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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-15-1130-KuJaJu
)
 MEDPOINT MANAGEMENT, LLC,) Bk. No. 14-15234
)
 Debtor.)
)
)
 MEDPOINT MANAGEMENT, LLC,)
)
 Appellant,)
)
 v.) **MEMORANDUM***
)
 JASON JENSEN; MIKE DANZER;)
 7511 IRA INVESTMENTS, LLC;)
 ROBERT BROWN,)
)
 Appellees.)

Argued and Submitted on May 20, 2016
at Phoenix, Arizona

Filed - June 3, 2016

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Daniel P. Collins, Chief Bankruptcy Judge, Presiding

Appearances: Jonathan Frutkin of The Frutkin Law Firm Plc
 argued for appellant Medpoint Management, LLC;
 Anthony Warren Austin of Fennemore Craig, P.C.
 argued for appellees Jason Jensen, Mike Danzer,
 7511 IRA Investments, LLC and Robert Brown.

*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 8024-1.

1 Before: KURTZ, JAIME** and JURY, Bankruptcy Judges.

2 **INTRODUCTION**

3 Four creditors of alleged debtor Medpoint Management, LLC
4 filed an involuntary chapter 7¹ petition against Medpoint. The
5 bankruptcy court granted Medpoint's motion to dismiss because of
6 Medpoint's connection to the cultivation and sale of medical
7 marijuana, which might be legal under Arizona law but still is
8 illegal under federal law. The petitioning creditors have not
9 appealed the bankruptcy court's dismissal.

10 In the process of dismissing the petition, the bankruptcy
11 court ruled that Medpoint was not entitled to recover from the
12 petitioning creditors its attorney's fees, costs and punitive
13 damages, and the court denied as unnecessary Medpoint's request
14 for an evidentiary hearing on those issues. Medpoint appeals
15 those rulings.

16 The bankruptcy court never permitted the parties to fully
17 develop the record regarding the controlling factual issues,
18 including whether Medpoint generally was paying its (undisputed)
19 debts as they came due, whether the petitioning creditors'
20 motives and intentions were culpable and whether the petitioning
21 creditors acted in bad faith. Accordingly, we will VACATE the
22 portion of the dismissal order denying Medpoint's requests for
23

24 **Hon. Christopher D. Jaime, United States Bankruptcy Judge
25 for the Eastern District of California, sitting by designation.

26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 fees, costs and punitive damages, and we will REMAND for further
2 proceedings.

3 **FACTS**

4 To provide context, we begin our factual recitation with a
5 description of Medpoint's business, its relationship with other
6 key players, and the transactions leading up to the filing of the
7 involuntary petition.²

8 Medpoint is an Arizona limited liability company formed to
9 provide a full range of management services to companies holding
10 certificates issued by the state of Arizona permitting them under
11 Arizona law to grow and sell medical marijuana. Because Arizona
12 law requires all certificate holders to operate on a not-for-
13 profit basis, management service companies like Medpoint also
14 help the certificate holders maintain their nonprofit status by
15 managing their cash flow to ensure that revenues are distributed
16 to pay the certificate holders' operating expenses, taxes and
17 management fees.

18 Medpoint only provided management services to one
19 certificate holder, Arizona Nature's Wellness ("ANW"). Medpoint
20 obtained that position in January 2013 by acquiring the
21 management service company then under contract with ANW - Tier
22 Management, LLC. At the time of the acquisition, Mike Danzer
23 owned and controlled Tier. He sold his interest in Tier to
24 Medpoint in exchange for \$450,000, with \$150,000 paid up front
25 and the remainder to be paid in installments of \$150,000 each.

26
27 ²Most of these background facts are not in dispute, so we in
28 large part have relied upon the description of these facts
contained in the bankruptcy court's final ruling.

1 Danzer is one of the petitioning creditors.

2 Robert Brown and 7511 IRA Investments, LLC also are
3 petitioning creditors and also loaned money to Medpoint. Robert
4 Brown loaned Medpoint \$100,000, and 7511 IRA Investments, LLC
5 loaned Medpoint \$400,000. In addition, Medpoint entered into
6 consulting contracts with Danzer and another man named Jason
7 Jensen pursuant to which Medpoint promised to pay Danzer and
8 Jensen \$5,000 per month each. Jensen is the fourth and final
9 petitioning creditor.

10 The person who currently owns and controls Medpoint, Yuri
11 Downing, admitted at his deposition that none of the petitioning
12 creditors have been repaid. He indicated that at least some of
13 the above-referenced debt is disputed, although the reasons he
14 offered for disputing the debt were thin. For instance, when
15 asked about Danzer's and Jensen's monthly consulting fees,
16 Downing indicated that the fees were not due because Medpoint
17 ultimately did not need or use Danzer's or Jensen's consulting
18 services. But Downing also admitted that there was nothing in
19 the consulting contracts making Medpoint's obligation to pay the
20 consulting fees contingent on the actual provision of consulting
21 services.

22 Meanwhile, when asked whether Medpoint had the ability to
23 repay the \$400,000 owed to 7511 IRA Investments, LLC, Downing
24 responded as follows:

25 A. Are we in a position to make that payment today?
26 No. Are we in a position to make that payment in the
next 30 days? I cannot say.

27 Q. Are there prospects that you could be in a position
28 in 30 days to make a \$400,000 loan payment?

1 A. I'm still a dreamer and I still believe I can make
2 things happen magically, so yes, I think I - I - the
3 answer is I don't know, but I'd sure like to try.

4 Depo. Tans. (Jan. 8, 2015) at 136:14-21.

5 Downing further admitted that, at the time of the petition
6 filing, Medpoint's only regular source of income was an \$8,000
7 per month licensing fee it is being paid for the use of the Bloom
8 name and trademark, which is still being used in ANW's business.

9 At the time of Medpoint's acquisition of Tier, in January
10 2013, Yuri Downing and Matt Morgan each owned and controlled one
11 of the two LLC members of Medpoint - Ask Nice Twice, LLC and Here
12 Is Now, LLC, respectively. Similarly, Morgan and Downing owned
13 and controlled another management services company, Bloom Master
14 Fund I, LLC, which was under contract with the certificate holder
15 for a Tucson marijuana dispensary.

16 In February 2014, Morgan divested himself of ownership and
17 control of both Medpoint and Bloom Master Fund I, LLC. At that
18 time, Morgan resigned from management and effectively conveyed
19 his interests in both companies to Downing. According to
20 Downing, with Morgan gone, he was looking for someone to help him
21 with management and operations at Medpoint and Bloom Master
22 Fund I, LLC, and he turned to Ed Vartughian for help. Downing
23 indicated that Morgan had introduced him to Vartughian, that he
24 did not know Vartughian well, and that he did not know who else
25 to turn to for help. Ultimately, Vartughian bought Downing's
26 interest in Bloom Master Fund I, LLC and agreed to help Downing
27 "fix" Medpoint's problems, but declined to purchase Medpoint.

28 Downing in essence claimed that Vartughian convinced ANW's
board of directors to declare Medpoint in breach of its

1 management services contract with ANW and to terminate the
2 contract on that basis. This seems odd because ANW's board
3 allegedly is a captive entity appointed by Medpoint, so Medpoint
4 supposedly had the ability to control the ANW board and its
5 decisions. ANW and Medpoint then entered into a settlement
6 agreement pursuant to which each side apparently agreed to
7 release the other from any claims arising from the management
8 services contract. Downing was unable to identify what amount of
9 management fees Medpoint might have forfeited as a result of the
10 settlement agreement. Downing expressed more concern about
11 Medpoint's potential liability for mismanaging ANW's business.

12 Whereas Downing characterized ANW's termination of and
13 settlement with Medpoint as fixing Medpoint's problems, the
14 petitioning creditors saw these dual transactions differently.
15 The petitioning creditors asserted that the two transactions
16 amounted to a fraudulent transfer of Medpoint's crown jewel
17 asset: its management services contract with ANW. Bloom Master
18 Fund I, LLC, now apparently owned by Vartughian, ended up with a
19 potentially valuable management relationship with ANW.
20 Meanwhile, Medpoint ended up as a virtually empty shell with a
21 significant amount of debt owed to the petitioning creditors and
22 others. After the settlement with ANW, Medpoint's only assets
23 consisted of: (1) the property rights associated with the Bloom
24 name and trademark; (2) the agreement with Bloom Master Fund I,
25 LLC licensing the Bloom name and trademark for \$8,000 per month;
26 and (3) any claims arising from the termination by and settlement
27 agreement with ANW.

28 Shortly after the petitioning creditors filed the

1 involuntary petition, Medpoint filed an answer. In its answer,
2 Medpoint denied the allegation that it was not paying its debts
3 as they became due. Medpoint further alleged that many of the
4 claims it had not paid were the subject of bona fide dispute.

5 At the initial status conference held in November 2014, the
6 bankruptcy court set dates for a discovery deadline, for a
7 continued status conference and for trial on the merits of the
8 involuntary petition. By the time of the continued status
9 conference held on January 29, 2015, Medpoint had filed a motion
10 to dismiss the involuntary petition, and the petitioning
11 creditors had filed a response. Medpoint's dismissal motion
12 asserted that the bankruptcy court should dismiss the involuntary
13 petition because Medpoint's business involved illegal drugs.
14 Medpoint posited that the bankruptcy court could not and should
15 not supervise the administration of a debtor whose business was
16 so closely connected to the cultivation and sale of marijuana
17 because those activities were illegal under federal law.
18 Alternately, Medpoint argued that the petitioning creditors came
19 to the bankruptcy court with unclean hands because they all were
20 aware of the illegal nature of ANW's business and Medpoint's
21 connection to that business. Finally, Medpoint claimed that it
22 was entitled to damages under § 303(i) because the petitioning
23 creditor's actions were motivated by a bad faith desire to take
24 control of ANW's valuable medical marijuana certificate.

25 In response, petitioning creditors attempted to demonstrate
26 that Medpoint's business at the time the involuntary petition was
27 filed was not so connected to the medical marijuana industry as
28 to justify dismissal. They further pointed out that there was no

1 proof that any of the revenue that Medpoint generated came
2 directly from the growing or sale of marijuana.

3 At the January 29, 2015 status conference, the bankruptcy
4 court ruled that it would take off calendar the trial date. The
5 court decided it would reserve the merits of the involuntary
6 petition and the issue of bad faith and damages against the
7 petitioning creditors until after it ruled on the motion to
8 dismiss. Thereafter, whenever the parties touched upon the
9 merits of the involuntary petition or upon the bad faith/damages
10 issue, the bankruptcy court steered them back to the issues
11 addressed in the motion to dismiss. For instance, after the
12 petitioning creditors raised a disputed point pertaining to the
13 bad faith issue, the bankruptcy court responded as follows:

14 THE COURT: I think I can cut you off on this subject
15 because in my view that's a fact issue, and if I'm
16 going down that road we're trying the issue, not
17 resolving it today.

18 * * *

19 THE COURT: Bad faith is not generally something you're
20 resolving on a motion in any event.

21 Hr'g Tr. (Jan. 29, 2015) at 54:5-25.

22 Furthermore, the court assured the parties that they would
23 be given a future opportunity to present evidence on the merits
24 and on the damages issue - if necessary. The following
25 exemplifies the court's assurances:

26 THE COURT: It seems to me that unless there are
27 stipulated facts that demonstrate bad faith, bad faith
28 is generally a factual issue. And if I ultimately
conclude that I need a full blown hearing on bad faith,
I think it really has to be an evidentiary hearing.

Hr'g Tr. (March 4, 2015) at 68:5-9; see also Hr'g Tr. (Jan. 29,
2015) at 31:3-9, 64:3-17, 76:21-77:6.

1 After supplemental briefing and additional oral argument on
2 the illegality issues raised by the motion to dismiss, the
3 bankruptcy court took the matter under submission and ultimately
4 issued a seventeen-page ruling granting the motion to dismiss.
5 In essence, the bankruptcy court concluded that the risks
6 associated with the potential forfeiture of Medpoint's assets and
7 with the trustee's inevitable violation of the Controlled
8 Substances Act, 21 U.S.C. §§ 801, et seq., in the process of
9 administering Medpoint's assets, justified dismissal of the
10 involuntary petition under § 707(a). The court alternately
11 concluded that dismissal was appropriate because the petitioning
12 creditors who sought relief from the bankruptcy court all had
13 unclean hands, because they knew or should have known that
14 Medpoint's operations were illegal under federal law.

15 The bankruptcy court further ruled that Medpoint was not
16 entitled to fees, costs or damages under § 303(i). The court
17 discussed the fees and damages issues as a single topic. While
18 the title the court gave to that discussion was "No Bad Faith,"
19 the introductory paragraph of that discussion identified the
20 issue to be addressed as whether Medpoint should be awarded its
21 fees, costs and damages under § 303(i)(1) and (2). There is no
22 discussion of the fees, costs and damages issues anywhere else in
23 the court's order.

24 The court cited the seminal Ninth Circuit case on the
25 awarding of attorney's fees under § 303(i)(1), Higgins v. Vortex
26 Fishing Sys., Inc., 379 F.3d 701, 707 (9th Cir. 2004), which
27 requires bankruptcy courts to consider the totality of the
28 circumstances. The bankruptcy court further noted that, if it

1 found bad faith, it also could award actual and punitive damages
2 against the petitioning creditors under § 303(i)(2).

3 In reaching its decision to deny all fees, costs and
4 damages, the bankruptcy court predominantly focused on the issue
5 of bad faith. The court explained its reasoning as follows:

6 The viability of an involuntary chapter 7 petition
7 filed against a debtor on account of debts relating to
8 state-licensed medical marijuana operations is a novel
9 question of law in this District. The Court does not
10 find that Petitioning Creditors' acted unreasonably in
11 filing the Petition. The record shows that Medpoint is
12 not and cannot meet its ongoing financial obligations
13 to numerous creditors, in amount and number sufficient
14 to justify an involuntary petition under section
15 303(b). The record before this Court does not contain
16 facts to support a finding of Petitioning Creditors'
17 bad faith. As the Ninth Circuit BAP has noted, "[n]ot
18 every failed reason for filing an involuntary petition
19 amounts to 'bad faith.'" In re Macke Int'l Trade,
20 Inc., 370 B.R. 236, 257 (9th Cir. BAP 2007).
21 Petitioning Creditors' unclean hands do not equate to a
22 finding of their bad faith in this instance. Finding
23 no bad faith, there is no need for a hearing on damages
24 proximately caused by a filing that is not in bad
25 faith.

26 Order Granting Motion to Dismiss (April 6, 2015) at 14:9-20.

27 The bankruptcy court entered its dismissal order on April 6,
28 2015, and Medpoint timely filed its notice of appeal.

29 JURISDICTION

30 The bankruptcy court had jurisdiction under 28 U.S.C.
31 §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction under
32 28 U.S.C. § 158.

33 ISSUES

34 1. Did the bankruptcy court commit reversible error when it
35 declined to award any attorney's fees against the
36 petitioning creditors?

37 2. Did the bankruptcy court commit reversible error when it

1 determined that the petitioning creditors had not acted in
2 bad faith, so Medpoint could not recover punitive damages
3 against the petitioning creditors?

4 **STANDARDS OF REVIEW**

5 The bankruptcy court's denial of attorney's fees under
6 § 303(i)(1) is reviewed for an abuse of discretion. Higgins,
7 379 F.3d at 705. The bankruptcy court's decision not to hold an
8 evidentiary hearing also is reviewed for an abuse of discretion.
9 Gray v. Warfield (In re Gray), 523 B.R. 170, 172 (9th Cir. BAP
10 2014). The bankruptcy court abuses its discretion if it applies
11 an incorrect legal rule or its findings of fact are illogical,
12 implausible or without support in the record. United States v.
13 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

14 The bankruptcy court's finding regarding the absence of bad
15 faith is reviewed under the clearly erroneous standard. Wechsler
16 v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc),
17 370 B.R. 236, 245 (9th Cir. BAP 2007). The bankruptcy court's
18 finding of fact is not clearly erroneous unless it is illogical,
19 implausible or without support in the record. Retz v. Samson
20 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

21 **DISCUSSION**

22 Under § 303(i)(1), if an involuntary bankruptcy petition is
23 dismissed, the bankruptcy court may award attorney's fees and
24 costs against the petitioning creditors. Under § 303(i)(2), if
25 the petitioning creditors filed the petition in bad faith, the
26 court also may award actual and punitive damages.

27 **1. § 303(i)(1) Analysis**

28 Section 303(i)(1) sets forth two exceptions to the right to

1 request attorney's fees upon dismissal: when the debtor waives
2 the right to attorney fees or when all of the parties consent to
3 the dismissal. In re Macke Int'l Trade, Inc., 370 B.R. at 251.
4 We have refused to recognize additional exceptions and have, in
5 essence, held that, aside from the exceptions referenced above,
6 § 303(i) applies whenever an involuntary petition is dismissed,
7 regardless of the grounds for dismissal. Id. at 251-53.

8 While the awarding of fees under § 303(i)(1) always is
9 discretionary, id. at 252, the Ninth Circuit Court of Appeals has
10 articulated a number of guidelines that bankruptcy courts in this
11 circuit must follow in applying the statute. Bankruptcy courts
12 are required to consider the totality of the circumstances.
13 Higgins, 379 F.3d at 705. When relevant, the bankruptcy court's
14 consideration must include the following factors, among others:
15 "1) 'the merits of the involuntary petition,' 2) 'the role of any
16 improper conduct on the part of the alleged debtor,' 3) 'the
17 reasonableness of the actions taken by the petitioning
18 creditors,' and 4) 'the motivation and objectives behind filing
19 the petition.'" Id. at 707-08 (quoting In re Scrap Metal Buyers
20 of Tampa, Inc., 233 B.R. 162, 166 (Bankr. M.D. Fla. 1999)).
21 Accord, In re S. Cal. Sunbelt Developers, Inc., 608 F.3d 456,
22 462-63 (9th Cir. 2010).

23 While the Higgins court expressed the expectation that the
24 above-referenced factors would be "definitive in most cases," the
25 Higgins court also acknowledged that these factors are not meant
26 to be exhaustive and that the bankruptcy court could exercise its
27 discretion to consider other relevant factors. Higgins, 379 F.3d
28 at 708.

1 The Higgins court held that its adoption of the totality of
2 circumstances test did not abrogate the presumption that, upon
3 dismissal, the petitioning creditors should be held liable for
4 the fees the alleged debtor incurred in defending against the
5 involuntary petition. Higgins explained the reasoning behind the
6 presumption in the following manner:

7 Although we adopt the totality of the circumstances
8 test as the appropriate standard under § 303(i)(1), we
9 do not abandon the premise that any petitioning
10 creditor in an involuntary case should expect to pay
11 the debtor's attorney's fees and costs if the petition
12 is dismissed. . . . This [rebuttable] presumption
13 helps reinforce the idea that the filing of an
14 involuntary petition should not be lightly undertaken,
15 and will serve to discourage inappropriate and
16 frivolous filings. Filing an involuntary petition
17 should be a measure of last resort because even if the
18 petition is filed in good-faith, it can chill the
19 alleged debtor's credit and sources of supply, and
20 scare away his customers.

21 Id. at 707 (citations, ellipses and internal quotation marks
22 omitted).

23 As the Ninth Circuit subsequently clarified, once the
24 involuntary petition was dismissed, “[t]he burden was on [the
25 petitioning creditor] to rebut the presumption by establishing
26 that fees and costs were unwarranted under the totality of
27 circumstances.” Sofris v. Maple-Whitworth, Inc.
28 (In re Maple-Whitworth, Inc.), 556 F.3d 742, 746 (9th Cir. 2009);
see also Laxmi Jewel Inc. v. C&C Jewelry Mfg., Inc. (In re C&C
Jewelry Mfg., Inc.), 2001 WL 36340326 at *14 (Mem. Dec.) (9th
Cir. BAP Apr. 14, 2009) (“The presumption imposes on the
petitioning creditors the burden of presenting evidence to meet
the presumption, but it does not shift the burden of proof to the
petitioning creditors.”).

1 On appeal, there is no dispute between the parties that
2 binding Ninth Circuit precedent required the bankruptcy court to
3 apply the above-referenced standards in order to determine
4 Medpoint's entitlement to recover its fees and costs. Rather,
5 the parties disagree as to whether the court correctly applied
6 these standards.

7 Medpoint claims that the bankruptcy court did not make
8 findings indicating that it had considered the totality of the
9 circumstances and did not acknowledge or apply the presumption
10 that Medpoint was entitled to recover its attorney's fees. We
11 agree. In light of the procedural posture of the case, we are
12 convinced that the bankruptcy court could not have correctly
13 considered the totality of the circumstances or correctly applied
14 the requisite presumption because the parties never were given
15 the opportunity to fully develop the evidentiary record. The
16 bankruptcy court determined the fate of the involuntary petition
17 based solely on the illegality under federal law of the
18 cultivation and sale of marijuana and the risks arising from that
19 illegality if a chapter 7 trustee were to administer Medpoint's
20 bankruptcy estate. The court had before it the parties' papers
21 in support of and in opposition to the dismissal motion, which
22 included some evidence. The parties presented the court with a
23 number of contracts and other documents, including Downing's
24 declaration and the transcript from his deposition. While there
25 was some evidence in these papers that might have enabled the
26 court to make some inferences regarding the first Higgins factor
27 - whether Medpoint was paying its debts as they came due - we are
28 not persuaded that the court gave the parties sufficient

1 opportunity to present all of the relevant evidence on this
2 issue. To the contrary, the court made it clear at the
3 January 29, 2015 status conference and at the March 4, 2015
4 dismissal motion hearing that the merits of the involuntary
5 petition only would be tried if the petition survived Medpoint's
6 dismissal motion.

7 Additionally, the parties had no genuine opportunity to
8 present evidence addressing the fourth Higgins factor - regarding
9 the petitioning creditors' motivations and objectives in filing
10 the petition. This factor requires the bankruptcy court to infer
11 from the record the petitioning creditors' subjective state of
12 mind in filing the petition. Higgins, 379 F.3d at 707; see also
13 In re Macke Int'l Trade, Inc., 370 B.R. at 252-53 & nn. 13, 14
14 (reflecting on the purity of the petitioner's intentions and
15 motives). The bankruptcy court was ill-equipped to make a
16 finding regarding this factor given that the parties were
17 instructed more than once to focus exclusively on the illegality
18 issues raised in the dismissal motion. Obviously, some of the
19 evidence presented during the course of the dismissal motion
20 proceedings is relevant in determining the petitioning creditors'
21 state of mind, but the limited scope of the dismissal motion
22 proceedings doubtlessly kept the parties from presenting all of
23 the relevant evidence.

24 Citing Jaffe v. Wavelength, Inc. (In re Wavelength, Inc.),
25 61 B.R. 614, 620 (9th Cir. BAP 1986), the bankruptcy court here
26 applied an objective standard in the process of finding that the
27 petition was not filed in bad faith. Under our own precedent,
28 this was the appropriate standard for determining bad faith for

1 purposes of applying **§ 303(i)(2)**. Id.; see also In re Macke
2 Int'l Trade, Inc., 370 B.R. at 256-57 (following
3 In re Wavelength, Inc. regarding the objective standard of bad
4 faith). However, for purposes of **§ 303(i)(1)**, the Higgins
5 factors typically require the bankruptcy court to assess both the
6 petitioning creditors' objective reasonableness as well as their
7 subjective motives and intent. Higgins, 379 F.3d at 707. The
8 bankruptcy court, here, made no explicit finding regarding the
9 petitioning creditors' subjective motives and intent. We
10 sometimes can affirm in the absence of a required finding when
11 the record is fully developed and when it gives us a full
12 understanding of the controlling issues. See Jess v. Carey
13 (In re Jess), 169 F.3d 1204, 1208-09 (9th Cir. 1999); Swanson v.
14 Levy, 509 F.2d 859, 860-61 (9th Cir. 1975). But that is not the
15 case here. The record needs further development on the issue of
16 the petitioning creditors' subjective motives and intent.

17 We acknowledge that Higgins indicates that bankruptcy courts
18 ordinarily are not required to conduct a mini-trial on the
19 alleged debtor's entitlement to attorney's fees if the court
20 already has held a trial on the merits of the petition. Higgins,
21 379 F.3d at 707. Summary judgment or similar proceedings - where
22 each side is given the opportunity to present evidence on the
23 full range of relevant issues - also might sufficiently develop
24 the record to obviate the need for a subsequent evidentiary
25 hearing on the propriety of awarding attorney's fees. See, e.g.,
26 In re Macke Int'l Trade, Inc., 370 B.R. at 242 (in the context of
27 a motion to dismiss under § 305(a), both sides given opportunity
28 to file declarations and briefs on the full range of relevant

1 issues); In re C&C Jewelry Mfg., Inc., 2001 WL 36340326 at *3-4
2 (summary judgment proceedings held on the merits, followed by
3 separate motion for § 303(i) fees and damages addressing issue of
4 petitioning creditors' bad faith).

5 Nonetheless, given the specific procedural posture of this
6 case and given the unique factual circumstances presented, the
7 bankruptcy court could not have correctly considered the totality
8 of the circumstances without further development of the record.
9 Simply put, the bankruptcy court erred by not giving the parties
10 the opportunity to present evidence pertaining to the full range
11 of factors relevant to the application of § 303(i)(1).

12 **2. § 303(i)(2) Analysis**

13 For the same reason, we also conclude that the court did not
14 correctly apply § 303(i)(2). As set forth above, our precedent
15 requires the bad faith determination under § 303(i)(2) to focus
16 on the petitioning creditors' objective reasonableness. See
17 In re Macke Int'l Trade, Inc., 370 B.R. at 256-57;
18 In re Wavelength, Inc., 61 B.R. at 620. The bankruptcy court,
19 here, correctly referenced the objective reasonableness standard,
20 and made a handful of findings in support of its conclusion that
21 the petition was not filed in bad faith. The bankruptcy court
22 pointed out that the dispositive issue - the illegality under
23 federal law of Medpoint's business - was a novel question of law.
24 The court further inferred from the existing record that Medpoint
25 was unable to "meet its ongoing financial obligations to numerous
26 creditors, in amount and number sufficient to justify an
27 involuntary petition under section 303(b)." Order Granting
28 Motion to Dismiss (April 6, 2015) at 14:13-14.

1 proceedings.

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