MILLER & STARR
REAL ESTATE NEWSALERT

Reprinted in part from
Volume 23, Number 4, March 2013
(Article starting on page 259 in the actual issue)

ARTICLE

COURTS ARE WITHOUT POWER TO TERMINATE EXPRESS EASEMENTS BASED UPON FINDING THEM "UNNECESSARY"—*COTTONWOOD* REINS IN *SCRUBY*

By Lewis J. Soffer*

In November 2012, the Third District Court of Appeal decided that a trial court does not have the power to extinguish an expressly granted easement merely because in that judge's opinion the dominant tenement does not really need the easement.[1] Given that a deed, including a deed granting or reserving an easement, is a contract,[2] and that courts may not rewrite deeds or other contracts in the guise of "interpreting" them,[3] the result in *Cottonwood Duplexes, LLC v. Barlow* should be unremarkable. What is remarkable is the fact that the plaintiff in that case, and the trial judge, believed that it was within the court's equity power to declare an outright termination of an expressly-granted easement based exclusively on the argument that the easement was no longer "necessary."

This article takes the position that the *Cottonwood* decision was entirely correct; but argues that although *Cottonwood* may have begun the process of clarifying the law governing partial obstruction of access easements, more work needs to be done to remedy the uncertainty and unpredictability that was inserted into California easement law by another Court of Appeal decision nearly two decades ago.

* Lewis J. Soffer is a shareholder in the Walnut Creek office of Miller Starr Regalia.

WEST®

THE *COTTONWOOD* DECISION

In *Cottonwood*, the owners of four parcels benefitted by a 60-foot wide private road and utility easement, as depicted in a recorded parcel map, granted each other easements by reference to that parcel map.[4] The same subdivider subsequently subdivided parcel 4 into six lots, one of which was sold to defendant Barlow. After that, the subdivider eventually sold parcels 2 and 3 to a developer. The developer proposed a 16-lot subdivision, and noted on the tract map that on five of the lots, no building could take place until the easement was quitclaimed entirely, or was reduced to 15 feet in width.[5] Cottonwood was the developer's lender, and became its successor by foreclosure.[6] All other owners of lots benefitted by the easement abandoned their rights, but Barlow refused to be bought out.

Frustrated by Barlow's intransigence, Cottonwood commenced an action for declaratory relief and quiet title. It asked the court to declare that Barlow's easement had been extinguished "as a result of the original intentions of the developer who created the Gatchett Lane easement, subsequent changes to the subdivision map and reasonable needs and historical uses by the parties."[7]

The trial court found that the easement had originally been created to serve parcels 1, 2 and 3 as shown on the parcel map, but that as the result of subsequent events that access was no longer necessary. Cottonwood had experts testify that there was no reasonable likelihood that the County would allow the easement to be used as primary access to the Barlow property.[8] On that testimony, and evidence that Barlow's property had adequate utility service outside the easement, the trial court found that "the reasonable use requirements of the Barlow Parcel both presently and in the future do not require the full size and scope of the Gatchett Lane easement," and to accommodate reasonable use by the servient tenement it reduced Barlow's access easement to 32 feet in width, and entirely eliminated his utility easement.[9]

As the court of appeal saw it, "the trial court partially extinguished Barlow's road easement and completely extinguished his utility easement on the court's determination that Barlow did not reasonably require, and in the future would not reasonably require, the entirety of the granted easement, and the smaller road easement would constitute the least burden on Cottonwood's property consistent with Barlow's reasonable needs."[10] The trial court had cited no law authorizing partial extinguishment of a granted easement based upon a court's perception of the dominant tenement's reasonable needs, but justified its judgment as a reasonable extension of the 1995 decision in *Scruby v. Vintage Grapevine*.[11]

The *Cottonwood* court of appeal agreed with Barlow that neither *Scruby* nor any recognized rule of law provides authority to partially terminate an otherwise valid easement against the will of the owner of the dominant parcel.[12] It highlighted a footnote in *Scruby* to the effect that the determination that the servient owner's current use of a portion of the easement does not unreasonably interfere with the dominant owner's right of access to their property, as presently developed, did not result in a pro tanto extinguishment of the granted easement,[13] and concluded that *Scruby* could not be logically extended to sanction total—or even partial—extinguishment of a granted easement against the will of the owner of the dominant tenement, because *Scruby* dealt only with the *scope of use* of an easement, and not its continued existence.[14]

The *Cottonwood* court exercised proper judicial restraint by distinguishing *Scruby*, rather than criticizing or disagreeing with *Scruby*. Unfortunately, by doing so *Cottonwood* avoided dealing with *Scruby's* unexplained departure from well established California law to the effect that obstruction of *any portion* of an expressly-granted, and specifically-described easement continuously for five years *does* result in pro tanto extinguishment,[15] an issue not presented in *Cottonwood*. Nor did *Cottonwood* address the other conundrum created by *Scruby*, the need for constant re-evaluation of the "reasonableness" of use by the servient and dominant tenements respectively, and the perpetual uncertainty this engenders.

SCRUBY'S REVERSAL OF THE LAW ON PRO-TANTO EXTINGUISHMENT OF EASEMENTS

Contrary to all prior California case law,[16] *Scruby* held that the owner of a servient tenement has the right to place permanent improvements within the boundaries of an expressly-granted, specifically-described access easement, despite the fact that those improvements completely prevent the owner of the dominant tenement from using portions of the easement area, "as long as [the obstructions] do not unreasonably interfere with the right of the owner of the dominant tenement to ingress and egress."[17]

Said more simply, *Scruby* held that the owner of a parcel burdened by a non-exclusive access easement can completely block portions of the easement area, so long as the party benefited by the easement can find an adequate route for accessing his or her property somewhere within the granted easement. As an afterthought, the *Scruby* court modified its decision to add a footnote (footnote 2) stating that no pro tanto extinguishment of the granted easement would result from this partial blocking of the easement area.[18] That footnote, which gave no explanation for this anomalous rule, turned out to be crucial to the result in *Cottonwood*.

PRE-*SCRUBY* LAW ON NON-EXCLUSIVE EASEMENTS AND PRO-TANTO EXTINGUISHMENT

Before *Scruby*, the law was that *where the grant of an access easement did not define the dimensions of that easement*, the easement "need only be such as is reasonably necessary and convenient for the purpose for which it was created," whereas if a grant of an access easement called out the location of the easement, including by reference to a map, extrinsic evidence that construction of improvements within the easement area would not unreasonably interfere with use by the dominant was excluded, because the servient owner was *not* allowed to construct *any* obstructions within the easement area.[19]

In fact, before *Scruby*, the rule that the holder of an expressly-defined non-exclusive easement was to be allowed to use the full easement area was well established:

> Where the way over the surface of the ground is one of expressly defined width, it is held that *the owner of the easement has the right, free of interference by the owner of the servient estate, to use the land to the limits of the defined width* even if the result is to give him a wider way than necessary.[20]

Scruby acknowledged this long standing authority, but paraphrased it as holding that "when the width of an easement is definitely fixed by the grant or reservation creating the same, *its use may be interpreted* as commensurate with the entire width thereof."[21] *Scruby* went on to say that, "It is equally well-settled, however, that 'the specification of width and location of surface rights-of-way does not always determine the extent of the burden imposed on the servient land….,'" quoting from a case involving a prescriptive easement.[22]

As noted above, before *Scruby*, if the owner of the servient tenement erected any improvements anywhere with a specifically-described, expressly granted easement that entirely prevented use by the dominant tenement of *any part* of the easement, the owner of the dominant was obligated to take legal action within five years, or pro-tanto extinguishment would occur.[23]

THE SIGNIFICANCE OF *SCRUBY* FOOTNOTE 2 FOR FUTURE GENERATIONS

The only mention of pro tanto extinguishment in *Scruby* appears at footnote 2: "No pro tanto extinguishment of the granted easement results from this decision[,] which determines that … [the servient owner's] *current use* of a portion of the easement does not interfere with Scruby's right of ingress and egress to their property *as presently developed*."[24]

This footnote is appended to a sentence about appellate courts not substituting their construction of contracts where the trial court's construction is "equally tenable," with which the footnote has no logical connection. That is because after the issuance of an original opinion, the Scrubys petitioned for a rehearing, on the grounds that the decision had apparently reversed case law governing the use of non-exclusive easements and pro tanto extinguishment stretching back to a 1910 Supreme Court decision, all of which authority had been thoroughly briefed. The court denied the petition for rehearing, and modified the decision by adding footnote 2.[25]

The *Cottonwood* court listed four "controlling principles of law" governing access easements that had been noted by *Scruby*, and then pointed out footnote 2, which mentions no controlling principle, and does not disclose any reason why previously-established law is being ignored.[26] *Cottonwood* concludes, relying on footnote 2, that, "Because *Scruby* did not consider whether a court can partially extinguish a granted easement if the evidence shows that the owner of the dominant tenement does not reasonably need, either now or in the future, the entirety of the easement, *Scruby* is not authority for the proposition that a court has such power."[27] This leads directly to *Cottonwood*'s conclusion that *Scruby* cannot be extended to cover outright extinguishment of part or all of an easement the court finds to be unnecessary, because *Scruby* did not deal with the issue of extinguishment, but only the issue of use of an easement.[28] As admirable a decision as *Cottonwood* is, that isn't exactly accurate.

Either *Scruby* footnote 2 left a gaping hole in California's law on pro-tanto extinguishment, or some actual rationale must be read into the footnote. In order to square *Scruby* footnote 2 with prior law, one may infer that the court meant to say this: "Because we here balance the reasonable uses and needs of both the servient tenement and the dominant tenement, based upon how those properties are presently developed, and those uses and needs may change unpredictably over time, we cannot allow partial extinguishment of the *Scruby* easement, even though all applicable precedent would require it. We therefore declare a new rule, that where present uses justify the servient owner's completely blocking use of a portion of a non-exclusive easement, because the remaining portion provides adequate access to the dominant tenement, the statute of limitations is tolled, no pro-tanto extinguishment occurs, and the easement continues to exist, in its entirety. As uses of the parcels change over time, this issue may have to be revisited, again, and again, and again. If Grapevine wants to maintain obstructions blocking any part of Scruby's easement, it must be forewarned that if the Scrubys ever sell to a hotel chain, the entire easement area may need to be cleared out and paved."

There are at least two alternative readings: (1) "There is here no pro-tanto extinguishment, because we say so. Good luck figuring out how that is consistent with prior authority."; and (2) "We explicitly reject all law stating that partial blocking of a non-exclusive specifically-described access easement results in pro tanto extinguishment." The former, while probably accurate, is less satisfying than reading into footnote 2 a reasoned rationale. The latter is not possible, since the rule *Scruby* rejected was put in place by the Supreme Court.

The *Cottonwood* court did not grapple with interpreting footnote 2, other than to point out that *Scruby* had not dealt with extinguishment. However, merely by declaring that no pro-tanto extinguishment would occur, on facts that under all prior authority would have resulted in exactly that, *Scruby did* deal with extinguishment. The *Cottonwood* trial court cannot really be criticized for believing it was merely extending *Scruby*. Although the *Cottonwood* Court of Appeal decision properly sidestepped the issue, eventually some appellate court may have to address the meaning of footnote 2 in a case where the servient is claiming pro-tanto extinguishment, and the dominant argues no extinguishment because allowing partial blockage for more than five years was "reasonable," and changed use patterns now require removal of the obstruction.

"YOU'VE BEEN SCRUBIED"

In the seventeen years since *Scruby* was published, it has been cited a mere ten times, a few times in the context of a denial of a request for judicial notice,[29] and the rest merely general statements about the duties of dominant tenement's owner, especially the duty to use the easement so as to impose as slight a burden as possible on the servient tenement.[30] Perhaps this is because cases requiring a balancing of the relative "reasonableness" of uses by the servient and dominant parcel owners are inherently heavily fact based, and not very conducive to appeals on that issue.[31] Before *Cottonwood*, no appellate decision citing *Scruby* even mentioned footnote 2, or extinguishment.[32]

This is not to say that *Scruby* has been inconsequential. Practitioners who deal with easement issues find it necessary to apply the "rule" of *Scruby* constantly. The usual dialogue with a client in a dispute with his neighbor over an easement (usually, but not always an access easement) goes like this:

"My neighbor just installed a flower bed/retaining wall/storage shed in the middle of my recorded easement. Can he get away with that?" "I don't know. We need to go to court and find out whether he is acting reasonably under all the circumstances." "If the court decides that

I don't really need the part of the easement where the flower bed is, does that mean my neighbor can keep building in the easement area?" "Depends. We might have to go back to court, maybe several times, because at some point he might block more than is reasonable." "That sounds expensive. Can I just wait to see what happens?" "You could, but you would be risking pro-tanto extinguishment after five years." "You mean I would entirely lose that part of my easement?" "Well, not exactly. Footnote 2 might mean that no part of your easement will be extinguished, but then again, it might not mean that." "So if I want to sell my single-family house at a big profit to a developer who plans to put in a 16-unit apartment building, can I tell him that the easement still exists?" "Not really. It depends on what footnote 2 means."

CONCLUSION

The pre-*Scruby* rule was that the owner of a dominant tenement served by an expressly-granted (or reserved), specifically-described access easement was allowed reasonable use of all parts of the easement area consistent with the right of the owner of the servient to continue to use his entire property so long as he did not unreasonably interfere with the dominant's right of access. However, if the servient owner erected obstructions that completely blocked any part of the easement area, the dominant owner had to sue within five years, or suffer pro-tanto extinguishment of his or her easement. *Scruby* changed all that, and made even the construction of permanent improvements partially blocking the easement a matter requiring courts to balance the reasonable needs of and uses by the two owners. The question of reasonableness might have to be addressed repeatedly, as more obstructions are installed, or the use of one or both parcels changes over time.

Now *Cottonwood* tells us that *Scruby* cannot be expanded to empower a trial court to extinguish part or all of an access easement by finding that uses in the area have changed since the easement was created, and the access easement is no longer necessary. That decision seems justified by *Scruby* footnote 2, which suggests that sometimes partial blockage by the servient owner will not result in pro-tanto extinguishment; but *Scruby* leaves open, and *Cottonwood* does not address, the question whether, and under what circumstances, blockage of part of an access easement still results in pro-tanto extinguishment. Perhaps the next case will squarely present this issue, and perhaps that decision will establish a rule that makes sense, and that removes at least some of the uncertainty caused by *Scruby*.

NOTES

1. *Cottonwood Duplexes, LLC v. Barlow*, 210 Cal. App. 4th 1501, 149 Cal. Rptr. 3d 235 (3d Dist. 2012) ("*Cottonwood*").
2. *Estate of Stephens*, 28 Cal.4th 665, 672 (2002) (deed is executed contract, subject to rules of construction applicable to contracts); *Johnston v. City of Los Angeles*, 176 Cal. 479, 485-486, 168 P. 1047 (1917); Civ. Code, §1040; *Lee v. Lee*, 175 Cal. App. 4th 1553, 1557, 97 Cal. Rptr. 3d 516 (5th Dist. 2009); *Van Slyke v. Arrowhead Reservoir & Power Co.*, 155 Cal. 675, 680-681, 102 P. 816 (1909).
3. Civ. Code, §1066; *City of Manhattan Beach v. Superior Court*, 13 Cal. 4th 232, 238, 52 Cal. Rptr. 2d 82, 914 P.2d 160 (1996); *Burnett v. Piercy*, 149 Cal. 178, 189, 86 P. 603 (1906); *Kimball v. Semple*, 25 Cal. 440, 449, 1864 WL 667 (1864); *Kerr v. Brede*, 180 Cal. App. 2d 149, 150-151, 4 Cal. Rptr. 443 (3d Dist. 1960); *Leoke v. San Bernardino County*, 249 Cal. App. 2d 767, 772, 57 Cal. Rptr. 770 (4th Dist. 1967); *Ames v. Irvine Co.*, 246 Cal. App. 2d 832, 836, 55 Cal. Rptr. 180 (4th Dist. 1966); *Barnett v. Barnett*, 104 Cal. 298, 300, 37 P. 1049 (1894); *Pulliam v. Bennett*, 55 Cal. 368, 371, 1880 WL 1911 (1880) (question of what lands were intended to be conveyed by deeds should be gathered from deeds themselves, rather than resorting to extrinsic evidence); *Mitchel v. Brown*, 43 Cal. App. 2d 217, 221, 110 P.2d 456 (4th Dist. 1941); *Pinsky v. Sloat*, 130 Cal. App. 2d 579, 588, 279 P.2d 584 (2d Dist. 1955).
4. *Cottonwood*, *supra,* 210 Cal.App.4th at 1503-1504.
5. *Id.* at 1504.
6. *Id.* at 1504-1505.
7. *Ibid.*
8. *Id*. at 1506.
9. *Ibid.*
10. *Id*. at 1507.
11. *Scruby v. Vintage Grapevine, Inc.*, 37 Cal. App. 4th 697, 43 Cal. Rptr. 2d 810 (1st Dist. 1995), as modified on denial of reh'g, (Sept. 6, 1995) ("*Scruby*").
12. *Cottonwood*, *supra,* 210 Cal.App.4th at 1503, 1507.
13. *Id*. at 1508; *Scruby*, *supra,* 37 Cal.App.4th at 706, n. 2.
14. *Cottonwood, supra,* 210 Cal.App.4th at 1509.
15. See endnote 23, *infra*.
16. By way of appropriate disclosure, the author admits that he represented the unsuccessful appellants, Giovanna and John Scruby, and that, even now, 17 years later, he harbors strong feelings about the *Scruby* case.
17. *Scruby*, *supra,* 37 Cal.App.4th at 700.
18. See Soffer and Harris, Ten Years After *Silacci, Mehdizdeh* and *Scruby*, Neighbors in California Are Still Behaving Like the "Hatfields and McCoys" published in Vol. 16, No. 6, Miller & Starr Real Estate Newsalert (July 2006), at pp. 417-43.
19. *Wilson v. Abrams*, 1 Cal. App. 3d 1030, 1034-1035, 82 Cal. Rptr. 272 (2d Dist. 1969); cf Golden West Baseball Co. v. City of Anaheim, 25 Cal. App. 4th 11, 41 n.31, 31 Cal. Rptr. 2d 378 (4th Dist. 1994).
20. *Tarr v. Watkins*, 180 Cal. App. 2d 362, 366, 4 Cal. Rptr. 293 (2d Dist. 1960) (italics added), citing *Ballard v. Titus*, 157 Cal. 673, 681, 110 P. 118 (1910), and *Haley v. Los Angeles County Flood Control Dist.*, 172 Cal. App. 2d 285, 289, 342 P.2d 476 (2d Dist. 1959).
21. *Scruby*, *supra,* 37 Cal.App.4th at 704.
22. *Ibid*., citing *Gaut v. Farmer*, 215 Cal. App. 2d 278, 282, 30 Cal. Rptr. 94 (4th Dist. 1963). *Gaut* does contain the language quoted in the text, for which statement it cites *City of Pasadena v. California-Michigan Land & Water Co.*, 17 Cal. 2d 576, 110 P.2d 983, 133 A.L.R. 1186 (1941). *Pasadena*, at page 580, distinguished *Ballard v. Titus*, 157 Cal. 673, 110 P. 118 (1910), also mentioned by *Gaut*, on the basis that *Ballard* and other cases "which hold that a surface right of way of defined width gives an easement holder the absolute right to occupy the surface to that width whenever he chooses,….do not

necessarily require a similar conclusion where the easement is for the limited purpose of laying underground water pipes," as was true in *Pasadena*. Thus, *Gaut*, a case about the extent of a prescriptive easement, relied on a case about underground pipes as support for a statement that *Scruby* reads as establishing a rule governing specifically-described, expressly-granted surface access easements. *Scruby* characterized *Heath v. Kettenhofen*, 236 Cal. App. 2d 197, 45 Cal. Rptr. 778 (1st Dist. 1965), a case withheld by Vintage Grapevine through the briefing, and first mentioned at oral argument, as "aptly illustrating" the point that the specification of the dimensions and location of a right of way does not always determine the extent of the burden on the servient tenement. (*Scruby, supra,* 37 Cal.App.4th at 704.) In *Heath,* the trial court ordered that both the dominant and the servient owners could use portions of the access easement for "such transitory parking as will not interfere with the rights of the others" (*Heath, supra,* 236 Cal. App.2d at 202, 204), and that the servient owner could maintain a barricade to delineate an area it was to use exclusively for parking, but "whether plaintiffs' future reasonable use of the easement will require removal of the barricade erected by defendant is not presently known." (*Heath,* 236 Cal.App.2d at 205). Transitory parking would not lead to pro-tanto extinguishment; and the court explicitly retained jurisdiction to order removal of the barricade if future developments required it, which is consistent with this article's proposed interpretation of *Scruby* footnote 2.

23. See, e.g., *Glatts v. Henson*, 31 Cal. 2d 368, 370-371, 188 P.2d 745 (1948) ("The nonpermissive erection and maintenance for the statutory prescriptive period of permanent structures, such as buildings, which obstruct and prevent the use of the easement will operate to extinguish the easement." Judgment quieting title reversed in part, and remanded with instructions that findings and judgment be amended to reflect partial extinguishment of easement by adverse possession.); *Ross v. Lawrence*, 219 Cal. App. 2d 229, 232-233, 33 Cal. Rptr. 135 (4th Dist. 1963) (express easement properly held extinguished not only as to portion obstructed by construction of curbing, retaining wall, and apartment buildings; but also as to portion used by servient owner and tenants for parking, which testimony established constituted total obstruction of dominant tenement owners uninterrupted for a period in excess of five years); *Gerhard v. Stephens*, 68 Cal. 2d 864, 903, 69 Cal. Rptr. 612, 442 P.2d 692 (1968); *Strother v. Pacific Gas & Elec. Co.*, 94 Cal. App. 2d 525, 529, 211 P.2d 624 (3d Dist. 1949); *Popovich v. O'Neal*, 219 Cal. App. 2d 553, 556, 33 Cal. Rptr. 317 (5th Dist. 1963); *Guerra v. Packard*, 236 Cal. App. 2d 272, 293, 46 Cal. Rptr. 25 (1st Dist. 1965), *Masin v. La Marche*, 136 Cal. App. 3d 687, 693, 186 Cal. Rptr. 619 (2d Dist. 1982); *Tract Development Services, Inc. v. Kepler*, 199 Cal. App. 3d 1374, 1386, 246 Cal. Rptr. 469 (4th Dist. 1988), as modified on denial of reh'g, (Apr. 11, 1988).
24. *Scruby*, *supra,* 37 Cal.App.4th at 706, fn. 2, italics added.
25. See *Scruby* opinion issued August 8, 1995; motion for rehearing denied, and opinion modified September 6, 1995, 37 Cal.App.4th at 706.
26. *Cottonwood*, *supra,* 210 Cal.App.4th at 1508.
27. *Ibid.*
28. *Ibid.*
29. *Warmington Old Town Associates, L.P. v. Tustin Unified School Dist.*, 101 Cal. App. 4th 840, 858 n.3, 124 Cal. Rptr. 2d 744, 168 Ed. Law Rep. 875 (4th Dist. 2002); *Alvarez v. Brookstone Co., Inc.*, 202 Cal. App. 4th 1023, 1030 n.6, 135 Cal. Rptr. 3d 777 (4th Dist. 2011).
30. *Mehdizadeh v. Mincer*, 46 Cal. App. 4th 1296, 1307-1308, 54 Cal. Rptr. 2d 284 (2d Dist. 1996), as modified on denial of reh'g, (July 24, 1996), *Reichardt v. Hoffman*, 52 Cal. App. 4th 754, 767, 60 Cal. Rptr. 2d 770 (6th Dist. 1997), as modified on denial of reh'g, (Mar. 5, 1997); *Alcaraz v. Vece*, 14 Cal. 4th 1149, 1173, 60 Cal. Rptr. 2d 448, 929 P.2d 1239 (1997) (duty to maintain and repair easement).
31. See *Blackmore v. Powell*, 150 Cal. App. 4th 1593, 1599, 59 Cal. Rptr. 3d 527 (2d Dist. 2007).
32. In *Kazi v. State Farm Fire and Cas. Co.*, 24 Cal. 4th 871, 103 Cal. Rptr. 2d 1, 15 P.3d 223 (2001), the Supreme Court addressed the issue of a general liability insurer's duty

to defend a suit by the owner of the dominant tenement alleging that the owner of the servient tenement had physically obstructed an implied easement. The Court concluded that there was no duty to defend, because the non-possessory use rights afforded by an easement are not "tangible property." (*Id*. at p. 880.) Apparently unaware of the irony involved, the Court made the following observation about the rights of a dominant tenement owner whose access easement is physically obstructed: "Because an easement interest conveys no property rights to the land subject to the easement, it exists only to benefit the easement holder's property. Interference with an easement frustrates the right of access by the easement holder to the burdened property, regardless of the method used to obstruct it, i.e., whether the easement is cordoned off or is physically damaged. In either case, the remedy is the same: the plaintiff must request that the obstruction be removed. (*Scruby v. Vintage Grapevine, Inc.*, 37 Cal. App. 4th 697, 703, 43 Cal. Rptr. 2d 810 (1st Dist. 1995), as modified on denial of reh'g, (Sept. 6, 1995))" (*Id*. at 884.)

Miller & Starr Real Estate Newsalert

Managing Editor:	**Karl E. Geier**
Executive Editor:	**Karen Turk**
Editor Emeritus:	**Edmund L. Regalia**
Founding Editors:	**Harry D. Miller & Marvin B. Starr**
Attorney Editor:	**John Frey**
Production Assistant:	**Cortney Carter**
Design & Layout:	**Specialty Composition/Rochester DTP**

Miller & Starr Real Estate Newsalert (USPS # pending) is issued six times per year, published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at periodic rate is pending at St. Paul, MN. POSTMASTER: Send address changes to: Miller & Starr Real Estate Newsalert, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

The law firm of Miller Starr Regalia, founded by Edmund Regalia, Marvin Starr, and Harry Miller is headquartered in Walnut Creek. Members of the firm have been writing and editing the treatise, Miller & Starr, since shortly after the firm was founded in 1964. Karl E. Geier, a shareholder of the firm, is the current editor-in-chief of the treatise.

MILLER STARR
REGALIA