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Courts are Without Power to Terminate Express Easements Based Upon Finding Them “Unnecessary” ? Cottonwood Reins in Scruby

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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 the judge’s opinion the dominant tenement does not really need the easement. Given that a deed, including a deed granting or reserving an easement, is a contract, and that courts may not rewrite deeds or other contracts in the guise of “interpreting” them, 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.”

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