

2021 WL 5632505

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United States Court of Appeals, Ninth Circuit.

H.I.S.C, INC.; DePalma Enterprises, Inc.,
Plaintiffs-counter-defendants-Appellants,

v.

Maria RAJANAYAGAM, Defendant-Appellee,
Franmar International Importers, Ltd.,
Defendant-counter-claimant-Appellee.

No. 20-56240

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FILED December 1, 2021

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Argued and Submitted November
19, 2021 Pasadena, California

Appeal from the United States District Court for the Southern
District of California, [Roger T. Benitez](#), District Judge,
Presiding, D.C. No. 3:16-cv-00480-BEN-WVG

Attorneys and Law Firms

[Pamela Carol Chalk](#), [Anton N. Handal](#), Murchison &
Cumming LLP, San Diego, CA, for Plaintiffs-Counter-
Defendants-Appellants.

Raquel Flyer Dachner, [David Flyer](#), Flyer & Flyer, PLC,
Newport Beach, CA, for Defendant-Appellee, Defendant-
Counter-Claimant-Appellee.

Before: [WARDLAW](#) and [HURWITZ](#), Circuit Judges, and
BOUGH,^{*} District Judge.

MEMORANDUM^{**}

^{*1} H.I.S.C., Inc. and DePalma Enterprises, Inc.
("Appellants") appeal a district court order granting
attorneys' fees to Franmar International, Ltd. and Maria

Rajanayagam ("Appellees"). We have jurisdiction pursuant to
[28 U.S.C. § 1291](#), and we affirm.

1. While "a court is generally precluded from reconsidering
an issue previously decided by the same court, or a higher
court in the identical case," [Milgard Tempering, Inc. v.
Selas Corp. of Am.](#), 902 F.2d 703, 715 (9th Cir. 1990), the
district court correctly determined that our conclusion in the
first appeal that this case was not exceptional for purposes an
award of attorneys' fees and costs on appeal was not the law
of the case as to whether the case was exceptional for purposes
of assessing attorneys' fees and costs for the five-year span
of litigation before it. See [SunEarth, Inc. v. Sun Earth Solar
Power Co., Ltd.](#), 839 F.3d 1179, 1181 (9th Cir. 2016).

2. The district court's determination that this was an
exceptional case under [15 U.S.C. § 1117\(a\)](#) was not an
abuse of discretion. After examining the " 'totality of the
circumstances' to determine if the case was exceptional," [id.](#)
[at 1181](#) (citing [Octane Fitness, LLC v. ICON Health &
Fitness, Inc.](#), 572 U.S. 545, 554 (2014)), the district court
determined that this was "an 'exceptional' case ... that stands
out from others with respect to the substantive strength of
[the] party's litigating position ... or the unreasonable manner
in which the case was litigated." [Octane Fitness](#), 572 U.S.
[at 554](#).

"District courts may determine whether a case is 'exceptional'
in the case-by-case exercise of their discretion...." [Id.](#) [at](#)
[545](#). The district court found Appellants' conduct in this
case to be "severe" and demonstrative of "an unreasonable
litigating position." Because there is a "reasonable basis" for
the district court's ruling and it "has [not] applied the wrong
test or standard in reaching its result," [Graham-Sult v.
Clainos](#), 756 F.3d 724, 751 (9th Cir. 2014) (citation omitted),
we **AFFIRM**.

All Citations

Not Reported in Fed. Rptr., 2021 WL 5632505

Footnotes

- *
_ The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.
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_ This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

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