

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JAN 13 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

STEPHEN YAGMAN, Attorney; et al.,

Plaintiffs - Appellants,

v.

MICHAEL COLELLO,

Defendant - Appellee.

No. 07-55582

D.C. No. CV-07-01311-GAF

MEMORANDUM\*

YAGMAN, YAGMAN & REICHMANN,

Plaintiff - Appellant,

v.

MICHAEL COLELLO,

Defendant - Appellee.

No. 07-55741

D.C. No. CV-07-02174-GAF

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted December 10, 2008\*\*  
Pasadena, California

Before: FARRIS and WARDLAW, Circuit Judges, and SCHWARZER,\*\*\* District Judge.

Stephen Yagman and his law firm, Yagman & Yagman & Reichmann, appeal the district court's denial of their motion for attorney fees and sanctions against Michael Colello. The firm also appeals the district court's dismissal of its malicious prosecution action against Colello. We have jurisdiction pursuant to 8 U.S.C. § 1291. We affirm.

Whether or not Colello's removal of the action against him was improper, it did not mandate sanctions under Rule 11 of the Federal Rules of Civil Procedure, the court's inherent sanctioning power, or 28 U.S.C. § 1927. Colello based his arguments on reasonable factual investigations and plausible interpretations of the law. His conduct lacked the objective unreasonableness necessary for Rule 11 sanctions. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991); *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). The district court reasonably found that Colello's tactical motivation did not constitute the bad faith

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\*\* The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

\*\*\* The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

necessary for sanctions under the court's inherent powers. *See Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir. 2001). The court supported this conclusion with a brief explanation. *See Trulis v. Barton*, 107 F.3d 685, 695-96 (9th Cir. 1997). Colello did not act with the recklessness necessary for § 1927 sanctions in the absence of bad faith. *See In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996); *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986).

Yagman and his firm present no tenable argument in favor of reversing the district court's denial of attorney fees pursuant to 28 U.S.C. § 1447(c).

The district court appropriately dismissed the malicious prosecution action against Colello. The removal proceedings initiated by Colello were not an "action" separate and distinct from the underlying lawsuit. *See Merlet v. Rizzo*, 75 Cal. Rptr. 2d 83, 86 (Ct. App. 1998) ("[S]ubsidiary procedural actions or purely defensive actions cannot be the basis for malicious prosecution claims.").

**AFFIRMED.**