

MAR 23 2018

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP Nos.	NC-17-1015-StaB
	)		NC-17-1034-StaB
LEONG PARTNERSHIP,	)		(related appeals)
	)		
Debtor.	)	Bk. No.	4:16-bk-42363
_____	)		
	)		
WARREN HAVENS,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
ARNOLD LEONG; UNITED STATES	)		
TRUSTEE,	)		
	)		
Appellees.	)		
_____	)		

Submitted Without Oral Argument  
on February 16, 2018

Filed - March 23, 2018

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

Honorable Charles D. Novack, Bankruptcy Judge, Presiding

Appearances: Appellant Warren Havens, pro se, on brief; Jeremy V. Richards and Miriam Manning of Pachulski Stang Ziehl & Jones LLP on brief for appellee Arnold Leong.

Before: SPRAKER, TAYLOR and BRAND, Bankruptcy Judges.

\* 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 Havens, for years, has repeatedly and consistently denied the  
2 existence of this oral agreement.

3 **A. The State Court Litigation Involving Leong and Havens.**

4 As a result of the Telesaurus dispute, in 2002 Leong filed a  
5 lawsuit in the Alameda County Superior Court against Havens and  
6 others (the, "Leong Action"). The Leong Action now includes as  
7 defendants Telesaurus and seven additional Havens-controlled  
8 companies that currently hold the disputed FCC licenses and  
9 additional, subsequently-purchased FCC licenses. The parties  
10 refer to these license holding entities as the pPNT companies.<sup>3</sup>  
11 Havens is the founder and majority interest holder of the pPNT  
12 companies.<sup>4</sup>

13 In 2005, the Alameda Superior Court ordered Leong and Havens  
14 to arbitrate. Ten years later, the arbitration still was  
15 pending, and Leong moved for appointment of a receiver in the  
16 Leong Action. In November 2015, the Alameda Superior Court  
17 appointed Susan Uecker to serve as the receiver of the pPNT  
18 companies and to take control from Havens of the companies'  
19 assets, including the FCC licenses. The Alameda Superior Court  
20 appointed a receiver in large part because of Havens'  
21 recalcitrant conduct in proceedings before the FCC. This conduct  
22 is described in an April 2015 FCC administrative law judge's  
23 order calling into question Havens' qualifications to hold the  
24 FCC licenses, which in turn placed the the licenses at risk of

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25  
26 <sup>3</sup> The term "pPNT" refers to precise Position, Navigation and  
Timing.

27  
28 <sup>4</sup> Havens is the sole member of one of the pPNT companies,  
the Skybridge Spectrum Foundation.

1 extinguishment.

2 Many of Havens' actions since November 2015 have been aimed  
3 at resisting Uecker's receivership efforts. For example, Havens  
4 filed both a motion to terminate the receivership and a notice of  
5 appeal from the receivership order in the Leong Action. Havens  
6 also commenced a voluntary bankruptcy case in Delaware on behalf  
7 of one of the pPNT companies, Skybridge Spectrum Foundation. The  
8 Delaware bankruptcy court dismissed that case, finding that it  
9 was filed in violation of the Alameda Superior Court's  
10 receivership order.

11 **B. The Involuntary Petition Filing Against the Leong Partnership.**

12 Shortly after the Delaware bankruptcy court dismissed the  
13 Skybridge bankruptcy case, Havens filed an involuntary chapter 11  
14 petition against an entity called the Leong Partnership. The  
15 involuntary petition was based on the premise that, by way of the  
16 receivership, Leong and his "partners," effectively sought to,  
17 and did, take control of the pPNT Companies and their FCC license  
18 assets. Havens stated that he filed the involuntary petition to  
19 address and remediate the deleterious effects of the receivership  
20 and take control back from this alleged partnership.

21 **1. The Alleged Partners of the Leong Partnership.**

22 In the petition, Havens identified the partners in the Leong  
23 Partnership as Leong and two other individuals with similarly  
24 lengthy litigation histories with Havens: Mark Griffith and  
25 Channing Jones. In 2012, Mark Griffith filed a separate lawsuit  
26 against Havens, also in Alameda Superior Court, to recover  
27 compensation from Havens and the pPNT companies. There is an  
28 email string reflecting that, in December 2013 and January 2014,

1 Griffiths and Leong attempted to coordinate some of their  
2 litigation efforts against Havens. However, shortly thereafter,  
3 Griffith entered into a settlement agreement with Havens that  
4 supposedly fully resolved their dispute. The settlement included  
5 a broad release of Griffith's claims against Havens. Havens  
6 contends that Griffith breached the settlement agreement by,  
7 among other things, not producing certain documents relating to  
8 Havens' dispute with Leong. On May 13, 2015, Havens and the pPNT  
9 companies sued Griffith, asserting various breach of contract and  
10 tort claims related to the alleged breach of that settlement  
11 agreement.

12 Channing Jones also sued Havens regarding investments he  
13 made in Havens-controlled companies. Jones, in addition,  
14 initiated arbitration proceedings against Havens based on the  
15 \$1.3 million in funds he invested to enable Havens to purchase  
16 FCC licenses. According to Jones, at least a portion of these  
17 funds were used to purchase licenses that ended up as assets of  
18 the pPNT Companies.

19 In his arbitration proceeding, commenced in 2012, Jones  
20 advocated for the consolidation of his arbitration with the Leong  
21 arbitration. In a letter dated March 9, 2012, to the arbitrator  
22 in support of consolidation of his arbitration with Leong's  
23 arbitration, Jones claimed that his transactions with Havens were  
24 "closely related . . . both factually and legally to Leong's  
25 transactions with Havens." The letter describes Jones'  
26 relationship with Havens to be "like Mr. Leong, . . . a long-time  
27 co-venturer with Mr. Havens." As one example of this  
28 interrelationship, Jones asserted that, in 1990, he and Leong

1 were both "partners" of Havens in a venture called SunCom  
2 Communications. Notably though, SunCom Communications is not one  
3 of the pPNT Companies, and was not a named party in any of  
4 Leong's litigation with Havens.

5 Again relying on the March 2012 letter, Havens points out  
6 that Jones described both his and Leong's entitlement to  
7 ownership interests in the pPNT Companies as "interlocking."  
8 However, a closer inspection reveals that Jones' reference to  
9 interlocking interests simply meant that both he and Leong  
10 claimed ownership interests in some of the pPNT Companies. Jones  
11 maintained that it would be difficult to untangle those interests  
12 because Havens had created a maze of entities and transactions to  
13 intentionally obfuscate the ownership entitlements of his  
14 investors.

15 Similar to Griffith, Jones settled his litigation against  
16 Havens by no later than December 2013, as reflected by Jones'  
17 voluntary dismissal with prejudice of his state court lawsuit  
18 against Havens, well before the Alameda Superior Court appointed  
19 the receiver in the Leong Action.

20 **2. The Petitioning Creditors and the Claims Asserted**  
21 **against the Leong Partnership.**

22 The involuntary petition was signed by Havens and two  
23 related creditors. Havens asserted two different types of claims  
24 against the Leong Partnership: a salary and rent claim in an  
25 amount exceeding \$460,000, and an unspecified tort claim in an  
26 amount exceeding \$100 million. Havens maintained that some of  
27 the pPNT Companies owed him for salary and rent, but he did not  
28 explain how the so-called Leong Partnership became liable for

1 obligations incurred by different entities (that Havens had  
2 controlled). He only stated that this liability flowed to the  
3 Leong Partnership because it assumed de facto ownership and  
4 control of the pPNT Companies when the receiver was appointed.  
5 With respect to the \$100 million tort claim, Havens indicated  
6 that the claim arose from the value of his equity and control  
7 interests in the pPNT Companies, which interests he asserts the  
8 Leong Partnership now possesses, de facto, as a result of the  
9 appointment of the receiver.

10 One of the other two petitioning creditors was Polaris PNT  
11 PBC, a Delaware Public Benefit Corporation formed in July 2016,  
12 which Havens controls. Polaris' alleged claim against the Leong  
13 Partnership resulted from Havens' assignment of \$100,000 of his  
14 personal claims to Polaris.<sup>5</sup>

15 The third petitioning creditor was Skybridge Spectrum  
16 Foundation, the pPNT entity that Havens had placed into  
17 bankruptcy in Delaware. Skybridge's claims against the Leong  
18 Partnership were also the result of Havens' assignment of his  
19 personal claims. Havens later withdrew Skybridge as a  
20 petitioning creditor, presumably because the injunctive relief  
21 contained in the receivership order prohibited Havens from acting  
22 on behalf of Skybridge.<sup>6</sup>

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24 <sup>5</sup> Because of the derivative nature of Polaris' claim against  
25 Leong, for ease of reference, all future references herein to  
Havens' claim also are meant to refer to Polaris' claim.

26 <sup>6</sup> The withdrawal of Skybridge calls into question the  
27 sufficiency of the involuntary petition as three creditors are  
28 required to commence an involuntary petition unless there are

(continued...)

1 **C. The Motion for Summary Judgment.**

2 After an unsuccessful attempt to obtain dismissal of the  
3 involuntary petition, Leong filed a summary judgment motion. To  
4 support his summary judgment motion, Leong relied on the  
5 restriction in § 303(b) limiting the filing of involuntary  
6 petitions to only those creditors whose claims are “not . . . the  
7 subject of a bona fide dispute as to liability or amount.” Leong  
8 asserted that the claims of the petitioning creditors were the  
9 subject of bona fide dispute for a number of reasons. First,  
10 there was little or no evidence that the Leong Partnership  
11 actually existed. Second, there was no evidence that the Leong  
12 Partnership had incurred any salary or rent obligations, which  
13 actually were disputed liabilities allegedly owed by some of the  
14 pPNT Companies that Havens had controlled. Leong pointed out  
15 that the documents on which Havens relied to support the  
16 existence of the salary and rent claim identified some of the  
17 pPNT Companies as the obligors and not the Leong Partnership.

18 Similarly, Leong noted that Havens’ \$100 million tort claim  
19 supposedly was based on the Leong Partnership’s alleged “de  
20 facto” control of the pPNT Companies. Leong argued that Havens  
21 could only demonstrate that Leong had been successful in  
22 convincing the Alameda Superior Court to appoint a receiver in  
23 the Leong Action. The stated purpose of the receivership is to  
24 preserve the value of the FCC license assets of the pPNT

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25  
26 <sup>6</sup>(...continued)  
27 fewer than 12 qualifying creditors. §§ 303(b)(1) and (2).  
28 However, the parties have not addressed this issue on appeal. We  
need not address the issue as it would not affect the disposition  
of the case.

1 companies and not to transfer control to Leong (or anyone else).

2 To support his summary judgment motion, Leong submitted many  
3 of the same documents Havens had referenced in and relied upon in  
4 his attachments to the involuntary petition, but Leong posited  
5 much different explanations regarding the significance and  
6 meaning of these documents. Leong contended that the documents  
7 evidenced nothing more than a hotly-contested dispute over the  
8 respective ownership and control interests in the FCC licenses  
9 and the pPNT Companies. Both Leong and Griffith submitted  
10 declarations in which they denied the existence of the Leong  
11 Partnership or having heard of any such entity until after Havens  
12 filed the involuntary petition. Both Leong and Griffith further  
13 maintained that they never acted in any concerted fashion that  
14 could have resulted in the formation of a partnership, either  
15 express or implied.

16 Though Havens filed the involuntary petition in pro per, he  
17 retained counsel to file an opposition to the summary judgment  
18 motion. Havens insisted that additional time for discovery was  
19 necessary to "confirm the existence of the 'Leong Partnership'"  
20 and to obtain evidence "directly relevant to the validity of the  
21 Petitioning Creditors' claims." Opposition to Motion for Summary  
22 Judgment (Dec. 2, 2016) at 4:5-6, 4:11.

23 Havens contended that, based on the admissible evidence, the  
24 bankruptcy court could not possibly conclude either that the  
25 Leong Partnership did not exist or that his claims were invalid.  
26 Havens further contended that the conduct of Leong, Jones and  
27 Griffith established an "actual partnership" or a "partnership by  
28 estoppel." Yet, Havens provided no legal authority to support

1 these arguments. Rather, he asserted that the Leong  
2 Partnership's liability for his claims flowed from the  
3 appointment of the receiver and the effective control the  
4 receivership gave Leong over the pPNT Companies. In addition, in  
5 his supplemental declaration, he maintained that, under tax law,  
6 the type of control that the Leong Partnership allegedly obtained  
7 could result in pass-through tax liability.

8 At the hearing on the summary judgment motion, the court  
9 heard the parties' oral argument and took the matter under  
10 submission. The court also ruled on Havens' evidentiary  
11 objections, overruling most of them.

12 The bankruptcy court entered its order granting the motion  
13 for summary judgment on December 29, 2016. In the order, the  
14 bankruptcy court gave a detailed recitation of the uncontroverted  
15 facts in the record and carefully analyzed why, in light of those  
16 facts, Leong was entitled to summary judgment. In essence, the  
17 court held that none of the statements Havens relied upon  
18 necessarily suggested any recent concerted effort by Leong, Jones  
19 and Griffith against Havens.

20 As for Havens' claims, the bankruptcy court determined based  
21 on the uncontroverted facts that both claims were subject to  
22 bona fide dispute. The bankruptcy court particularly was  
23 concerned regarding Havens' assertion that the Leong Partnership  
24 was liable for Havens' \$468,000 salary and rent claim because of  
25 its de facto control over the pPNT Companies. As the bankruptcy  
26 court noted, there was no evidence of such de facto control. To  
27 the contrary, it was uncontroverted that the state court receiver  
28 was in control of the pPNT Companies. Furthermore, Havens failed

1 to present any viable legal theory how the Leong Partnership's  
2 alleged control would cause the liability for the salary and rent  
3 claim to flow from the pPNT Companies to the Leong Partnership.

4 The bankruptcy court further held that Havens' unliquidated  
5 \$100 million tort claim suffered from the same types of defects.  
6 Like the salary and rent claim, the tort claim was founded on the  
7 unsupported allegation that the Leong Partnership had taken over  
8 de facto control of the pPNT Companies. Additionally, Havens'  
9 summary judgment opposition papers were bereft of any legal  
10 explanation as to what type of tort could have arisen from the  
11 alleged de facto control.

12 The court entered summary judgment dismissing the  
13 involuntary petition on January 18, 2017. Havens timely appealed  
14 the order granting the motion for summary judgment (NC-17-1015)  
15 and the summary judgment of dismissal (NC-17-1034).<sup>7</sup>

#### 16 JURISDICTION

17 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
18 §§ 1334 and 157(b)(2)(A) and (O). See Marciano v. Fahs (In re  
19 Marciano), 459 B.R. 27, 34 (9th Cir. BAP 2011), aff'd, 708 F.3d  
20 1123 (9th Cir. 2013). We have jurisdiction under 28 U.S.C.  
21 § 158.

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23 <sup>7</sup> Several months after the bankruptcy court entered its  
24 summary judgment of dismissal, the bankruptcy granted Leong's  
25 motion to recover attorneys' fees and costs under § 303(i) and  
26 entered judgment against Havens and Polaris, jointly and  
27 severally, for \$262,070.50 in fees and \$562.60 in costs. Havens  
28 timely appealed the fee order, but the fee order appeal is not  
before this Panel; Havens elected to have his fee order appeal  
heard by the United States District Court for the Northern  
District of California.



1 those alleged to be general partners of that partnership. That  
2 is why alleged partners historically have been permitted to  
3 oppose such petitions. See Advisory Committee Note accompanying  
4 Rule 1011 (noting possible consequences to alleged general  
5 partners and citing cases); Kennedy, Partnerships and Partners  
6 Under the Bankruptcy Reform Act and the New (Proposed) Rules, 27  
7 St. Louis U.L.J. 507, 553-55 & n.239 (1983). As for  
8 redressability, successfully opposing the involuntary petition  
9 would remedy the potential impact of the petition by preventing  
10 the entry of the order for relief.

11 Havens has not seriously challenged Leong's constitutional  
12 standing. Instead, Havens construes Rule 1011(a) as excluding  
13 alleged partners from standing to contest an involuntary petition  
14 against a partnership.<sup>8</sup> Rule 1011(a) specifically permits  
15 alleged partners to oppose an involuntary petition against a  
16 partnership, but the reference within that rule is directed  
17 towards involuntary petitions filed against a partnership under  
18 Rule 1004.<sup>9</sup> Havens argues that this is problematic because Rule

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19  
20 <sup>8</sup> Havens first raised his Rule-based standing argument in a  
21 motion he filed in the bankruptcy court requesting entry of the  
22 order for relief. Havens maintained that, because Leong lacked  
23 standing, the involuntary petition against the Leong Partnership  
24 effectively was unopposed, so an order for relief should have  
25 been immediately entered under § 303(h). Havens' standing  
26 argument appears to be derived from the concept of statutory  
27 standing. Statutory standing is a prudential, nonjurisdictional  
28 variant of the standing doctrine. In re Godon, Inc., 275 B.R.  
555, 564 (Bankr. E.D. Cal. 2002).

<sup>9</sup> Rule 1011(a) provides:

**(a) Who may contest petition**

(continued...)

1 1004, which governs involuntary petitions against partnerships,  
2 references only § 303(b)(3), the statutory provision governing  
3 involuntary petitions against partnerships filed by fewer than  
4 all of the partners of that partnership.<sup>10</sup> Havens points out  
5 that he filed his involuntary petition under § 303(b)(2) as an  
6 alleged creditor of the Leong Partnership. Neither Rule 1011(a),  
7 nor Rule 1004, specifically address who may defend an involuntary  
8 petition filed against a partnership by creditors under  
9 § 303(b)(2).

10 Havens argues that the reference in Rule 1011(a) to alleged  
11 partners applies only in those involuntary bankruptcy cases  
12 commenced by the partnership itself. As a consequence of Rules  
13 1011(a) and 1004, he argues that an alleged partner lacks  
14 standing to contest an involuntary petition commenced by  
15 creditors. Havens' restrictive reading of Rule 1011(a)

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17 <sup>9</sup>(...continued)

18 The debtor named in an involuntary petition may contest  
19 the petition. In the case of a petition against a  
20 partnership under Rule 1004, a nonpetitioning general  
21 partner, or a person who is alleged to be a general  
22 partner but denies the allegation, may contest the  
23 petition.

24 <sup>10</sup> Rule 1004 specifically applies to involuntary petitions  
25 but references only those petitions filed under § 303(b)(3) by a  
26 petitioning partner:

27 After filing of an involuntary petition under  
28 § 303(b)(3) of the Code, (1) the petitioning partners  
or other petitioners shall promptly send to or serve on  
each general partner who is not a petitioner a copy of  
the petition; and (2) the clerk shall promptly issue a  
summons for service on each general partner who is not  
a petitioner. Rule 1010 applies to the form and  
service of the summons.

1 completely ignores § 303(d), which provides:

2 (d) The debtor, or a general partner in a partnership  
3 debtor that did not join in the petition, may file an  
4 answer to a petition under this section.

4 Havens identified Leong as a general partner of the Leong  
5 Partnership. Pursuant to Rule 1004, Havens obtained and served  
6 summonses upon each of the general partners, including Leong.  
7 Having been named by the petitioning creditors as a general  
8 partner in the involuntary petition and issued a summons, Leong  
9 clearly had standing to defend against the petition under  
10 § 303(d).<sup>11</sup> That his defense to the involuntary petition  
11 included denial of the partnership is irrelevant to his standing  
12 to assert that defense given the petition. To hold otherwise  
13 would be to deny Leong due process.<sup>12</sup> To the extent that his

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15 <sup>11</sup> Under prior law, individuals alleged to be partners were  
16 permitted to oppose the involuntary petition against the  
17 partnership even if they denied the allegation that they were  
18 partners and regardless of whether the involuntary petition was  
19 filed by creditors or by another partner. See Former Bankruptcy  
20 Rule 112; Kennedy, supra, at 554 & n.239. In short, when  
21 Congress enacted § 303(d), it was not writing on a clean slate.  
22 As a rule of statutory construction, we typically presume that  
23 Congress did not intend to change existing pre-Code bankruptcy  
24 practice unless the Code or the legislative history makes that  
25 intent to change clear. Dewsnup v. Timm, 502 U.S. 410, 419  
26 (1992); Kelly v. Robinson, 479 U.S. 36, 47 (1986).

22 <sup>12</sup> The Fifth Amendment provides: "No person shall be  
23 deprived of life, liberty, or property, without due process of  
24 law." U.S. Const. amend. V. "The fundamental requirement of due  
25 process is the opportunity to be heard 'at a meaningful time and  
26 in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333  
27 (1976). If we were to interpret § 303(d) to exclude Leong  
28 because he challenges the underlying partnership we would  
effectively foreclose any challenge to the involuntary petition.  
Under the doctrine of constitutional avoidance, when faced with  
two competing plausible interpretations of a statute, we

(continued...)

1 standing conflicts with Rule 1011(a), which we believe it does  
2 not, it is well established that “any conflict between the  
3 Bankruptcy Code and the Bankruptcy Rules must be settled in favor  
4 of the Code.” Am. Law Ctr. PC v. Stanley (In re Jastrem),  
5 253 F.3d 438, 441-42 (9th Cir. 2001).

6 **B. The Bankruptcy Court’s Summary Judgment Ruling.**

7 Having concluded that Leong had standing, we review the  
8 bankruptcy court’s summary judgment dismissing the involuntary  
9 petition. Under § 303(b)(1) and (2), only certain creditors may  
10 file an involuntary petition against an alleged debtor. To be  
11 qualified to file the involuntary petition, the creditors must,  
12 among other things, hold a claim that is not subject to bona fide  
13 dispute. Liberty Tool & Mfg. v. Vortex Fishing Sys., Inc. (In re  
14 Vortex Fishing Sys., Inc.), 277 F.3d 1057, 1064 (9th Cir. 2001).  
15 More specifically, the statute provides that the claims of each  
16 petitioning creditor must be neither contingent as to liability  
17 nor subject to “bona fide dispute as to liability or amount.”  
18 § 303(b)(1).

19 Whether a bona fide dispute exists is a question of fact,  
20 and “[t]he burden is on the petitioning creditors to show that no  
21 bona fide dispute exists.” In re Vortex Fishing Sys., Inc.,  
22 277 F.3d at 1064 (citing Rubin V. Belo Broad. Corp. (In re  
23 Rubin), 769 F.2d 611, 615 (9th Cir. 1985)). A claim is subject  
24 to “bona fide dispute” if “there is an objective basis for either  
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26 <sup>12</sup> (...continued)  
27 generally must presume that Congress did not intend the  
28 interpretation that would raise serious constitutional doubts.  
Clark v. Martinez, 543 U.S. 371, 380-82 (2005).

1 a factual or a legal dispute as to the validity of the debt.”  
2 Id. (citation omitted). Put another way, “if there is either a  
3 genuine issue of material fact that bears upon the debtor's  
4 liability, or a meritorious contention as to the application of  
5 law to undisputed facts, then the petition must be dismissed.”  
6 Id. (citation omitted).

7 Summary judgment required Leong to establish that there was  
8 no genuine dispute that Havens' claims were disputed.<sup>13</sup> For  
9 summary judgment purposes, an issue is genuine only if the trier  
10 of fact could find in favor of the non-moving party. Far Out  
11 Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir. 2001). Thus,  
12 Leong was entitled to summary judgment if no reasonable trier of  
13 fact could have found, on the record presented, that Havens'  
14 claims were beyond bona fide dispute. When, as here, the non-  
15 moving party would bear the burden of proof at trial to establish  
16 an essential element of his or her case, the moving party can  
17 meet his or her summary judgment burden by pointing to the  
18 absence of evidence to support an essential element of the non-  
19 moving party's claim. See Celotex Corp. v. Catrett, 477 U.S.  
20 317, 323-25 (1986).

21 Havens' contention that the Leong Partnership took control  
22 of the pPNT companies and thereby assumed liability for Havens'  
23 rent and salary claim against the pPNT companies was not  
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25 <sup>13</sup> Applying the standard for summary judgment is somewhat  
26 confusing in this contest: Leong was required to prove that there  
27 was no genuine dispute that Haven's claims were subject to a bona  
28 fide dispute, which required evidence that there was a genuine  
issue of material fact as to the partnership's liability or  
damages.

1 supported by any evidence or any concrete legal theory. Indeed,  
2 it is contradicted by the state court receivership. There is  
3 simply nothing to support the contention that the Leong  
4 Partnership owed Havens rent and salary. While Havens argues  
5 that the bankruptcy court erroneously determined that the Leong  
6 Partnership did not owe him rent and salary, he misstates the  
7 question. The bankruptcy court did not decide that there were no  
8 claims against the Leong Partnership for rent or salary, only  
9 that there was no genuine dispute that such claims were the  
10 subject of a bona fide dispute and could not support the  
11 involuntary petition. The record amply supports this  
12 determination.

13 The same is true regarding Havens' tort claims, which remain  
14 unliquidated. This alone precluded Havens from using them to  
15 support an involuntary petition. Moreover, Havens failed to  
16 identify the specific conduct qualifying as tortious or the  
17 particular types of torts that allegedly occurred.

18 Given the absence of any evidence to suggest that the Leong  
19 Partnership was liable to Havens for rent and salary, or for any  
20 tort, the bankruptcy court correctly ruled that Havens failed to  
21 establish a genuine issue that his claims were beyond bona fide  
22 dispute. See Celotex Corp., 477 U.S. at 323-25. Havens contends  
23 that the bankruptcy court ignored his evidence, incorrectly  
24 determined that his claims were invalid, and improperly  
25 relinquished its jurisdiction in favor of proceedings in the  
26 Alameda Superior Court. Havens' arguments betray a fundamental  
27 misunderstanding of the controlling issue concerning the  
28 existence of a bona fide dispute. The bankruptcy court granted

1 summary judgment because Leong was able to point to viable  
2 factual and legal issues calling into question the validity and  
3 existence of Havens' claims. This negated an element essential  
4 to Havens' involuntary petition: the absence of a bona fide  
5 dispute as to the claims of the petitioning creditors.  
6 Consequently, all of the above-referenced arguments, which Havens  
7 characterizes as demonstrating reversible error, actually  
8 demonstrate no error at all.

9 **C. Existence of the Leong Partnership.**

10 The parties and the bankruptcy court invested much time and  
11 effort addressing the existence of the Leong Partnership.  
12 Because Havens' claims were subject to bona fide dispute, our  
13 analysis of the existence of the partnership is not essential to  
14 our resolution of this appeal. Even so, we note our agreement  
15 with the bankruptcy court's assessment of the partnership issue.  
16 The litigant statements that Havens relied upon to fashion the  
17 existence of the Leong Partnership were, themselves, equivocal at  
18 best. But, this is exactly the point; the very equivocal nature  
19 of the evidence Havens presented demonstrated the existence of a  
20 bona fide dispute as to the existence of the partnership and, by  
21 extension, the existence of any claims against such entity.

22 Havens claims that the bankruptcy court used too narrow a  
23 definition of partnership and only considered the absence of a  
24 formal written partnership agreement. We disagree. The  
25 bankruptcy court acknowledged that a partnership can arise solely  
26 from the conduct of the parties. Conduct that would lead a  
27 reasonable person to believe that a partnership has been formed  
28 is a foundational requirement for both of Havens' alternate

1 partnership theories - actual partnership and partnership by  
2 estoppel. See In re Lona, 393 B.R. 1, 14-17 (Bankr. N.D. Cal.  
3 2008) (summarizing and applying Cal. partnership law).<sup>14</sup>

4 Here, the paucity of evidence of conduct that reasonably  
5 could have led a third party to believe that the Leong  
6 Partnership had been formed afforded Leong with an objective  
7 factual basis for disputing the existence of the Leong  
8 Partnership. This, in turn, was sufficient to support the  
9 bankruptcy court's determination that the existence of the Leong  
10 Partnership was subject to bona fide dispute.<sup>15</sup>

11 **D. Havens' Other Arguments.**

12 Havens makes three additional arguments on appeal that  
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14 <sup>14</sup> In the bankruptcy court, Havens argued that Delaware law  
15 should be used to determine the partnership issue. The  
16 bankruptcy court disagreed and instead applied California law  
17 given that two of the three alleged general partners resided in  
18 California and the events allegedly leading to the supposed  
19 formation of the Leong Partnership mostly occurred in California.  
20 Havens has not challenged on appeal the bankruptcy court's choice  
21 of law determination, so we also have applied California  
22 partnership law.

23 <sup>15</sup> Under the doctrine of ostensible partnership or  
24 partnership by estoppel, an individual can be estopped from  
25 denying that they are a partner of a partnership if, by their  
26 words or conduct, they held themselves out to be a partner of  
27 that partnership or consented to being represented as such by  
28 others. See Cal. Corp. Code § 16308(a); Armato v. Baden, 71 Cal.  
App. 4th 885, 898 (1999). The statute and case law indicate that  
this doctrine is a means of imposing partnership liability on one  
or more persons when a formal partnership might not, in fact,  
have existed. See J & J Builders Supply v. Caffin, 248 Cal. App.  
2d 292, 297-98 (1967). It is far from clear that this doctrine  
is sufficient to support the existence of a partnership for  
purposes of filing an involuntary partnership petition under the  
Code. In light of our resolution of this appeal, we do not need  
to reach this issue.

1 perhaps exist independently of the controlling bona fide dispute  
2 question. Havens, first, argues that the bankruptcy court should  
3 have dismissed the involuntary petition pursuant to § 303(j)(1)  
4 based on a notice of voluntary dismissal he filed in December  
5 2014, shortly before the bankruptcy court entered its order  
6 granting Leong's motion for summary judgment. Section 303(j)  
7 sets forth the requirements for obtaining a voluntary dismissal  
8 of an involuntary petition. Because Havens' notice of voluntary  
9 dismissal patently contravened § 303(j)'s requirements, the  
10 bankruptcy court's refusal to dismiss the petition under § 303(j)  
11 was not reversible error. See generally 2-303 Collier on  
12 Bankruptcy ¶ 303.34 (16th ed. 2017).

13 Havens next argues that the bankruptcy court committed  
14 reversible error when it erroneously commented in its post-  
15 judgment order granting Leong's § 303(i) fee motion that Jones  
16 specifically denied the existence of the Leong Partnership.  
17 While Leong and Griffith submitted declarations denying the  
18 existence of the partnership, Jones did not. The bankruptcy  
19 court's apparent mistake regarding the Jones denial was part of  
20 an order entered several months after entry of the summary  
21 judgment dismissing the involuntary petition. As such, it is not  
22 entitled to any bearing in our review of the summary judgment  
23 ruling. See Castro v. Terhune, 712 F.3d 1304, 1316 n.5 (9th Cir.  
24 2013). The fee appeal is not before the Panel; furthermore,  
25 there is no indication in the record that the bankruptcy court  
26 was suffering from a similar misapprehension at the time it  
27 entered summary judgment or that such a misapprehension, if it  
28 existed at that time, would have materially altered the

1 bankruptcy court's bona fide dispute determination. Indeed, such  
2 statement has no bearing on the bona fide dispute of the  
3 underlying claims themselves.

4 Havens' third argument concerns the denial of his request  
5 that the summary judgment motion be continued or denied so that  
6 he could have a lengthier opportunity to conduct further  
7 discovery. Nothing in Havens' opposition papers explained:  
8 (1) what specific facts he expected to obtain through further  
9 discovery; (2) how those facts would have helped him establish a  
10 genuine issue of material fact regarding the bona fide dispute  
11 issue; or (3) why he was unable to obtain the same information  
12 during the years of litigation between him and Leong preceding  
13 the filing of the involuntary petition. Without such  
14 explanations, Havens was not entitled to a continuance or denial  
15 of the summary judgment motion. See Moss v. U.S. Secret Serv.,  
16 572 F.3d 962, 966 n.3 (9th Cir. 2009); see also 14-C Rutter Group  
17 Prac. Guide Fed. Civ. Pro. Before Trial ¶ 14:114 (listing and  
18 explaining full requirements for obtaining postponement or denial  
19 of a summary judgment motion based on alleged need for further  
20 discovery).<sup>16</sup>

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23 <sup>16</sup> It is unclear whether Havens meant to challenge on appeal  
24 the bankruptcy court's overruling of his evidentiary objections  
25 to the declarations of Leong and Griffith. Havens has not  
26 brought to our attention any particular error in the bankruptcy  
27 court's evidentiary rulings. Even if there were such error, it  
28 could not have prejudiced Havens' rights. On this record, we are  
convinced that the evidentiary rulings did not affect the outcome  
of the summary judgment motion. See Orr v. Bank of America,  
285 F.3d 764, 773 (9th Cir. 2002). Any such evidentiary error  
was not reversible error. See id.

1 **CONCLUSION**

2 For the reasons set forth above, we AFFIRM the bankruptcy  
3 court's summary judgment dismissing Havens' involuntary petition  
4 against the Leong Partnership.<sup>17</sup>

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24 <sup>17</sup> On February 7, 2018, Havens filed a motion to supplement  
25 his briefs, and to suspend this appeal pending the outcome of  
26 other litigation, as well as a request for judicial notice. All  
27 relief Havens sought by way of his motion is ORDERED DENIED.  
28 None of the issues Havens discusses in his motion are relevant to  
our analysis and resolution of this appeal, or to the dispositive  
issue in this appeal: the fact that Havens' claims against the  
Leong Partnership are subject to bona fide dispute.