

CERTIFIED FOR PARTIAL PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

FRED M. POWERS et al.,

Plaintiffs and Appellants,

v.

THE RUG BARN et al.,

Defendants and Respondents.

E033920

(Super.Ct.No. INC019331)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

The opinion in this matter filed on April 13, 2004, as modified on May 3, 2004, is further modified as follows:

Item 3 in the prior modification is deleted and replaced with the following:

3. The last sentence of the second full paragraph on page 13 is modified to read:

Given DeVall's feelings of dissatisfaction, the conclusion seems virtually inescapable that she eventually would have terminated the partnership even without any involvement on the part of defendants.³

The text of new footnote 3 is as follows:

³ This is not to say that the fact DeVall had the right to terminate the partnership agreement at will meant defendants could not be liable under

any circumstances for interfering with the agreement. “It is well established that the at-will nature of a contract does not preclude a tortious interference claim.” (*GAB, supra*, 83 Cal.App.4th at p. 426.) The fact a party to a contract has the right to cause its termination without liability does not give a third party the same right. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1127.) It is the lack of independently actionable conduct, not the at-will nature of the partnership agreement, that creates the impediment to plaintiffs’ interference claim.

Except for this modification, the opinion as previously modified remains unchanged. This modification does not effect a change in the judgment.

CERTIFIED FOR PARTIAL PUBLICATION

RICHLI
J.

I concur:

HOLLENHORST
Acting P.J.