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NOT FOR PUBLICATION

SUSAN M SPRAYL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-12-1111-HHaMk
)
 IMANI FE, LP, AKA Abs Bricker,) Bk. No. 11-20598-PC
 LLC, AKA Abs Hollywood, LLC,)
 AKA Abs Imani Fe, LLC, AKA Abs)
 Magnolia, LLC, AKA Abs Mayer)
 Bricker, LLC, AKA Abs)
 Properties, Inc., AKA Advanced)
 Business Solutions, LLC,)
)
 Debtor.)
 _____)
 HILROCK CORPORATION; ALBERTO)
 MAKABALI; ROBERT BOGHOZIAN,)
)
 Appellants,)
)
 v.) MEMORANDUM¹
)
 IMANI FE, LP,)
)
 Appellee.)
 _____)

Argued and Submitted on September 21, 2012
at Pasadena, California

Filed - November 7, 2012

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Peter H. Carroll, Chief Bankruptcy Judge, Presiding

Appearances: Derek L. Tabone, of the Law Offices of Tabone,
 APC, argued for the Appellants; Louis J. Cisz,
 III, of Nixon Peabody LLP, argued for the
 Appellee.

¹ This disposition is not appropriate for publication.
 Although it may be cited for whatever persuasive value it may
 have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Before: HOLLOWELL, HAMMOND² and MARKELL, Bankruptcy Judges.

2 This appeal stems from the bankruptcy court's refusal to
3 continue a hearing on a motion to dismiss an involuntary
4 bankruptcy petition that the appellants brought against the
5 appellee, and the subsequent entry of an award of fees in the
6 appellee's favor. We AFFIRM.

7 **I. FACTS**

8 Imani Fe was organized for the purpose of acquiring and
9 developing an affordable housing project in South Central Los
10 Angeles (the Project). Imani Fe hired Hilrock Corporation
11 (Hilrock) as the general contractor on the Project. Hilrock, in
12 turn, hired various subcontractors, including Coast to Coast
13 Associates (Coast to Coast) and KR Electric. A dispute arose
14 between Hilrock and the managing member of Imani Fe's general
15 partner. Hilrock contended that it did not receive full payment
16 for overhead and profit on the Project and that it was not
17 reimbursed for advance costs and change orders. As a result,
18 Hilrock recorded a mechanic's lien against the Property. In
19 September 2010, Hilrock brought a state court action against
20 Imani Fe for breach of contract, alleging damages in excess of
21 \$4.9 million and to foreclose on the lien.

22 On March 11, 2011, Toshio Kato aka Hilrock, along with
23 Alberto Makabali aka Coast to Coast, and Robert Boghozian dba
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25
26

27 ² Hon. M. Elaine Hammond, United States Bankruptcy Judge for
28 the Northern District of California, sitting by designation.

1 KR Electric (the Petitioning Creditors) filed a chapter 7³
2 involuntary petition (Petition) against Imani Fe. The
3 Petitioning Creditors asserted claims for unpaid contractor work
4 performed on the Project. Hilrock asserted a claim of
5 \$4,950,102.43; Coast to Coast asserted a claim of \$21,500.00 and
6 KR Electric asserted a claim of \$22,766.69.⁴

7 On March 30, 2011, Imani Fe filed an answer contesting the
8 petition and denying all material allegations. Imani Fe asserted
9 that the Petitioning Creditors were ineligible to file the
10 Petition because they did not hold three separate and distinct
11 claims and held claims subject to a bona fide dispute. A status
12 conference on the Petition was continued several times while the
13 parties conducted discovery. During that time, Imani Fe
14 successfully defended against two motions for relief from stay
15 filed by Wilshire State Bank, whose claim was secured by the
16 Property.

17 After concluding discovery, the Debtor filed, on October 11,
18 2011, a summary motion to dismiss the Petition or summary
19 adjudication (Motion to Dismiss). Imani Fe asserted that
20 deposition testimony from Coast to Coast and KR Electric

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22 ³ Unless otherwise indicated, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. § 101-1532. All
24 "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
26 are referred to as "Civil Rules."

27 ⁴ Holding the largest claim, Hilrock has been the creditor
28 most involved in the Petition. Hilrock's counsel is also counsel
for Coast to Coast and KR Electric. Throughout the case, Hilrock
has taken the lead on preparing briefs and appearing at hearings
for the Petitioning Creditors.

1 established that they were not its creditors, but creditors of
2 Hilrock. Imani Fe also asserted that Hilrock admitted that part
3 of its claim was invalid. Therefore, Imani Fe contended that
4 Hilrock's claim was subject to a bona fide dispute as to
5 liability and amount. As a result, Imani Fe argued that the
6 Petitioning Creditors were ineligible to file the Petition and
7 that the Petition was filed in bad faith. Imani Fe requested
8 that the bankruptcy court dismiss the Petition and retain
9 jurisdiction to decide whether to award attorneys' fees, costs
10 and/or punitive damages. A hearing on the Motion to Dismiss was
11 set for November 22, 2011.

12 On November 1, 2011, Hilrock filed an ex-parte application
13 to continue the hearing on the Motion to Dismiss for 30 days
14 (Motion to Continue). Hilrock asserted that its principal,
15 Gerald Schneiderman, had been hospitalized from October 8-25
16 (with hydrocephalus, which required brain surgery) and was
17 readmitted on October 31, 2011. Thus, Hilrock asserted that due
18 to Mr. Schneiderman's unavailability, it was unable to draft an
19 opposition to the Motion to Dismiss.

20 Neither Coast to Coast nor KR Electric filed a separate
21 opposition to the Motion to Dismiss and Imani Fe filed a notice
22 of their non-opposition on November 2, 2011. Hilrock filed a
23 reply to the non-opposition, stating that the Petitioning
24 Creditors anticipated filing a joint opposition to the Motion to
25 Dismiss, but were hampered by Mr. Schneiderman's hospitalization.
26 Imani Fe filed an opposition to the Motion to Continue, alleging
27 that counsel for Hilrock had not contacted it regarding a
28 stipulation and had not sufficiently explained why other members

1 of Hilrock, Coast to Coast, or KR Electric could not assist in
2 filing an opposition. No opposition to the Motion to Dismiss was
3 ever filed by any of the Petitioning Creditors; the Motion to
4 Dismiss was therefore unopposed.

5 On November 8, 2011, the bankruptcy court entered an order
6 denying the Motion to Continue. The hearing on the Motion to
7 Dismiss went forward as scheduled on November 22, 2011. Counsel
8 for the Petitioning Creditors asserted that he was unaware that
9 the Motion to Continue had been denied until he checked the
10 docket before the hearing. The bankruptcy court then retrieved
11 and reviewed the case docket, and noted that it waited for Imani
12 Fe's opposition to the Motion to Continue before ruling, that it
13 docketed the order denying the Motion to Continue, and that the
14 clerk's office sent, the same day, both electronic and mail
15 notifications of the order to all parties. The bankruptcy court
16 also noted that there was no response filed to the Motion to
17 Dismiss. Therefore, the bankruptcy court orally ruled that:

18 there being no response in opposition, and based upon
19 the evidence in support of the [Motion to Dismiss], the
20 Court will adopt the statement of uncontroverted facts
21 and conclusions of law in support of the summary motion
22 to dismiss and grant the summary motion to dismiss, the
23 involuntary petition against the alleged Debtor Imani
24 Fe, L.P. and reserve jurisdiction over any issue
25 concerning attorney's fees and costs under Section 303
26 of the Bankruptcy Code.

27 Hr'g Tr. (Nov. 22, 2011) at 4:2-9.

28 The bankruptcy court subsequently entered its order granting
the Motion to Dismiss (Dismissal Order) and retaining
jurisdiction to determine any motion brought under § 303(I) on

1 November 28, 2011. The Petitioning Creditors did not appeal the
2 Dismissal Order.⁵

3 On January 13, 2012, the Debtor filed a motion pursuant to
4 § 303(I) requesting \$373,654.69 in attorneys' fees and \$200,000
5 in punitive damages (Fee Request).

6 The Petitioning Creditors opposed the Fee Request. In their
7 opposition, the Petitioning Creditors asserted that the Fee
8 Request was untimely under the Rules because it was not filed
9 within 14 days of the Dismissal Order. The Petitioning Creditors
10 also argued the merits of the Petition and contended there was no
11 dispute as to Imani Fe's liability or the amount of Hilrock's
12 claim. The Petitioning Creditors asserted that Imani Fe's
13 actions led the Petitioning Creditors to initiate litigation, not
14 any frivolous motives on the part of the Petitioning Creditors.
15 They also asserted that the amount of the requested attorneys'
16 fees was excessive and unreasonable. Finally, the Petitioning
17 Creditors asserted that any fees awarded should be offset by the
18 amount Imani Fe owed them and that no punitive or other damages
19 should be awarded.

20 A hearing on the Fee Request was held on February 7, 2012.
21 At the hearing, the Petitioning Creditors reiterated their
22 argument that the Fee Request was untimely, citing the Local
23 Bankruptcy Rules (LBR). However, the bankruptcy court concluded
24 that a bankruptcy rule could not abridge a substantive right
25 provided by the Bankruptcy Code. Additionally, the bankruptcy

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27 ⁵ The Petitioning Creditors assert that they were unable to
28 prepare a response to the Dismissal Order due to
Mr. Schneiderman's poor health. He died on December 8, 2011.

1 court determined that the Petitioning Creditors were not entitled
2 to setoff. It found the amount of the attorneys' fees requested
3 was not unreasonable and that the costs were actually incurred
4 and necessary in defending against the Petition. However, the
5 bankruptcy court did not find that there was bad faith in
6 conjunction with the filing of the Petition, and therefore, it
7 denied Imani Fe's request for punitive damages.

8 An order granting, in part, the Fee Request was entered on
9 February 15, 2012, awarding judgment against the Petitioning
10 Creditors jointly and severally in the amount of \$373,654.69 (Fee
11 Award). A judgment was entered the same day. The Petitioning
12 Creditors timely appealed.

13 II. JURISDICTION

14 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
15 § 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.
16 § 158.

17 III. ISSUES

18 What is the scope of the appeal?

19 Did the bankruptcy court abuse its discretion in awarding
20 attorneys' fees and costs to Imani Fe?

21 IV. STANDARDS OF REVIEW

22 We address the question of our jurisdiction de novo. Menk
23 v. Lapaglia (In re Menk), 241 B.R. 896, 903 (9th Cir. BAP 1999).

24 We review the bankruptcy court's decision to award fees for
25 an abuse of discretion. Orange Blossom Ltd. P'ship v. S. Cal.
26 Sunbelt Devs., Inc. (In re S. Cal. Sunbelt Devs., Inc.), 608 F.3d
27 456, 464 n.3 (9th Cir. 2010) ("The court retains broad discretion
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1 to fashion a fee award under § 303(I)."); Higgins v. Vortex
2 Fishing Sys., 379 F.3d 701, 705 (9th Cir. 2004).

3 A bankruptcy court abuses its discretion if it bases a
4 decision on an incorrect legal rule, or if its application of the
5 law was illogical, implausible, or without support in inferences
6 that may be drawn from the facts in the record. United States v.
7 Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en banc);
8 Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth),
9 455 B.R. 904, 914 (9th Cir. BAP 2011).

10 V. DISCUSSION

11 A. Scope of the Appeal

12 The main argument presented by the Petitioning Creditors on
13 appeal is that the bankruptcy court abused its discretion in
14 denying the Motion to Continue and entering the Dismissal Order.
15 However, the only order that the Petitioning Creditors appealed
16 was the Fee Award. Nevertheless, the Petitioning Creditors
17 assert that the Motion to Continue and the Dismissal Order merged
18 into the only final judgment in the case from which to appeal,
19 namely, the Fee Award. They are incorrect.

20 Before the bankruptcy court entered a judgment against the
21 Petitioning Creditors awarding Imani Fe attorneys' fees and costs
22 associated with challenging the Petition, it entered an order
23 dismissing the Petition. A dismissal of an involuntary
24 bankruptcy petition is a final order. See Coop. Supply Inc. v.
25 Corn-Pro Nonstock Coop., Inc. (In re Corn-Pro Nonstock Coop.,
26 Inc.), 317 B.R. 56, 58 (8th Cir. BAP 2004). An order is final if
27 it contains "'a complete act of adjudication,' that is, a full
28 adjudication of the issues at bar, and clearly evidences the

1 judge's intention that it be the court's final act in the
2 matter." Brown v. Wilshire Credit Corp. (In re Brown), 484 F.3d
3 1116, 1120 (9th Cir. 2007)(citing Slimick v. Silva
4 (In re Slimick), 928 F.2d 304, 307 (9th Cir. 1990)).

5 Unlike final orders, interlocutory orders decide merely one
6 aspect of the case without disposing of the case in its entirety
7 on the merits. See U.S. v. Real Prop. Located at 475 Martin Ln.,
8 Beverly Hills, Cal., 545 F.3d 1134, 1141 (9th Cir. 2008); Am.
9 Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892,
10 897 (9th Cir. 2001). A court's ruling on a motion to continue
11 does not end the litigation. Therefore, a denial of a motion to
12 continue merges into the final order deciding the merits. Id.;
13 Am. Ironworks, 248 F.3d at 897 ("An interlocutory order becomes
14 appealable when final judgment is entered."); Munoz v. Small Bus.
15 Admin., 644 F.2d 1361, 1364 (9th Cir. 1981) (an appeal from a
16 final judgment draws in question all earlier non-final orders and
17 all rulings which produced the judgment). Consequently, the
18 bankruptcy court's denial of the Motion to Continue merged into
19 the final order that ended the involuntary bankruptcy case on its
20 merits, the Dismissal Order.

21 Once an order is final, it triggers the time in which to
22 appeal. Rule 8002(a). Our jurisdiction extends only over
23 appeals that have been filed within 14 days of entry of a final
24 order. Rule 8002(a); 28 U.S.C. § 158. No appeal was taken of
25 the Dismissal Order.

26 The bankruptcy court may not award attorneys' fees and costs
27 prior to a determination of whether dismissal of the involuntary
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1 petition is warranted. 11 U.S.C. § 303(i); In re Corn-Pro
2 Nonstock Coop., Inc., 317 B.R. at 58 ("The plain language of
3 [§ 303(i)] requires dismissal before the alleged debtor becomes
4 entitled to damages."). By its language, § 303(i) contemplates
5 sanctions only after the validity of the petition has been
6 determined and a dismissal has been entered. The imposition of
7 costs, attorneys' fees and or damages under § 303(i) "requires
8 inquiry into and determination of a collateral issue only; it
9 does not require any further judgment on the merits of the
10 action." In re Tobacco Rd. Assocs., LP, 2007 WL 966507, *21
11 (E.D. Pa. Mar. 30, 2007); see also, Higgins 379 F.3d at 707 (by
12 the time a motion for fees is decided, the court has already
13 heard all the evidence surrounding dismissal).

14 The Petitioning Creditors argue that because the bankruptcy
15 court retained jurisdiction after the case was dismissed in order
16 to rule on a subsequent § 303(i) motion, the Dismissal Order was
17 not final until the fee issue was resolved. However, there was
18 no pending request for fees under § 303(i) at the time the
19 bankruptcy court considered the Motion to Dismiss. A court may
20 preserve its jurisdiction to issue fees when it otherwise may be
21 divested of jurisdiction upon dismissal of a proceeding or due to
22 an appeal. Lindblade v. Knupfer (In re Dyer), 322 F.3d 1178,
23 1186 (9th Cir. 2003) ("[W]e have held that unresolved issues
24 related to attorneys' fees do not defeat finality, regardless of
25 whether the attorneys' fees are available under a statute, by
26 contract, or as a sanction for bad faith litigation.").

27 Because the Petitioning Creditors failed to appeal the
28 Dismissal Order, we have no jurisdiction to review the merits of

1 whether the dismissal was appropriate or whether the bankruptcy
2 court abused its discretion in denying the Motion to Continue.
3 Therefore, we address below only whether the bankruptcy court
4 abused its discretion in entering the Fee Award.

5 **B. Timeliness of Fee Request**

6 The Petitioning Creditors argue that the Fee Request was
7 untimely. In the bankruptcy court, the Petitioning Creditors
8 argued that the Fee Request was untimely under Rule 7054,
9 incorporating Civil Rule 54. They asserted that under Civil
10 Rule 54(d), the Fee Request was required to have been filed
11 within 14 days from the entry of the Dismissal Order. At the
12 hearing on the Fee Request, and in their brief on appeal, the
13 Petitioning Creditors asserted that the LBRs⁶ imposed a deadline
14 of 30-days after the Dismissal Order for the filing of the Fee
15 Request. For the reasons given below, we conclude that neither
16 timeframe constrains a motion for attorneys' fees under
17 § 303(i)(1).

18 Civil Rule 54(d) provides that a claim for prevailing
19 party's attorneys' fees be made by motion no later than 14 days
20 after entry of a judgment. Rule 7054 incorporates part of Civil
21 Rule 54 in adversary proceedings, but does not incorporate
22 subsection (d). Therefore, Civil Rule 54(d) is inapplicable to
23 bankruptcy proceedings.

24 LBR 7054-1 allows a prevailing party to seek an award of
25 costs and attorneys' fees:

26 _____

27 ⁶ At the hearing, counsel for the Petitioning Creditors
28 could not specifically identify which LBR applied. However, in
their brief on appeal, they assert it is LBR 7054-1.

1 (c) Bill of Costs

2 The prevailing party who is awarded costs shall
3 have 30 days after entry of judgment to file and serve
4 a Bill of Costs. . . .

4 (g) Motion for Attorneys' Fees

5 If not previously determined at trial or other
6 hearing, a party seeking an award of attorneys' fees
7 where such fees may be awarded must file and serve a
8 motion not later than 30 days after the entry of
9 judgment or other final order, unless otherwise ordered
10 by the court. . . .

8 LBR 7054-1.

9 Imani Fe's entitlement to fees is provided by § 303(I).
10 Section 303(i)(1) permits an alleged debtor to bring a claim for
11 an award of fees and costs if: (1) the involuntary petition was
12 dismissed by the court; (2) the dismissal was not stipulated to
13 by the debtor and all the petitioning creditors; and (3) the
14 debtor did not waive its rights to judgment. 11 U.S.C.
15 § 303(i)(1)(A)-(B). Additionally, the statute provides that in
16 the event of bad faith, actual and punitive damages may be
17 awarded. 11 U.S.C. § 303(i)(2); Jaffe v. Wavelength, Inc.
18 (In re Wavelength, Inc.), 61 B.R. 614, 619 (9th Cir. BAP 1986).

19 Section 303(i)(1) does not provide a timeframe in which the
20 motion must be made. The Bankruptcy Appellate Panel (BAP) has
21 previously reviewed whether the timeframes of Civil Rule 54(d)
22 and LBR 7054-1 apply to § 303(i) motions in an unpublished
23 memorandum decision, Klein v. Cap. Fin., Inc. (In re Cap. Fin.,
24 Inc.), 2007 WL 7535047 (9th Cir. BAP Nov. 14, 2007)(unpublished).
25 The BAP determined that LBR 7054-1 did not apply to involuntary
26 petitions. Instead, it recognized that attorneys' fees under
27 § 303(i) are "inherently different from a prevailing party
28 statute" because § 303(i) is "'intended to be the exclusive

1 remedy for regulating abuse of the involuntary bankruptcy
2 process.'" In re Cap. Fin., Inc., 2007 WL 7535047, at *6 (citing
3 Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade,
4 Inc.), 370 B.R. 236, 249 (9th Cir. BAP 2007) (emphasis in
5 original)). "The key distinction is that § 303(I) is substantive
6 law providing an independent claim to an alleged debtor whenever
7 an involuntary petition is dismissed without the alleged debtor
8 having waived that claim." Id. at *5.

9 Furthermore, in making its decision, the BAP recognized that
10 it would be incongruous and inefficient to demand that a motion
11 for attorneys' fees under § 303(i)(1) be filed within a strict
12 timeframe, while a motion for damages under § 303(i)(2) is not
13 subject to a specific deadline. Id. at *6. Similarly, the BAP
14 noted that if an order for relief had been entered, the
15 petitioning creditors would be under no time constraint in
16 seeking fees under § 503(b)(3)(A) and (b)(4). Thus, the BAP
17 reasoned that it would be unfair to impose a deadline on the
18 alleged debtor, who did not willingly participate in the
19 bankruptcy process, but not on the petitioning creditors who
20 participated on their own accord. Id.

21 We agree with the BAP's reasoning and conclusion that
22 neither the Rules nor the LBRs regarding prevailing parties apply
23 to motions for fees under § 303(I). Section 303(I) provides the
24 alleged debtor an independent cause of action for attorneys' fees
25 when it successfully defends against an involuntary petition.

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1 Consequently, we conclude that the Fee Request was not untimely
2 and the bankruptcy court did not err in ruling on its merits.⁷

3 **C. Reasonableness of Fee Request**

4 Section 303(I) states that the bankruptcy court may award
5 fees and costs, rendering any award under § 303(I) discretionary.
6 Higgins, 379 F.3d at 706. However, in the Ninth Circuit there is
7 a rebuttable presumption that a debtor who has successfully
8 contested an involuntary petition will be awarded fees and costs.
9 In re S. Cal. Sunbelt Devs., Inc., 608 F.3d at 462; In re Macke
10 Int'l Trade, Inc., 370 B.R. at 250. Indeed, "because of the
11 adverse impact on the debtor and the need to encourage discretion
12 in filing such cases, unsuccessful involuntary petitioners should
13 routinely expect to pay the debtor's legal expenses arising from
14 the involuntary filing." Id.

15 The presumption imposes on petitioning creditors the burden
16 of presenting evidence to meet the presumption, but it does not
17 shift the burden of proof. See Fed. R. Evid. 301. Petitioning
18 creditors may overcome the presumption by demonstrating that an
19 award of attorneys' fees and costs is inappropriate given the
20 totality of the circumstances. Sofris v. Maple-Whitworth, Inc.
21 (Matter of Maple-Whitworth, Inc.), 556 F.3d 742, 746 (9th Cir.
22 2009); Higgins, 379 F.3d at 707. Under a totality of the
23 circumstances analysis, the bankruptcy court may consider:
24 (1) the relative culpability among the petitioners, (2) the
25 motives or objectives of individual petitioners in joining the

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27 ⁷ Even if the LBRs did apply, LBR 1001-1(d) allows the
28 bankruptcy court to waive the application of any LBR in its
discretion and in the interest of justice.

1 involuntary petition, (3) the reasonableness of the respective
2 conduct of the debtors and petitioners, and (4) other
3 individualized factors. Higgins, 379 F.3d at 707-08. The list
4 is not exhaustive. A bankruptcy court may choose to consider
5 other material factors it deems relevant. Id.

6 The Petitioning Creditors asserted that Imani Fe should not
7 have been entitled to fees because Imani Fe manipulated the
8 accounting on the Project and shorted contractors on payments,
9 thereby causing the Petitioning Creditors to file the Petition in
10 order to recover what they should have been paid. See Opposition
11 to Fee Request. When the bankruptcy court dismissed the
12 Petition, it adopted the uncontroverted facts and conclusions of
13 law submitted by Imani Fe. Thus, there are no facts to support
14 the Petitioning Creditors' contention that Imani Fe acted
15 inappropriately. The opportunity to rebut the presumption of
16 fees "does not give the petitioning creditor license to . . .
17 present evidence on an issue that has already been decided."
18 Higgins, 379 F.3d at 707. Rather, all the evidence surrounding
19 the dismissal was already presented to the bankruptcy court and
20 taken into account in deciding whether to award fees. The merits
21 of the Petition were resolved by summary judgment in favor of
22 Imani Fe.

23 The Petitioning Creditors also asserted that Imani Fe's
24 attorneys' fees were excessive and unreasonable and that Imani Fe
25 "overworked the case." They contended that the amount of hours
26 expended in conducting discovery and preparing briefs in the case
27 was unreasonable. Imani Fe submitted, with its Fee Request,
28 declarations from its attorneys stating that the services

1 performed in defending the Petition were necessary, including
2 researching the issues raised by the Petition, responding to
3 Wilshire Bank's motions for stay relief, preparing multiple
4 briefs, responses, and replies to oppositions, preparing for and
5 attending multiple hearings in the case, and also in conducting
6 discovery regarding the nature and extent of the Petitioning
7 Creditors' asserted claims.

8 The bankruptcy court found that the Petitioning Creditors
9 offered no evidence that the legal work performed by Imani Fe was
10 not actually performed or that it was unnecessary to defend
11 against the Petition. Indeed, while the Petitioning Creditors
12 asserted that the practice of an attorney billing for analyzing
13 the work of another attorney resulted in what they considered to
14 be excessive hours worked in the case, they failed to point to
15 itemized instances or charges that required a specific reduction
16 from the overall award. They simply asserted that the bankruptcy
17 court should reduce at least by half the amount of fees requested
18 by Imani Fe. They based this assertion on case law, not on a
19 calculation that deducted what they considered to be unreasonable
20 charges. See Opposition to Fee Request.

21 The bankruptcy court determined that the Petitioning
22 Creditors failed to rebut the presumption of the award of fees.
23 Furthermore, the bankruptcy court independently reviewed Imani
24 Fe's Fee Request, which was supported by itemized time records
25 describing the work performed by various members of Imani Fe's
26 attorneys and their staff throughout in the case. It found that
27 the hourly rates that were charged for the work were within the
28 customary range for the Central District of California.

1 Additionally, the bankruptcy court considered the merits of
2 the Petition and found no improper conduct on the part of Imani
3 Fe. Similarly, the bankruptcy court did not find that the
4 Petitioning Creditors acted in bad faith by bringing the
5 Petition, although it noted that Coast to Coast and KR Electric
6 may not have fully understood the consequences of filing the
7 Petition. It determined that:

8 the motivations and objectives behind the filing of the
9 involuntary petition [did not] weigh in favor of a
10 reduction of fees under the circumstances of this case,
11 particularly in light of the findings and conclusions
made by the Court in conjunction with the summary
judgment entered in this case, which is a final
judgment of the Court.

12 Hr'g Tr. at 12: 10-18. Based on its findings, the bankruptcy
13 court refused to award punitive damages.

14 The bankruptcy court properly evaluated relevant factors in
15 its review of the totality of the circumstances. Based on our
16 review of the record, we conclude that the bankruptcy court's
17 decision was not illogical, implausible, or unsupported by the
18 record. As a result, the bankruptcy court did not abuse its
19 discretion in entering the Fee Award.

20 The Petitioning Creditors assert that any award of fees
21 should be offset by the amount of debt that Imani Fe owes them.
22 The BAP has previously addressed whether setoff is appropriate
23 under § 303(i) motions and concluded that because the section is
24 remedial in nature, setoff is impermissible. In re Macke Int'l
25 Trade, Inc., 370 B.R. at 255 (citations omitted). "If setoff
26 were allowed, there would be little downside to a creditor's
27 resort to an involuntary bankruptcy petition against a debtor,
28 even if its conduct did not rise to the level of 'bad faith.'"

1 Id. Moreover, the Bankruptcy Code allows offset only of "a
2 mutual debt owing by such creditor to the debtor that arose
3 before the commencement of the case. . . ." 11 U.S.C. § 553(a).
4 There is no evidence in the record that there was a mutual debt
5 owing before the Petition was filed. Therefore, the bankruptcy
6 court did not abuse its discretion in denying any offset of the
7 Fee Award.

8 **VI. CONCLUSION**

9 For the reasons given above, we AFFIRM the Fee Award.

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