

An architect and a developer own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height.

Last year the developer decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on her parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project.

As the developer's new building was in the course of construction, the architect realized that the shadows it would create would place the architect's building in such deep shade that the rent she could charge for space in her building would be substantially reduced.

The architect brought an appropriate action against the developer to enjoin the construction in order to eliminate the shadow problem and for damages. The architect presented uncontroverted evidence that her evaluation as to the impact of the shadow on the fair rental value of her building was correct. There is no statute or ordinance (other than the building and zoning ordinances) that is applicable to the issues before the court.

How should the court rule?

- A. Award the architect damages measured by the loss of rental value, but not an injunction.
- B. Grant judgment for the developer, because she had secured all the necessary governmental approvals for the new building.
- C. Grant judgment for the developer, because the architect has no legal right to have sunshine continue to reach the windows of her building.
- D. Grant the architect the requested injunction.

Explanation:

Remedies for nuisance & easement actions

	Temporary nuisance	Permanent nuisance	Misuse / interference of easement
Damages	Diminished rental value Reasonable repair costs Incidental loss Loss of use & enjoyment Punitive damages	Diminished land value	Rents received Decreased value of servient estate and/or easement Value of excessive use Cost of restoration Loss of use
Injunction	Available	N/A	Available
Self-help	Available	N/A	Available
Forfeiture	N/A		Unavailable unless injunction will not relieve servient estate

At English common law, a landowner's right to light was protected as a prescriptive negative easement under the **Doctrine of Ancient Lights**. This doctrine has been **rejected in the United States**. Courts also generally decline to recognize blockage of light as a public or private **nuisance** unless the blockage was motivated by malice. As a result, landowners only have a **right to light if they are protected by statute** or enter into an express agreement with the other landowner to create a **negative easement** (ie, restrictive covenant).

Here, the architect sought to prevent the developer from blocking the light to the architect's building. However, there is no indication that the developer is erecting a high-rise building out of malice or that the architect has obtained a negative easement or covenant from the developer. There is also no statute prohibiting interference with the light. Therefore, the court should grant judgment for the developer because the architect has no legal right to the light reaching her windows (**Choices A & D**).

(Choice B) The fact that the developer had secured all the necessary governmental approvals does not allow her to bar others from exercising their legal rights. Therefore, this fact would not prevent the architect from prevailing in a lawsuit had she had a legal right to continued access to the light.

Educational objective:

A landowner only has a right to light if (1) this right is protected by statute or (2) the landowner enters into an express agreement with the other landowner to create a negative easement or covenant.

References

Mohr v. Midas Realty Corp., 431 N.W.2d 380, 382 (Iowa 1988) (explaining that every state has rejected the Doctrine of Ancient Lights).

Sher v. Leiderman, 226 Cal. Rptr. 698, 701 (Ct. App. 1986) (holding that blockage of light is not an actionable nuisance except in cases of malice).

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