



Easements For Light, Air, and View in Michigan

Do Not Assume You Are Covered

It happens all the time. Some client calls complaining that his or her neighbor is in the process of building a gigantic home or structure next to or in front of the client's home. Usually, the cause of the complaint is not jealousy that the neighbor is building such a large home. The cause of concern with the new home is that it will block the client's sunlight, air, or view of the lake, neighborhood, valley, etc. This article will discuss how Michigan courts have dealt with the problems of my hypothetical client. Unfortunately, my client may not like the answer: there is no statutory or common law protection for air, light, or view.

The Michigan Law

Under the common law rule, persons could acquire rights to light and air through a prescriptive easement. As set forth in Michigan Real Property Law, under English common law, there was such an easement. In English common law, it was held that where one was the owner of two adjoining lots of land, on one of which is a building with an apparent and continuous right of light and air through windows therein over the other lot, conveys away the former lot, retaining the latter, there is, in the absence of an express provision to the contrary, an implied grant by him of the right to the light and air which have been enjoyed through the windows over the other property. John G. Cameron, Jr., Michigan Real Property Law Principles and Commentary, 2nd Ed., Vol. I, 6.35, at 224; (quoting 1A Thompson, Thompson on Real Property (J. Grimes, ed., 1980), 238, at 258). Michigan, however, does not recognize the "right" of light and air, unless a neighbor or other person blocks the light or air maliciously or unless the light or air were actually and absolutely necessary. Thompson on Real Property, 235, at 248-49. Proving that someone has blocked your air or light maliciously is, no doubt, difficult. Nor does Michigan recognize a protected right to a view, regardless of how beautiful that view is prior to your neighbor ruining it.

What You Should Do

If you think about it for a minute, the fact that Michigan law does not generally protect prescriptive easements for light, air, and view makes sense. Almost all structures, regardless of size and location, will obstruct someone's light and air, and someone's view of something. Moreover, even if it made sense to protect a person's view of a beautiful lake, river, or stream, versus someone's view of the highway, where would the courts draw the line as to which views should be protected? Thus, it probably is best that there is no body of law in Michigan protecting your light, air, and view, given the alternative. However, that also means that when you are purchasing real property, you must be careful. If you are purchasing commercial property in an industrial park, for instance, light, air, and view may not make any difference to you. If, however, you are spending a lot of money purchasing a home on or near a lake, you must keep the Michigan law in mind. When purchasing any property, always keep in mind the provisions of the local zoning ordinance, if any. Many small, rural townships and cities in Michigan still do not have

zoning, and the absence of zoning generally allows property owners to do what they wish. Where zoning does exist, please make sure to investigate your neighbor's requirements for construction. Zoning ordinances will generally govern setback requirements (i.e., how close can your neighbor build to his property line); size of the structure (i.e., the structure can only cover a certain percentage of the lot); and height restrictions (i.e., the zoning ordinance may prescribe how tall a structure can be). You should also check if there are any deed or plat restrictions governing the size or nature of buildings on your lot or your neighbor's lot. Maybe there is a plat restriction which limits the height of the buildings in your plat. The results of your failure to investigate these possible restrictions (or lack thereof) can be disastrous. If you live one lot off of a lake, and have a clear view of the lake, but there is no height requirement for residential or commercial structures, or there is no zoning in your township, or no other restrictions exist, then the neighbor in front of you may have no prohibition against building a home or other structure which will completely block out your view.

Conclusion

Many people assume that Michigan law protects their light, air, and view, because it may seem intuitive that those things should be protected, and that it would be unfair for a neighbor to block them. Unfortunately, that view is erroneous. It appears that Michigan courts have balanced those rights against the rights of people to do what they want to with their property within the confines of local ordinances or other restrictions, and have decided not to protect such rights. As a buyer, you are wise to get a lay of the land, and find out in advance before you purchase property whether there exists a local zoning ordinance, plat restrictions, or other prohibitions which protect your rights to sunlight, air, and view. If no such protections exist, then do not look to Michigan courts to protect you either.

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