVE TWENTY-FIVE, INC.

District Court of Appeals of Florida, Third District, 1959.
114 So.2d 357.

* * * In this action, plaintiff-appellee sought to enjoin the defendants-appellants from proceeding with the construction of [an] 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; further, that the construction of such addition on the north side of defendants' property, rather than the south side, was actuated by malice and ill will on the part of the defendants' president toward the plaintiff's president; and that the construction was in violation of a building ordinance requiring a 100-foot setback from the ocean. 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. * * *" Some attempt was also made to allege an easement by implication in favor of the plaintiff's property, as the dominant, and against the defendants' property, as the servient, tenement.

* * *

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 as follows:

> * * * The ruling is not based on 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 pruis or appellate. It is based solely on the proposition that no one has a right to use his property to the injury of another and that the intended 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.

This is indeed a novel application of the maxim *sic utere tuo ut alienum non laedas.* This maxim does not mean that one must never use his own property in such a way as to do any injury to his neighbor. It means only that one must use his property so as not to injure the lawful *rights* of another. Cason v. Florida Power Co., 74 Fla. 1, 76 So. 535. In Reaver v. Martin Theatres (Fla.1951) 52 So.2d 682, 683, 25 A.L.R.2d 1451, under this maxim, it was stated that "it is well settled that a property owner may put his own property to any reasonable and lawful use, so long as he does not thereby deprive the adjoining landowner of any right of enjoyment of his property *which is recognized and protected by law, and so long as his use is not such a one as the law will pronounce a nuisance.*" [Emphasis supplied.]

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. Blumberg v. Weiss, (N.J.1941), 17 A.2d 823.

* * * 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,* 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. See the cases collected in the annotation in 133 A.L.R. at pp. 701 et seq.; 1 Am.Jur., Adjoining Landowners, Sec. 54, p. 536. * * *

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.

* * *

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.