

A developer and a commercial real estate investment group own adjoining lots near a city's downtown. The developer decided to raze the existing building on its lot and erect an office building of greater height. The developer received all governmental approvals required to pursue the project and no statute or ordinance applies (other than those dealing with various approvals for zoning, building, etc.).

When the building was completed, the investment group discovered that the substantial shadow cast by the developer's new building diminished its ability to lease apartments, substantially lowered the rent it could charge, and greatly reduced the apartment complex's overall occupancy rate. Assume that these facts are proved in an appropriate action the investment group instituted against the developer for all and any relief available.

Which of the following is the most appropriate comment concerning this lawsuit?

- A. Judgment should be for the developer, because the investment group has no cause of action.
- B. The investment group is entitled to a mandatory injunction requiring the developer to restore conditions to those existing with the prior building insofar as the shadow is concerned.
- C. The court should award damages for losses suffered to the date of trial and leave open recovery of future damages.
- D. The court should award permanent damages, in lieu of an injunction, equal to the present value of all rents lost and loss on rents for the reasonable life of the apartment complex.

Explanation:

Available negative easements

Common law

Light

Air

Support

Water access

Modern view

View

Solar access

Conservation

The **Doctrine of Ancient Lights** is an English common law doctrine that enabled landowners to prevent their neighbors from constructing buildings or other structures that blocked their access to sunlight. This doctrine has been **rejected in every jurisdiction**, so landowners can only **restrict another's** blockage of light—or other **lawful use** of their own land—through a **negative easement** (ie, restrictive covenant). This type of easement can only be created by **express written agreement**.

Here, the developer's new building casts a substantial shadow over the investment group's apartment complex. But the developer received all necessary governmental approvals to pursue its project and there is no applicable statute. Additionally, there is no indication that the investment group obtained a negative easement or covenant from the developer that would prevent it from blocking the sunlight. Therefore, judgment should be for the developer because the investment group has no cause of action.

(Choices B, C & D) Had the investment group obtained a negative easement, it would have been entitled to an injunction and/or damages. Courts consider several **factors** in determining the appropriate remedy but tend to issue an injunction for breach of a negative easement. That is because the easement holder is denied the benefit of the easement—ie, the ability to restrict another's lawful use of their own land—if only damages are issued.

Educational objective:

A landowner can only restrict another's lawful use of their own land by obtaining a negative easement (ie, restrictive covenant). And negative easements can only be created by express written agreement.

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).

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