

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Gopher Media LLC v. Melone

Gopher Media LLC v. Melone · No. 24-2626 · Decided October 9, 2025

SUMMARY

The en banc Ninth Circuit held that a district court’s denial of a motion to strike under California’s anti-SLAPP statute is not immediately appealable under the collateral order doctrine. The court overruled Batzel v. Smith, concluding that anti-SLAPP determinations are intertwined with the merits and are reviewable after final judgment. The court dismissed the appeal for lack of jurisdiction and remanded, while assuming for purposes of the decision that California’s anti-SLAPP statute applies in federal court.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Mary H. Murguia; Mary H. Murguia, Chief Judge; Consuelo M. Callahan; Milan D. Smith, Jr.; Michelle T. Friedland; Mark J. Bennett; Daniel P. Collins; Kenneth K. Lee; Daniel A. Bress; Patrick J. Bumatay; Lawrence VanDyke; Holly A. Thomas
JURISDICTION	United States Court of Appeals for the Ninth Circuit
DECIDED	October 9, 2025
DOCKET	24-2626
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs appealed interlocutorily from the Southern District of California's denial of their motion to strike a countercomplaint under California's anti-SLAPP statute. The Ninth Circuit reheard the appeal en banc to reconsider whether the denial was immediately appealable under the collateral order doctrine.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and application of the collateral order doctrine.
PRECEDENTIAL VALUE	published and precedential; en banc
PARTIES	Gopher Media LLC, Ajay Thakore v. Andrew Melone, American Pizza Manufacturing

TOPICS

interlocutory appeal

appellate jurisdiction

appellate procedure

civil procedure

PRACTICE AREAS

appellate jurisdiction

civil procedure

constitutional law

First Amendment

QUESTIONS PRESENTED

1. Whether a district court's denial of a motion to strike under California's anti-SLAPP statute is immediately appealable under the collateral order doctrine.
2. Whether the denial of a California anti-SLAPP motion resolves an issue completely separate from the merits of the action.
3. Whether the denial of a California anti-SLAPP motion is effectively unreviewable on appeal from a final judgment.
4. Whether the Ninth Circuit should overrule *Batzel v. Smith*.

HOLDINGS

1. A district court's denial of a motion to strike under California's anti-SLAPP statute is not immediately appealable as a collateral order.
2. A denial of a California anti-SLAPP motion does not resolve an issue completely separate from the merits because the anti-SLAPP analysis is inextricably intertwined with factual and legal questions underlying the claims.
3. A denial of a California anti-SLAPP motion is not effectively unreviewable on appeal from a final judgment.
4. *Batzel v. Smith* is overruled to the extent it held that denials of California anti-SLAPP motions are immediately appealable under the collateral order doctrine.

KEY QUOTATIONS

“Upon reexamination, we now conclude that a district court’s denial of a motion to strike under the California anti-SLAPP statute does not satisfy the requirements for an interlocutory appeal under the collateral order doctrine.” (at 5)

“Accordingly, we overrule Batzel and dismiss this appeal for lack of jurisdiction.” (at 5)

“We have noted these developments and now hold that orders denying anti-SLAPP motions under California’s statute are not immediately appealable under the collateral order doctrine.” (at 11)

“Thus, our holding in this case unifies the approach we use for anti-SLAPP motions under the California statute; whether the motion is granted or denied, a party may not take an interlocutory appeal as of right from that decision under the collateral order doctrine.” (at 13)

FACTUAL BACKGROUND

Ajay Thakore and Gopher Media sued Andrew Melone and American Pizza Manufacturing over alleged harassment, discrimination, unfair competition, and related conduct involving a take-and-bake pizza business. Melone and American Pizza filed counterclaims alleging defamation, trade libel, and unfair business practices based in part on alleged negative online reviews and social-media statements. Plaintiffs responded with an anti-SLAPP motion to strike the countercomplaint, which the district court denied.

PROCEDURAL HISTORY

Gopher Media and Thakore sued Melone and American Pizza Manufacturing in federal district court. The defendants filed counterclaims for defamation, trade libel, and unfair business practices, and the plaintiffs moved to strike the countercomplaint under California Code of Civil Procedure section 425.16. After the district court denied the motion, plaintiffs filed an interlocutory appeal. The Ninth Circuit took the case en banc, overruled its prior precedent recognizing collateral-order jurisdiction over denials of California anti-SLAPP motions, dismissed the appeal for lack of jurisdiction, and remanded the case.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeal is dismissed for lack of jurisdiction and the case is remanded to the district court. Each side shall bear its own costs.

CASES CITED

- Batzel v. Smith, 333 F.3d 1018, 1024-26 (9th Cir. 2003)
- Will v. Hallock, 546 U.S. 345, 349, 351-52 (2006)
- P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993)
- Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867-68, 878-79 (1994)
- Mohawk Industries, Inc. v. Carpenter, 558 U.S. 100, 107-09, 114 (2009)
- Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546-47, 555-56 (1949)
- Johnson v. Jones, 515 U.S. 304, 307, 314, 317 (1995)
- Hyan v. Hummer, 825 F.3d 1043, 1046-47 (9th Cir. 2016) (per curiam)
- United States ex rel. Newsham v. Lockheed Missiles & Space Co., 190 F.3d 963, 970-73 (9th Cir. 1999)
- DC Comics v. Pacific Pictures Corp., 706 F.3d 1009 (9th Cir. 2013)
- Planned Parenthood Federation of America, Inc. v. Center for Medical Progress, 890 F.3d 828, 833-38 (9th Cir. 2018), amended by 897 F.3d 1224 (9th Cir. 2018)
- Travelers Casualty Insurance Co. of America v. Hirsh, 831 F.3d 1179, 1182-86 (9th Cir. 2016)
- Makaeff v. Trump University, LLC, 736 F.3d 1180, 1188-92 (9th Cir. 2013)
- Martinez v. ZoomInfo Technologies, Inc., 82 F.4th 785, 794, 796-97 (9th Cir. 2023), vacated, 90 F.4th 1042 (9th Cir. 2024) (mem.)

- Ernst v. Carrigan, 814 F.3d 116, 119-21 (2d Cir. 2016)
- Coomer v. Make Your Life Epic LLC, 98 F.4th 1320, 1326, 1328-29 (10th Cir. 2024)
- FilmOn.com Inc. v. DoubleVerify Inc., 439 P.3d 1156, 1160-61, 1165 (Cal. 2019)
- Varian Medical Systems, Inc. v. Delfino, 106 P.3d 958, 966 (Cal. 2005)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)
- Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co., 559 U.S. 393, 398-99 (2010)
- Planned Parenthood Federation of America, Inc. v. Center for Medical Progress, 890 F.3d 828, 834 (9th Cir. 2018)
- Alaska Rent-A-Car, Inc. v. Avis Budget Group, Inc., 738 F.3d 960, 973 (9th Cir. 2013)
- Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259 & n.31 (1975)
- Abbas v. Foreign Policy Group, LLC, 783 F.3d 1328, 1333-37 (D.C. Cir. 2015)
- Klocke v. Watson, 936 F.3d 240, 242, 245, 247-48 (5th Cir. 2019)
- La Liberte v. Reid, 966 F.3d 79, 87-89 (2d Cir. 2020)
- Davide M. Carbone v. Cable News Network, Inc., Carbone v. Cable News Network, Inc., 910 F.3d 1345, 1347, 1350, 1354-57 (11th Cir. 2018)
- Los Lobos Renewable Power, LLC v. Americulture, Inc., 885 F.3d 659, 668-73 (10th Cir. 2018)