

Page 16

454 So.2d 16 (Fla.App. 3 Dist. 1984)

Michael RICHMOND, Appellant,

v.

GENERAL ENGINEERING ENTERPRISES CO., a  
Florida corporation, Appellee.

No. 83-2937.

Florida Court of Appeals, Third District.

July 17, 1984

Rehearing Denied Sept. 14, 1984.

Page 17

Welbaum, Zook, Jones & Williams and John D.  
Weatherford, Miami, for appellant.

No appearance for appellee.

Before SCHWARTZ, C.J., and HUBBART and NESBITT,  
JJ.

SCHWARTZ, Chief Judge.

Richmond sued for money damages based on the alleged  
"negligence" of the defendant-appellee in permitting  
branches of a ficus tree growing on its property to extend  
over and onto the next lot where the plaintiff's home was  
located. We affirm the trial court's dismissal of the  
complaint.

While there is substantial authority to the contrary, which  
may indeed represent the majority rule, cases collected, 2  
C.J.S. Adjoining Landowners § 53, n. 37 (1972), we agree  
with those decisions which hold that in view of the  
undoubted right of the landowner himself to cut off  
intruding roots or branches at the property line, 2 C.J.S.  
Adjoining Landowners § 52 (1972), [1] no such action may  
be maintained. *Sterling v. Weinstein*, 75 A.2d 144  
(D.C.1950); *Michalson v. Nutting*, 275 Mass. 232, 175 N.E.  
490 (1931); *Norwood v. City of New York*, 95 Misc.2d 55,  
406 N.Y.S.2d 256, 258 (Civ.Ct.1978); *Mead v. Vincent*, 199  
Okl. 508, 187 P.2d 994 (1947); *Granberry v. Jones*, 188  
Tenn. 51, 216 S.W.2d 721 (1949); see *Knepper v. Slovak*,  
31 Fla.Supp. 131 (15th Cir.Ct.1968). It seems to us that the  
recognition of an action of this type to redress a claimed  
wrong which might otherwise be obviated by the  
time-honored remedy of self-help would represent a

wasteful and needless use of the judicial system. See *Kirou  
v. Oceanside Plaza Condominium Association, Inc.*, 425  
So.2d 650 (Fla.3d DCA 1983).

Affirmed.

-----

Notes:

[1] We do not consider whether the reasonable expenses so  
incurred are recoverable. See *Olson v. Westerberg*, 2  
Ill.App.2d 285, 119 N.E.2d 413 (1954).

-----