

JUL 30 2007

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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NOT FOR PUBLICATION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. NV-06-1354-ESD
SAXTON, INC.,)
Debtor.) Bk. No. 01-23232
Ref. No. 06-20

JAMES C. SAXTON; MICHELE)
SAXTON; JAMES C. SAXTON, II;)
LEE-ANN BURGESS; MICHELE PORI,)
Appellants,)

v.)

MEMORANDUM¹

JAMES F. LISOWSKI,)
CHAPTER 7 TRUSTEE,)
Appellee.)

Argued and submitted on May 17, 2007
at Las Vegas, Nevada

Filed - July 30, 2007

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

Honorable Linda B. Riegler, Bankruptcy Judge, Presiding

Before: EFREMSKY,² SMITH AND DUNN, Bankruptcy Judges.

¹This 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.

²Hon. Roger L. Efremsky, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

1 Five insider employees and officers (collectively,
2 "Claimants")³ of Saxton, Inc. (the "Debtor") appeal the
3 bankruptcy court's Order Denying Application for the Approval of
4 Chapter 11 Administrative Claims Pursuant to 11 U.S.C. § 503(b)
5 (the "Order"). For the reasons set forth below, we AFFIRM.

6 **I. FACTS**

7 A. Background Regarding the Case

8 The Debtor was a real estate developer. In December 2001,
9 certain creditors filed an involuntary chapter 7⁴ case against
10 the Debtor. In May 2002, the case was converted to a chapter 11
11 case. In December 2004, the court reconverted the case to one
12 under chapter 7, and James F. Lisowski became the chapter 7
13 trustee.

14 In February 2005, the Trustee sued Claimants, alleging,
15 inter alia, fraud and breach of fiduciary duty arising from their
16 activities during the time period they ran the business of the
17
18

19 ³According to the chapter 7 trustee (the "Trustee"), the
20 Debtor's statement of financial affairs identifies James Saxton
21 as the president, CEO and treasurer; James Saxton, II as the vice
22 president for construction; Lee-Ann Burgess as the controller;
23 Michelle Pori as the executive vice president and secretary.
Michelle Saxton was apparently not given a title but appears from
her Affidavit to have had many administrative roles with the
Debtor.

24 ⁴Unless otherwise indicated, all chapter, section, and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036 as
27 enacted and promulgated prior to the effective date of most of
the provisions of the Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"),
28 since the case from which this appeal arises was filed before the
BAPCPA effective date (generally October 17, 2005).

1 Debtor in possession (the "Adversary Proceeding").⁵

2 B. The History of the Application

3 On May 5, 2005, Claimants timely filed their Application for
4 the Approval of Chapter 11 Administrative Claims (the
5 "Application") seeking approval of \$289,851.81 in deferred
6 salaries as an administrative expense. The Application was first
7 set for hearing on June 9, 2005. According to Claimants, the
8 matter was taken off calendar at that time with instructions from
9 the court that it could be renewed at a later point.

10 In May 2006, Claimants re-noticed the Application for a
11 hearing on June 14, 2006. On May 30, 2006, the Trustee filed an
12 Opposition to the Application. The court apparently did not
13 consider the merits of the Application at the June 14, 2006
14 hearing. (The record does not include transcripts of the 2005
15 hearing or the June 2006 hearing.)

16 In August 2006, Claimants once again set the matter for
17 hearing and filed a reply to the Opposition. The court considered
18 the merits of the Application for the first time on September 7,
19 2006. There is no evidence that the matter was conducted as an
20 evidentiary hearing.

21 C. Substance of the Application and the Supporting Affidavits

22 The Application was brought pursuant to § 503(b)(1)(A). It
23 states that the services provided by the five Claimants arose
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25
26 ⁵The complaint is not included in the record. The Trustee
27 stated that the claims for relief included breach of fiduciary
28 duty, fraud in a fiduciary capacity, fraud upon the court
regarding a post-petition transfer, diversion of funds of the
estate, turnover of funds received from Debtor, an accounting,
and disgorgement of post-petition salaries.

1 from post-petition transactions with the Debtor, that the
2 services were necessary to preserve the estate and that the
3 services directly benefitted the estate. The Application also
4 states that Claimants agreed to defer their salaries in an effort
5 to assist the Debtor in its reorganization efforts.⁶

6 The Application was supported by an Affidavit from each
7 Claimant, explaining, in the most general terms, what each
8 Claimant's role had been with the Debtor and the amount claimed
9 to be owed as deferred salary.

10 For example, the Affidavit of James Saxton (claiming to be
11 owed \$108,552.90) contains 11 paragraphs covering less than two
12 pages describing his duties as the CEO and acting CFO of the
13 Debtor. It states that he implemented "broad corporate policies,
14 procedures and organizational structure" and provided "key
15 management direction" to top executives, and management of the
16 "overall direction of the Company."

17 The other Affidavits are similarly brief and general in
18 their terms. The Affidavit of James Saxton, II states he is owed
19 \$52,591.70. It consists of 11 paragraphs in approximately one
20 page and describes his work as overseeing "total development and
21 construction effort from inception through completion to ensure
22 all projects are constructed in accordance with approved plans
23 and specifications, budgets and schedules." He also says he was

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25 ⁶There was apparently no court approval of an agreement to
26 defer salaries. Generally, salaries for employees of a debtor in
27 possession are within the ordinary course of business entitled to
28 administrative expense status under § 364(a). Arguably, an
agreement to defer salaries would be outside the ordinary course
of business, and notice and court approval may have been
appropriate.

1 responsible for project budgets, interfacing with municipalities,
2 managing design professionals, managing the customer service
3 department and ensuring that workstations, printers and
4 telephones worked.

5 The Affidavit of Michelle Pori, claiming \$51,809.93,
6 consists of 14 paragraphs and is less than one page in length. It
7 describes her general duties dealing with insurance policies,
8 corporate records, construction defects, and closing escrows on
9 residential subdivision sales.

10 The Affidavit of Lee-Ann Burgess, claiming \$45,755.52,
11 consists of 13 paragraphs covering less than one page. It
12 describes her general duties dealing with maintaining books and
13 records, bank reconciliations, payroll reports, and inter-company
14 accounts.

15 The Affidavit of Michelle Saxton, claiming \$31,141.77,
16 consists of 12 paragraphs in approximately one page. It generally
17 describes her role as maintaining home sales contracts,
18 interfacing with homeowners, and general office administration.

19 Each Affidavit ends with the representation that the amount
20 sought is the "actual, necessary costs and expenses of preserving
21 the estate rendered by the Affiant after the commencement of the
22 case." There is one spreadsheet attached to the Application. It
23 shows a total of deferred salary of \$289,851.81 for all Claimants
24 for a time period covering 6 pay periods in 2002, 4 pay periods
25 in 2003, and 4 pay periods in 2004.

26 The Affidavits do not indicate how the Claimants' employment
27 benefitted the estate in any particular way. The Affidavits do
28 not mention a particular project or transaction undertaken by any

1 of the Claimants on behalf of the estate.

2 D. Substance of the Opposition

3 In his Opposition, the Trustee described events that he
4 alleged had taken place in the chapter 11 period and attached
5 exhibits relating to these alleged events. The Trustee did not
6 support the Opposition with declarations or affidavits.⁷

7 The thrust of the Opposition was that Claimants had engaged
8 in self-dealing, had deprived the estate of valuable assets and
9 had, as a result, not provided any benefit to the estate by their
10 services. The transactions described in the Opposition apparently
11 formed the basis for the claims in the Adversary Proceeding.

12 The exhibits attached to the Opposition appear to have been
13 produced in discovery in connection with the Adversary
14 Proceeding.⁸ The Trustee also pointed to several docket entries
15 in support of his self-dealing claims based on events occurring
16 in the bankruptcy court but made no specific request for judicial
17 notice.

18 Among the allegations made by the Trustee were the
19 following: James Saxton had shifted \$2 million of his personal
20 debt to the Debtor. In connection with a relief from stay motion
21 regarding property referred to as the MLK property, Saxton had
22 filed only a cursory opposition where recent appraisals indicated
23 the property was worth between \$1.1 million and \$1.7 million, and
24 the secured debt was less than \$500,000. After relief from stay
25 was granted, through one of his entities (CDS Member, LLC),

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27 ⁷This was a contested matter governed by Rule 9014 which
28 makes Part VII of the Rules applicable, including Rule 7052.

⁸Each page of the exhibits has a Bates number on it.

1 Saxton arranged with the secured creditor to pay less than
2 \$500,000 to purchase the \$2.5 million note and deed of trust and
3 represented to the secured creditor that the amount owed on the
4 note was less than \$300,000. CDS Member, LLC then acquired the
5 MLK property at foreclosure for a credit bid of \$1.6 million and
6 transferred it to another entity owned by Saxton. The new entity
7 then sold the property for \$1.2 million. None of the proceeds
8 from this transaction were shared with the Debtor. Documents
9 allegedly evidencing this series of transactions were attached to
10 the Opposition as exhibits.

11 The Opposition described several other transactions in which
12 Saxton or his controlled entities allegedly deceived the court,
13 diminished the value of the estate's assets, or deprived the
14 estate of valuable assets or potential claims.

15 The Trustee also urged a "deepening insolvency" theory as a
16 basis to deny the Application. He pointed out that his first
17 monthly operating report filed in August 2004 showed that
18 liabilities of the estate increased by \$17,000 (excluding
19 administrative expenses) from the petition date to his
20 appointment.⁹ During this same time period, CDS Member, LLC
21 acquired assets from the Debtor and profited from the
22 transactions. Also, during this time period, certain
23 professionals were paid a "substantial sum", but the estate owed
24 \$1 million to professionals at the time the case was converted.

25 Based on these allegations, the Trustee argued:

26 (1) Claimants had not conferred any benefit on the estate.
27 During the four years in chapter 11, the estate incurred almost

28

⁹The operating reports are not included in the record.

1 \$1 million in administrative expenses and the only persons to
2 receive a benefit from the case had been Claimants.

3 (2) Claimants did not meet their burden of proving that
4 their past and present compensation was for reasonable, actual
5 and necessary services to the estate. In fact, they had caused
6 harm to the estate resulting in greater debt, deepening
7 insolvency and dissipation of the estate's assets.

8 (3) Claimants had performed services for other businesses
9 while receiving compensation from the estate and had operated the
10 business of the Debtor in possession for their own benefit.¹⁰

11 E. The September 7, 2006 Hearing on the Application

12 At the hearing on September 7, 2006, counsel for Claimants
13 stated that (1) he was renewing the Application at the court's
14 instruction; (2) the Opposition was merely a recitation of the
15 allegations in the Adversary Proceeding; (3) Claimants were
16 willing to defer payment of their administrative expenses until
17 the Adversary Proceeding was concluded. Throughout the hearing,
18 counsel stressed that the Trustee had presented no evidence in
19 his Opposition.

20 The court challenged Claimants' counsel's characterization
21 of the Opposition as lacking in evidence and stated: "[T]he
22 administrative claimants operated the Debtor for the benefit of
23 themselves. How much bolder could that be?" Transcript of
24 Proceedings 7:1-4, September 7, 2006. Counsel stated that the
25 Trustee was suggesting that "they, perhaps, had other side

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27 ¹⁰ The Trustee also argued that Claimants were officers and
28 insiders of the Debtor as defined in § 101 and had not had their
employment approved under § 327. This argument was not considered
by the bankruptcy court and is not considered here.

1 businesses" but claimed that the Trustee did not argue that
2 Claimants' services were not performed and were not beneficial.
3 Id. at 7:14-20.

4 When the court asked where was the evidence that Claimants
5 had preserved the estate, counsel stated they had completed
6 projects to allow secured creditors to maximize the value of
7 their collateral and repeated that the Trustee had offered no
8 evidence in support of the Opposition. Id. at 8:9-12.

9 The Trustee's counsel argued that the services were not
10 reasonable or necessary and pointed to the exhibits attached to
11 the Opposition as support for the argument that Claimants had
12 conferred no benefit by their services. In response to the
13 argument that there was no evidence, he referred to his exhibits
14 and stated "I call that evidence . . . there has been no attack
15 that this isn't [sic] genuine documents . . . There's no attack
16 that they didn't offer these documents. There's nobody here right
17 now to explain those documents." Id. at 13:11-15.

18 The court made the following concluding comments at the
19 hearing:

20 "How can you bold-facedly come here and demand
21 administrative salaries when these allegations are pending? How
22 can you do that?" When counsel pointed out they were merely
23 allegations, the court replied: "meaning they didn't do the work
24 they were supposed to do . . . meaning they lied, cheated, and
25 [stole]." Id. at 16:19-17:7.

26 "But how can . . . you come here and demand that they be
27 paid or they be allowed these moneys . . . without a final
28 hearing addressing whether or not these allegations are true? . .

1 . What makes you think . . . that that's appropriate? . . . If
2 you were self-dealing . . . and if you're doing stuff for your
3 own benefit, that's not for the benefit of the estate." Id. at
4 17:14-18:13.

5 "It can't be any clearer. Just the [c]hutzpah of your coming
6 here demanding this money when your clients are accused of this
7 in the course of doing these very things you're demanding money
8 for . . . is just astounding to me." Id. at 18:15-23.

9 The court also pointed out that the Debtor's monthly
10 operating report for the period ending March 31, 2002 showed that
11 no post-petition salaries were owed.¹¹ Counsel for Claimants
12 appeared surprised by this and admitted to the court he had not
13 checked the monthly operating reports. Upon learning he had not
14 checked, the court stated "I'm now going to deny the motion
15 outright. I don't think you have supported their burden that what
16 they did was beneficial to the estate. I think they were just
17 churning. It's easy to stay in your job and continue to collect a
18 salary. The schedules seem to suggest that they said they weren't
19 owed anything so I'm going to deny the motion . . . I don't have
20 . . . sufficient evidence, so I'm going to deny it." Id. at
21 23:20-24:4.

22 The court then denied the Application with prejudice. The
23 Order entered on September 14, 2006 states that the court made
24 findings of fact and conclusions on the electronic record which
25 are incorporated into the Order. Claimants filed a timely appeal.

26
27 ¹¹It also appears that the next monthly operating report to
28 be filed (which was not until September 2002) showed no post-
petition salaries were owed. These operating reports are not part
of the record on appeal but the court alluded to them during the
hearing.

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 1334 and 157(b) (1) and (b) (2). We have jurisdiction under 28
4 U.S.C. § 158.

5 **III. ISSUE**

6 Whether the bankruptcy court abused its discretion in ruling
7 that Claimants had failed to meet their burden of proof for
8 allowance of their administrative expense claims.

9 **IV. STANDARDS OF REVIEW**

10 An order allowing or disallowing an administrative expense
11 claim is reviewed for an abuse of discretion. Burlington N.R.R.
12 Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.), 853
13 F.2d 700, 707 (9th Cir. 1988).

14 A bankruptcy court abuses its discretion if it bases its
15 decision on an erroneous view of the law or on clearly erroneous
16 factual findings. Highland Fed'l Bank v. Maynard (In re Maynard),
17 264 B.R. 209, 213 (9th Cir. BAP 2001). The Panel will not reverse
18 for abuse of discretion unless it has a definite and firm
19 conviction that the bankruptcy court committed a clear error of
20 judgment in the conclusion it reached. S.E.C. v. Coldicutt, 258
21 F.3d 939, 941 (9th Cir. 2001).

22 Findings of fact are reviewed for clear error and
23 conclusions of law are reviewed de novo. Einstein/Noah Bagel
24 Corp. v. Smith (In re BCE West, L.P.), 319 F.3d 1166, 1170 (9th
25 Cir. 2003). Mixed questions of law and fact are also reviewed de
26 novo. See U.S. v. McConney, 728 F.2d 1195 (9th Cir.) cert.
27 denied, 469 U.S. 824 (1984); Carillo v. Su (In re Su), 290 F.3d
28 1140 (9th Cir. 2002). A finding is clearly erroneous when,

1 although there is evidence to support it, the reviewing court on
2 the entire evidence is left with the definite and firm conviction
3 that a mistake has been committed. United States v. U.S. Gypsum
4 Co., 333 U.S. 364, 395 (1948). Findings of fact based on
5 credibility are given particular deference. Anderson v. City of
6 Bessemer City, 470 U.S. 564, 573-74 (1985).

7 Rulings as to the admission of evidence or the necessity for
8 the presentation of evidence are reviewed for an abuse of
9 discretion. Lee-Benner v. Gergely (In re Gergely), 110 F.3d 1448,
10 1452 (9th Cir. 1997).

11 V. DISCUSSION

12 A. The Standards for Allowance of an Administrative Expense

13 Section 503(b), as applicable in this case, provides that
14 "after notice and a hearing, there shall be allowed
15 administrative expenses, other than claims allowed under section
16 502(f) of this title, including -(1)(A) the actual, necessary
17 costs and expenses of preserving the estate, including
18 wages,
19 salaries, or commissions for services rendered after the
20 commencement of the case."

21 The parties agree on the basic framework for the allowance
22 of an administrative expense under § 503. They agree that the
23 burden of proof is on the party seeking payment to establish that
24 the debt arose from a transaction with the debtor in possession
25 and directly and substantially benefitted the estate. Microsoft
26 Corp. v. DAK Indus., Inc. (In re DAK Indus.), 66 F.3d 1091 (9th
27 Cir. 1995). They also agree that the terms "actual" and
28 "necessary" are construed narrowly to keep fees and

1 administrative costs at a minimum. Dant & Russell, 853 F.2d at
2 706.

3 The parties disagree as to how this test is to be applied
4 and on the facts before the court upon which it is to be applied.

5 B. Claimants' Burden of Proof

6 To meet their burden of proof, Claimants had to show by a
7 preponderance of the evidence that they met the § 503 standard.
8 BCE West, L.P., 319 F.3d at 1172; Toma Steel Supply, Inc. v.
9 Transamerican Natural Gas Corp. (In re Transamerican Natural Gas
10 Corp.), 978 F.2d 1409, 1416 (5th Cir. 1992).

11 A prima facie case under § 503(b)(1) is established by
12 evidence that the claim arises from a transaction with the estate
13 and that the claimant has benefitted the estate in some
14 demonstrable way. DAK Indus., 66 F.3d at 1094. "After the movant
15 has established a prima facie case, the burden of producing
16 evidence shifts to the objector; but the burden of persuasion, by
17 a preponderance of the evidence, remains with the movant."
18 Transamerican Natural Gas, 978 F.2d at 1416.

19 Claimants argue that it is undisputed that (1) the services
20 were provided post-petition, and (2) that the amount sought
21 represented the actual and necessary costs and expenses of
22 preserving the estate. Claimants' argument is premised on the
23 assertion that the administrative expense claims must be allowed
24 because the Trustee failed to offer sufficient opposition.¹²

26 ¹²A properly executed and filed proof of claim under § 502
27 is prima facie evidence of the validity and amount of the claim.
28 Rule 3001(f). No Rule gives a request for payment of an
administrative expense under § 503 a similar presumption of
validity.

1 Claimants stressed that they were not seeking immediate
2 payment but merely trying to quantify their offset rights if the
3 Trustee were to prevail in the Adversary Proceeding. Claimants
4 assert that the Trustee's Opposition was based on the unproven
5 allegations of misconduct from the Adversary Proceeding which
6 were not supported in the record.

7 C. Claimants' Evidence that they Benefitted the Estate

8 The evidence offered by Claimants consisted of the five
9 Affidavits and the single spreadsheet listing the amount of
10 deferred salary for each of the Claimants. The Trustee argues
11 that the Affidavits are self-serving and conclusory. While they
12 are, by definition, self-serving, the fact that they are vague,
13 general, and lacking in any specificity is fatal.

14 The Affidavits are simply job descriptions rather than
15 descriptions of jobs actually performed. Each Affidavit is so
16 general in its description of the services provided, it is
17 impossible to conclude that Claimants have shown that they did,
18 in fact, benefit the estate during the period in which they
19 continued to accrue salaries. There is no reference to a
20 particular deal or transaction. There is no showing of a
21 financial benefit to the estate from the performance of any of
22 Claimants' activities.

23 Claimants had the burden of proof by a preponderance of
24 evidence that all elements of § 503 were met. Taking the
25 statements in each Affidavit as true, they fail to show any
26 benefit to the estate--they simply recite general job duties. On
27 the basis of the defective Affidavits, the bankruptcy court
28 correctly found that Claimants failed to make a prima facie case.

1 D. The Trustee's Evidence

2 This was a contested matter governed by Rule 9014.¹³
3 According to Rule 9014 and the analogous local rule¹⁴, the
4 Trustee's Opposition had to be supported by affidavits or
5 declarations.

6 Oddly, the only description of specific activities of
7 Claimants during the chapter 11 period are those alleged by the
8 Trustee in the Opposition. Although not submitted by way of a
9 declaration and not authenticated, the Trustee relied on the
10 exhibits to support his argument that the Claimants had in fact
11 stripped the estate of assets rather than provided a benefit to
12 it. In addition, the Trustee made reference to certain matters in
13 the court's docket but did not formally request judicial notice
14 of them.

15 Based on the comments made by the court at the hearing, it
16 is clear that the court was concerned about the timing of the
17 Application. The court also noted that the record in the case,
18 including the schedules and the monthly operating reports,

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20 ¹³ Rule 9014 provides that in a contested matter relief is
21 requested by motion. Rule 9014(c) makes Part VII of the Rules
22 apply and Rule 9014(d) provides that testimony of witnesses with
23 respect to disputed material factual issues is taken, as it is in
24 adversary proceedings.

25 ¹⁴ Affidavits must contain only non-hearsay factual
26 evidentiary matter, conform as far as possible to Fed. R. Civ. P.
27 56(e) and avoid mere general conclusions. Bankr. D. Nev. LR
28 9014(c) (1) (B). Affidavits must also authenticate documents and
exhibits unless the documents have already been authenticated in
the record or have been previously admitted into evidence and are
specifically referred to and identified in the moving or opposing
papers. Bankr. D. Nev. LR 9014(c) (1) (C). It is not clear from the
record whether the Trustee's exhibits are within either of these
categories.

1 contradicted the assertion that Claimants had provided a benefit
2 to the estate.

3 Mere allegations unsupported by evidence are insufficient to
4 rebut a prima facie case. However, the court found that the
5 Affidavits did not make out a prima facie case. Thus, any
6 argument that the Trustee failed to offer sufficient facts in his
7 Opposition fails. The burden of persuasion was at all times
8 Claimants'. Transamerican Natural Gas, 978 F.2d at 1416.

9 E. Findings of Fact and Conclusions of Law

10 Rule 7052(a) (made applicable by Rule 9014(c)) provides that
11 the court is to find the facts and state its conclusions of law.

12 In general, when there are conflicting versions of the
13 facts, findings are desirable. See Canadian Commercial Bank v.
14 Hotel Hollywood (In re Hotel Hollywood), 95 B.R. 130, 132 (9th
15 Cir. BAP 1988). Here, at the conclusion of the September hearing,
16 the court stated its legal conclusion that Claimants had not met
17 their burden of proof -- they had not shown that they had
18 provided a benefit to the estate by their post-petition
19 activities.

20 The court also stated that the monthly operating reports
21 contradicted the claim that salaries were owed, at least as to
22 the time periods for those operating reports. In addition,
23 counsel for Claimants conceded that Claimants' services had gone
24 to completing projects solely for the benefit of the secured
25 creditors. While the court seemed troubled by the fact that the
26 allegations in the Adversary Proceeding, if proven, defeated any
27 argument that there had been a benefit to the estate, the court's
28 decision did not rest on that basis.

1 F. It Was Not an Abuse of Discretion to Deny the Application

2 The court had wide discretion in allowing or disallowing
3 these claims. "Although a claim may meet the implicit
4 requirements of section 503(b)(1)(A), namely that any claims
5 under the section must have a distinct postpetition character,
6 bankruptcy courts have broad discretion in determining whether to
7 award administrative expense priority." Dant & Russell, 853 F.2d
8 at 707.

9 A court abuses its discretion if it bases its decision on an
10 erroneous view of the law or on clearly erroneous factual
11 findings. Maynard, 264 B.R. at 213. The court did not have an
12 erroneous view of the law. Nor did the court make erroneous
13 factual findings or incorrectly apply the law to the facts. The
14 court simply found Claimants' evidence lacking -- they failed to
15 make a prima facie case with their Affidavits, and the record in
16 the case contradicted their assertions. Despite what the Trustee
17 argues, nothing in the record supports a conclusion that the
18 Affidavits were found inadmissible. The court admitted them but
19 found them deficient in light of the requirement that
20 administrative claims are to be narrowly construed, and there
21 must be proof of the required elements by a preponderance of the
22 evidence. Here, the Affidavits failed to show any benefit to the
23 estate; they were essentially general job descriptions.

24 A finding is clearly erroneous when, although there is
25 evidence to support it, the reviewing court on the entire
26 evidence is left with the definite and firm conviction that a
27 mistake has been committed. Anderson, 470 U.S. at 573-74. This
28 standard is not an invitation to reverse the finding of the trier

1 of fact simply because the reviewing court would have decided the
2 case differently. Applying this standard here, the court did not
3 abuse its discretion.

4 **VI. CONCLUSION**

5 The bankruptcy court acted well within its discretion in
6 ruling that the Claimants failed to show by a preponderance of
7 evidence that their services had provided a benefit to the
8 estate. Accordingly, the Order is AFFIRMED.

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