

Tree blocking view must go, court orders

By Bob Egelko

Trees are among nature's wonders — but a neighbor's growing arbor can also eliminate a resident's treasured scenic views. Now a state appeals court, relying on a San Francisco ordinance that seeks to resolve treetop feuds, has ordered a Pacific Heights couple to take down a sprouting Monterey pine that stands between their next-door neighbor's home and the bay.

The neighbor, now 81, moved into the San Francisco home with her now-deceased husband in 1976 and testified that they chose the site largely because of its unobstructed view of San Francisco Bay, the Golden Gate Bridge, Angel Island and lands to the north. The pine was planted next door by a prior resident in 1999 and, by the time the case went to trial in 2019, had grown to about 32 feet, with widening, thickly growing branches.

"The tree's rapid growth in both height and breadth obstructs the views of landmarks and vistas that could once be seen" from the neighbor's ground floor, Superior Court Judge Jeffrey Ross, who had visited the site during the nonjury trial, said in a December 2019 order to remove the pine under San Francisco's 1988 Tree Dispute Resolution Ordinance.

In a ruling Wednesday upholding Ross' order, the First District Court of Appeal said the city has the authority, under state law, "to resolve tree view obstruction disputes between adjoining landowners," as it seeks to do in its ordinance.

San Francisco's law isn't the only one of its kind. Berkeley and Oakland also have tree-dispute resolution ordi-

A state appeals court has ordered a Pacific Heights couple to remove a tree, above, blocking a neighbor's original view of the bay, top

nances, and in 1968 a state appeals court upheld an ordinance in Tiburon that required a homeowner to cut down trees that stood between a nearby apartment building and the bay. The court said Tiburon was entitled to promote its aesthetic values by preserving sunlight, much like it can regulate the height of buildings or fences.

The San Francisco ordinance has been invoked in multiple cases, most notably by Larry Ellison, the billionaire

chief executive officer of Oracle Corp., who sued a downhill neighbor in 2011 to seek removal of three redwoods and an 80-year-old acacia that he said were obscuring the view of the bay from his Pacific Heights mansion. The suit was settled with an agreement to trim the trees.

Barri Bonapart, a lawyer for Ellison in that case, also represented the woman in Wednesday's ruling. She said her client, a retired actuary who heads two charitable nonprofits, has asked

to have her name withheld because she's afraid of being harassed.

When the woman and her husband first entered the house "and saw the magnificent views, they were sold," Bonapart said. "You could see all the way from Marin Headlands, out to the Pacific Ocean, and then the Golden Gate Bridge, Palace of Fine Arts, Sausalito, Belvedere, Tiburon and Angel Island."

She "tried everything she could to work with her neighbors to find a collaborative solution," Bonapart said. "Unfortunately, they were always adamant that they would never agree to restore her views unless they were ordered to."

After the ruling, she said, her client simply told her, "I am optimistic about the future."

A lawyer for the neighbors did not respond to requests for comment. They could appeal the ruling to the

state Supreme Court.

The earlier owners were still living next door in 2011 when Bonapart's client first asked them to remove the pine, and offered to pay for it. The current residents bought the home in 2012, when they were living abroad, moved in several years later, and proposed to prune the tree but not to remove it, saying it provided them with shade and privacy.

After mediation failed, their neighbor filed suit in 2018 under the 1988 San Francisco ordinance, which declared the rights of property owners to restore their "views lost due to tree growth" on an adjoining property. The ordinance provides alternate remedies, including tree-topping and thinning, but Judge Ross found, and the appeals court agreed, that the only workable solution in this case was to remove the tree.

Pruning might have worked when the pine

was smaller, but it has grown too much now to be thinned or topped in a way that would restore the view, Justice Ioanna Petrou said in the 3-0 ruling. She cited arborists' testimony that the tree provides little shade or privacy to the homeowners and could be cut down without disturbing the soil. Under the ordinance, both households would share the costs of removal, which an arborist has estimated at \$1,800.

The court also upheld Ross' order of \$47,300 in penalties against the homeowners for an email their trial attorney had sent to their neighbor's mortgage lender claiming removal of the tree would destabilize the property — an apparent attempt, the court said, to get her loan canceled.

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Photos provided by Barri Bonapart