

EASEMENT OF LIGHT AND AIR**Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.**
114 So.2d 357 (Fla.App. 1959)

PER CURIAM. This is an interlocutory appeal from an order temporarily enjoining the appellants from continuing with the construction of a 14-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. Both are luxury hotels, facing the Atlantic Ocean. The proposed addition to the Fontainebleau is being constructed twenty feet from its north property line, 130 feet from the mean high water mark of the Atlantic Ocean, and 76 feet 8 inches from the ocean bulkhead line. The 14-story tower will extend 160 feet above grade in height and is 416 feet long from east to west. 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 (it appears to have been roughly eight stories high at the time suit was filed), 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.

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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. In *Reaver v. Martin Theatres*, Fla. 1951, 52 So.2d 682, 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. And the English doctrine of "ancient lights" has been unanimously repudiated in this country.

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.

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Reversed with directions.

Source: District Court of Appeal of Florida. Third District.

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