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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No. CC-05-1067-MaMeP
)	
UNITED EDUCATION AND SOFTWARE,)	Bk. No. LA 89-26724-EC
)	
Debtor.)	
_____)	
)	
ROBERT P. MOSIER,)	
)	
Appellant,)	
)	
v.)	<u>MEMORANDUM</u> ¹
)	
ARNOLD L. KUPETZ, Chapter 7)	
Trustee; UNITED STATES TRUSTEE,)	
)	
Appellees.)	
_____)	

Argued and Submitted on July 29, 2005
at Pasadena, California

Filed - October 7, 2005

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

Honorable Ellen A. Carroll, Bankruptcy Judge, Presiding.

Before: Marlar, Meyers² and Perris, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

² Hon. James W. Meyers, United States Bankruptcy Judge for the Southern District of California, sitting by designation.

1 **INTRODUCTION**

2
3 The debtor's former president and CEO, Robert P. Mosier
4 ("Mosier") has appealed the bankruptcy court's denial of his
5 \$59,477.90 administrative expense claim.

6 The debtor's converted chapter 7³ case had insufficient funds
7 to pay all of the preconversion chapter 11 administrative
8 creditors in full, and Mosier faced disgorgement of his chapter 11
9 fees. With the bankruptcy court's permission, Mosier objected to
10 certain chapter 11 administrative claims in the converted chapter
11 7 case. His efforts resulted in a reduction of those claims by
12 almost \$315,000, thus yielding a greater pro rata payment to the
13 chapter 11 administrative claimants as well as a reduction of the
14 disgorgement amounts.

15 When Mosier sought an award of administrative expense for his
16 and his professional's fees and expenses, the bankruptcy court
17 denied his claim, finding that he was neither a creditor who had
18 made a substantial contribution to a chapter 9 or 11 estate, as
19 required by the statute, nor was he a professional employed by the
20 estate.

21 On appeal, Mosier maintains that he was a constructive
22 creditor and that the Code should be read broadly to reward his
23 benefit to the estate. We conclude that neither statutory
24 interpretation nor fundamental fairness justified an
25 administrative expense claim for Mosier, who essentially
26 volunteered his services, and AFFIRM.

27
28

³ Unless otherwise indicated, "chapter" and "section"
references are to the Bankruptcy Code ("Code"), 11 U.S.C. §§ 101-
1330.

1 **FACTS**

2
3 United Education & Software ("Debtor") filed a chapter 11
4 petition in 1989. The case was converted to chapter 7 in 1996,
5 and a trustee ("Trustee") was appointed.

6 Mosier was retained with the bankruptcy court's approval as
7 the chapter 11 Debtor's president and CEO from 1994 to 1996. His
8 fees and costs were paid in full during the chapter 11 case.⁴

9 In 2000, postconversion, Trustee reported that the estate was
10 administratively insolvent at the chapter 11 level, and the
11 bankruptcy court entered an order that professionals who had
12 received fees, including Mosier, would be subject to a future
13 order of disgorgement of certain amounts so that all chapter 11
14 administrative creditors would be paid the same pro rata amount.

15 Mosier made an unsuccessful attempt to exempt himself from
16 the disgorgement process. Meanwhile, in 2003, Trustee filed his
17 final account and report, which authorized payment for certain
18 chapter 11 administrative claims. After reviewing the report,
19 Mosier sought and obtained an order to postpone the disgorgement
20 proceedings in order to permit him to object to some of those
21 claims. The bankruptcy court's June 12, 2003 order stated, in
22 pertinent part:

23 IT IS HEREBY ORDERED that the hearing on the
24 court's Order to Show Cause re Disgorgement of Fees (the
25 "OSC") and on all other matters relating thereto,
currently scheduled for June 16, 2003 at 2:00 p.m. shall

26 ⁴ The appellate record shows that Mosier received
27 \$302,543.28 See Decl. of Mosier (Dec. 10, 2003), p. 13, exh. C.
28 The theory under which he was paid is unclear from the record, as
another judge presided, and the pertinent papers and transcripts
have not been provided.

1 be continued to November 25, 2003 at 2:00 p.m. to permit
2 Robert Mosier and/or the Chapter 7 Trustee, Arnold
3 Kupetz, to object to certain Chapter 11 administrative
claims, the outcome of which objections may reduce the
amounts to be disgorged pursuant to the OSC.

4 Order Granting Motion to Continue Hearing (June 12, 2003).

5 Mosier described the genesis of his work as follows:

6 I assumed (perhaps incorrectly) that the Trustee
7 would review and object to claims as part of his
administration of the case. I was therefore startled to
8 discover in 2003 . . . that a number of claims presented
for payment in Schedule "G" of the Trustee's Final Account
9 and Report ("TFR") appeared improper. In a review of
approximately 45 claims with values over \$10,000 (the
10 focus of my limited inquiry), I discovered that many were
void of backup, some appeared to be pre-petition (in an
11 estate that could only afford to pay a portion of Chapter
11 administration claims), and one landlord claim had not
12 been reconciled. The level of claims is paramount in a
disgorgement equation set up by the Court to achieve
13 equality between the amounts already paid to professionals
and amounts to be paid to the remaining Chapter 11
14 administrative claimants.

15 Decl. of Mosier (Dec. 10, 2003), p. 2, ¶ 3.

16 Mosier then began the process of meeting with Trustee and
17 claimants, investigating the claims, and filing objections through
18 his business, Mosier & Co., Inc. It was undisputed that his
19 objections resulted in a reduction of chapter 11 administrative
20 claims by approximately \$315,000, which money was then available
21 to all of those claimants. His work thus reduced the amount of
22 chapter 11 administrative fees subject to disgorgement.

23 In November, 2003, Mosier, describing himself as a "party in
24 interest,"⁵ filed an application for administrative expense for
25 reimbursement of fees and costs in the sum of \$45,620.71 incurred

27 ⁵ Mosier averred: "Because of this Court's pending Order to
28 Show Cause re Disgorgement, I continue to be a party in interest
in this proceeding." Decl. of Mosier (Dec. 10, 2003), p. 1.

1 in bringing the claim objections. The requested amount included
2 compensation for Mosier's professional services and those of his
3 accountant. The basis for the claim was the benefit conferred
4 upon the estate by lowering the amount of non-court-approved
5 chapter 11 administrative claims.

6 Following a hearing, the bankruptcy court denied the
7 application. The interlocutory order, entered on May 12, 2004,
8 was not appealed.⁶

9 Then, in June, 2004, the bankruptcy court entered its order
10 for disgorgement which included Mosier among the professionals.
11 Mosier immediately moved for reconsideration, whereupon the court
12 vacated the order, in August 2004, with respect to Mosier, finding
13 that he was not a professional subject to disgorgement.⁷

14 In December 2004, Mosier filed his First Amended Application
15

16 ⁶ An order disallowing an administrative expense claim is
17 generally a final, appealable order. See Anderson v. Mouradick
18 (In re Mouradick), 13 F.3d 326, 326-27 (9th Cir. 1994). Here,
19 Mosier moved to amend the order, and six months later, the
20 bankruptcy court ruled that its order had been without prejudice
to Mosier filing an amended application. See Decl. of Mosier
(Nov. 18, 2004), p. 14, ¶ 7; AER exh. E at 79. Therefore, the
first order was interlocutory.

21 ⁷ This fact is not disputed and is indirectly substantiated
22 in the record, which is devoid of the pleadings or transcripts
from the disgorgement proceedings. For example, Trustee states,
in his opposition to Mosier's amended application:

23 Thereafter, in June of this year, the Court entered
24 the Order on disgorgement. Although Mr. Mosier was
25 originally subject to this Order, the Court, on
26 reconsideration, held that Mr. Mosier was not a
27 professional subject to disgorgement. As admitted by Mr.
Mosier in his opposition to the disgorgement motion, he
was paid in full for all of his services because he was
not a professional.

28 Trustee's Statement Re Application for Payment of Fees (Dec. 1,
2004), p. 2:17-21.

1 for Payment of Administrative Expense ("First Amended
2 Application"), moving under § 503(b)(1)(A) (for "actual and
3 necessary costs and expenses of preserving the estate"),
4 § 503(b)(3) (for actual, necessary expenses incurred by a creditor
5 in making a substantial contribution in a chapter 11 case), and
6 § 503(b)(4) (for compensation of a professional's fees who is
7 employed by an allowed § 503(b)(3) claimant). Mosier requested
8 the sum of \$59,477.90 for the period May 2003 through January
9 2004, while the case was in chapter 7. The basis of the claim was
10 "for expenses he and his accountant incurred in researching filed
11 administrative priority proofs of claim in the case and
12 successfully objecting to \$707,738 of said claims, resulting in an
13 increase of \$314,686 available for payment of appropriate
14 administrative priority claims in this estate." First Amended
15 Application, at 1-2.

16 Trustee, while acknowledging that Mosier's work had
17 significantly benefitted the estate, objected to the application
18 for the following reasons: (1) Mosier's actions were intended to
19 benefit himself and only collaterally benefitted the estate; (2)
20 Mosier had already been paid in full for services rendered in the
21 chapter 11 case and did not have to disgorge them in the chapter 7
22 case; thus, he was not a creditor who would be entitled to
23 compensation for making a substantial contribution to the estate;
24 and (3) Mosier was not a court-approved "professional" and,
25 therefore, his actions as a "de facto" professional in the chapter
26 7 case should not be compensated.

27 Mosier replied to Trustee's objections and made the following
28 points: (1) personal benefit is irrelevant in determining the

1 allowance of administrative claims under § 503(b) (3); (2) from
2 2002 until the court vacated its disgorgement order as to Mosier
3 in August 2004--the time during which the expenses were incurred--
4 Mosier was considered a professional subject to disgorgement and,
5 thus, was a constructive creditor of the estate; and (3) he was
6 also a deemed or constructive creditor because the bankruptcy
7 court permitted him to exercise Trustee's powers in bringing the
8 claim objections.

9 The bankruptcy court made oral findings and conclusions at
10 the January 25, 2005 hearing. First, it concluded that
11 compensation under § 503(b) (1) (A) was inappropriate for Mosier, as
12 that subsection is intended to encourage entities such as trade
13 creditors to do business with a chapter 11 debtor, not to
14 compensate a party in interest who has objected to claims in a
15 chapter 7 case.⁸

16 Next, the court found that Mosier was not a creditor and thus
17 was not entitled to compensation under § 503(b) (3). It also
18 determined that Mosier's request did not fit under the provisions
19 of any of the six subsections of § 503(b) (3), which it interpreted
20 as being exclusive.

21 Finally, because Mosier was not a creditor, the bankruptcy
22 court found that Mosier's accountant could not be compensated
23 under § 503(b) (4).

24 The order denying the first amended application was entered
25 on February 2, 2005, and was timely appealed by Mosier.

26

27

28 ⁸ Mosier has not challenged the bankruptcy court's decision
in regards to § 503(b) (1) (A).

1 **ISSUE**

2
3 Whether a party in interest⁹ who, with the bankruptcy court's
4 permission, successfully objects to chapter 11 administrative
5 claims in a converted chapter 7 case, thereby increasing the cash
6 distribution to those claimants, is entitled to an administrative
7 expense claim in the chapter 7 case for his related fees and
8 expenses.

9
10 **STANDARD OF REVIEW**

11
12 The bankruptcy court's interpretation of the Code is a matter
13 of law which we review de novo. United States v. Hatton (In re
14 Hatton), 220 F.3d 1057, 1059 (9th Cir. 2000).

15 The bankruptcy court's ultimate decision whether to treat a
16 particular claim as an administrative expense is reviewed for an
17 abuse of discretion. See Kadjevich v. Kadjevich (In re
18 Kadjevich), 220 F.3d 1016, 1019 (9th Cir. 2000). Its exercise of
19 its equitable powers is also reviewed for an abuse of discretion.
20 AARP v. First Alliance Mortg. Co. et al. (In re First Alliance
21 Mortg. Co.), 269 B.R. 428, 433 (C.D. Cal. 2001). A bankruptcy
22 court may abuse its discretion if it does not apply the correct
23 law or rests its decision on a clearly erroneous assessment of
24 evidence. See An-Tze Cheng v. K & S Diversified Invs., Inc. (In

25
26 _____
27 ⁹ Mosier's presented issues have been restated in order to
28 avoid an assumption that he was a creditor. The problem with such
presentation is that Mosier was determined not to be a creditor by
the bankruptcy court. On the other hand, it is undisputed that he
had authorization to object to the claims.

1 re An-Tze Cheng), 308 B.R. 448, 452 (9th Cir. BAP 2004).

2
3 **DISCUSSION**

4
5 **A. §§ 503(b) (3) and (b) (4)**

6
7 In the Ninth Circuit, the claimant has the burden of proving
8 an administrative expense under a standard which "limit[s] abuses
9 of the administrative-expense priority." Einstein/Noah Bagel
10 Corp. v. Smith (In re BCE West, L.P.), 319 F.3d 1166, 1172 (9th
11 Cir. 2003) (alteration added). Section 503(b) has been construed
12 narrowly because administrative claims are paid directly from the
13 bankruptcy estate and reduce the funds available for creditors and
14 other claimants. See Microsoft Corp. v. DAK Indus., Inc. (In re
15 DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995); In re
16 Alumni Hotel Corp., 203 B.R. 624, 630 (Bankr. E.D. Mich. 1996).
17 See also §§ 507(a); 726(a) and (b).

18 Section 503(b) provides a nonexhaustive list of allowable
19 administrative expenses. See 11 U.S.C. § 503(b); Kadjevich, 220
20 F.3d at 1019 (citing Tex. Comptroller of Pub. Accounts v.
21 Megafoods Stores, Inc. (In re Megafoods Stores, Inc.), 163 F.3d
22 1063, 1067 (9th Cir. 1998)).

23 Mosier admits that his claim for the expenses which he
24 incurred, in objecting to certain proofs of claim, does not fit
25 squarely within the subsections of § 503(b). Still, he maintains
26 that the implied policy behind the statute supports his claim's
27 treatment as an additional type of administrative expense, since
28 he was doing the work of the trustee. Moreover, Mosier maintains

1 that he was a constructive creditor during the time that he was
2 subject to the potential disgorgement order and brought the claim
3 objections, and thus argues that his request falls under
4 §§ 503(b) (3) and (b) (4) .

5 Trustee disagrees and maintains that Mosier, acting as a de
6 facto professional, was not entitled to compensation because he
7 had not been employed under § 327(a) nor was he a creditor, as
8 that term is defined in the Code.

9 The relevant Code sections, §§ 503(b) (3) and (b) (4) provide,
10 in pertinent part:

11 (b) After notice and a hearing, there shall be allowed
12 administrative expenses, other than claims allowed under
section 502(f) of this title, including --

13 (3) the actual, necessary expenses, other than
14 compensation and reimbursement specified in paragraph
(4) of this subsection, incurred by --

15

16 (D) a creditor, an indenture trustee, an equity
17 security holder, or a committee representing
creditors or equity security holders other than
18 a committee appointed under section 1102 of this
title, in making a substantial contribution in
a case under chapter 9 or 11 of this title;

19

20 (4) reasonable compensation for professional services
21 rendered by an attorney or an accountant of an entity
22 whose expense is allowable under paragraph (3) of
this subsection, based on the time, the nature, the
23 extent, and the value of such services, and the cost
of comparable services other than in a case under
24 this title, and reimbursement for actual, necessary
expenses incurred by such attorney or accountant; .

25

26 11 U.S.C. § 503(b) (3) and (b) (4) (emphasis added) .

27 The two requirements to recover on a § 503(b) (3) (D) claim
28 are: (1) the claimant must be a creditor of the estate; and (2)

1 the creditor must have made a substantial contribution to the
2 chapter 9 or 11 bankruptcy estate. See Cellular 101, Inc. v.
3 Channel Communications, Inc. (In re Cellular 101, Inc.), 377 F.3d
4 1092, 1096 (9th Cir. 2004).

5 We do not need to decide whether or not Mosier was a creditor
6 because he did not meet the requirement that the creditor make a
7 "substantial contribution in a case under chapter 9 or 11." 11
8 U.S.C. § 503(b)(3)(D) (emphasis added). Mosier's services and
9 contribution were made in the converted chapter 7 case, not in the
10 chapter 11 case.

11 The Supreme Court has stated:

12 It is well established that "when the statute's language
13 is plain, the sole function of the courts--at least where
14 the disposition required by the text is not absurd--is to
enforce it according to its terms."

15 Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004) (citation
16 omitted).

17 In addition, the legislative history of § 503(b)(3)(D)
18 indicates that it was meant to reimburse those efforts that
19 directly benefitted the reorganization process. See Lebron v.
20 Mechem Fin. Inc., 27 F.3d 937, 944-45 (3d Cir. 1994). The proper
21 interpretation of § 503(b)(3)(D) is that it does not authorize
22 administrative priority for expenses incurred in a chapter 7 case
23 or after a case has been converted from chapter 11 to chapter 7.
24 Id.; In re United Container LLC, 305 B.R. 120, 128 (Bankr. M.D.
25 Fla. 2003); Alumni Hotel Corp., 203 B.R. at 631. Therefore,
26 Mosier does not meet the threshold requirements for asserting an
27 administrative claim under § 503(b)(3)(D).

28 Nevertheless, Mosier contends that the provisions of

1 § 503(b) (3) should be expanded to cover his situation. He argues
2 that the bankruptcy court erred in ruling that the subsections of
3 § 502(b) (3) were exclusive.

4 For legal support, Mosier cites Matter of Del Grosso, 129
5 B.R. 156 (N.D. Ill. 1991). There, in an apparent chapter 7 case,
6 two unsecured creditors objected to the secured attorneys' fee
7 claim of the debtor's prepetition lawyers for their work in
8 litigating and settling a personal injury case. The objectors
9 contended that the lawyers failed to perfect their statutory
10 liens. The bankruptcy court sustained the objection, ruling that
11 the lawyers were unsecured creditors and thus more than \$41,000,
12 which otherwise would have been disbursed to them as
13 administrative expense, was available to the bankruptcy estate.
14 Id. at 156.

15 The objectors' attorneys then requested fees for their
16 efforts in defeating the secured claims. Two other unsecured
17 creditors then objected to those fees, and the bankruptcy court
18 sustained the objection. The objectors' appeal went to the
19 district court.

20 The district court reversed and ruled that the preservation
21 of \$41,000 for the estate was a recovery of property by a
22 creditor, under § 503(b) (3) (B), and that the attorneys' fees were
23 allowable as an administrative expense under § 503(b) (4).

24 Section 503(b) (3) (B) provides for administrative expenses
25 incurred by

26 (B) a creditor that recovers, after the court's
27 approval, for the benefit of the estate any
property transferred or concealed by the debtor;

28 11 U.S.C. § 503(b) (3) (B).

1 The district court in Del Grosso reasoned that "setting
2 aside a lien is a recovery of property previously transferred."
3 Id. at 157.

4 At first blush, there is some appeal between Del Grosso and
5 our case. Here, Mosier's claim objection resulted in a \$315,000
6 reduction in the chapter 11 administrative claims. As a result,
7 the chapter 11 administrative claimants received a greater pro
8 rata distribution from the chapter 7 estate. Similarly, in Del
9 Grosso, the objectors' efforts resulted in more than \$40,000
10 coming back into the estate for distribution. However, the
11 rationale for administrative expense of Del Grosso--that
12 eliminating a lien is a recovery for the estate--is missing in our
13 case. Section 503(b) (3) (B) speaks of recovering for the estate
14 "any property transferred or concealed by the debtor." Here,
15 there were no transfers of a secured interest or other property.
16 The language of subsection (3) (B) therefore cannot be broadened to
17 provide that any claim objection which results in the elimination
18 or reduction of that claim is a recovery of "property transferred"
19 by the debtor.

20 Mosier further argues that he should be compensated because
21 he was doing Trustee's work. He relies on Duckor Spradling &
22 Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774 (9th
23 Cir. 1999).

24 In P.R.T.C., the chapter 7 trustees, in consolidated cases,
25 assigned certain avoidance actions and rights to sue various
26 individuals to the estates' largest creditor after the trustees
27 determined that their respective estates lacked sufficient funds
28 to pursue these actions. Under the assignment, the creditor

1 pursuing the claims was obligated to pay to the estates 50% of the
2 net proceeds of any successful actions. Id. at 777. Over an
3 objection, the bankruptcy court approved the assignment, which was
4 upheld by the district court and affirmed on appeal by the Ninth
5 Circuit. The Ninth Circuit court held:

6 The bankruptcy court can authorize a creditor to
7 exercise [the trustee's avoidance] powers if: (1) the
8 creditor is pursuing interests common to all creditors;
 . . . and (2) allowing the creditor to exercise those
 powers will benefit the remaining creditors

9 Id. at 782 (citations omitted).

10 P.R.T.C. decided the issue of creditor standing. Here,
11 Mosier's standing as a party in interest to bring the claim
12 objections was not disputed. However, such standing does not
13 automatically entitle the creditor to be compensated by the estate
14 for his efforts. In P.R.T.C., the parties agreed, in a written
15 assignment agreement, to the terms of the creditor's involvement,
16 including its retention of 50% of the recovery. See id. at 777.
17 Here, Mosier did not bring the claim objections on behalf of
18 Trustee or enter into any type of agreement with him, nor did he
19 obtain a court order regarding the payment of his fees. We have
20 held that even a creditor acting under the statutory creditor-
21 recovery authority of § 503(b)(3)(B) litigates at his own risk and
22 expense. See Simantob v. Claims Prosecutor, LLC (In re Lahijani),
23 325 B.R. 282, 292 (9th Cir. BAP 2005).

24

25 **B. Notions of Equity or Fundamental Fairness**

26

27 Finally, Mosier contends that § 503 should be read broadly to
28 reimburse him for his undertaking, because the six enumerated

1 subsections under § 503(b) are nonexhaustive.

2 We are not convinced that § 503(b)(3) should be enlarged to
3 accommodate a substantial contribution by a creditor in a chapter
4 7 case. When a statute sets forth a series of items included
5 under a general rule, and does not use the term "including," the
6 canon of expressio unius est exclusio alterius applies, under
7 which a court infers an intention to restrict the statute's
8 application to the specific listed examples. See United States v.
9 Ledlin (In re Mark Anthony Constr., Inc.), 886 F.2d 1101, 1106
10 (9th Cir. 1989). Therefore, unlike the six enumerated subsections
11 under § 503(b), in which the use of the word "include" is
12 significant for being nonexhaustive, the five examples under
13 § 503(b)(3) are restricted to only those five.

14 Here, Mosier has not challenged the bankruptcy court's ruling
15 that his request did not fall within the scope of § 503(b)(1)(A).
16 At the same time, the nonrestrictive nature of § 503(b) has lent
17 itself to a broader construction when dealing with new facts.
18 Most prominently, in Reading Co. v. Brown, 391 U.S. 471 (1968),
19 the Supreme Court interpreted the Bankruptcy Act's provision for
20 administrative expense claims broadly and carved out a new basis
21 for a claim based on damages caused by a chapter 11 trustee's
22 negligence in the operation of the bankruptcy estate. Id. at 485.
23 The Court stated that "actual and necessary costs" should "include
24 costs ordinarily incident to operation of a business, and not be
25 limited to costs without which rehabilitation would be
26 impossible." Id. at 483 (construing § 64a of the Bankruptcy Act,
27 a provision similar to § 503(b)(1)(A)). It remarked: "In our view
28 the trustee has overlooked one important, and here decisive,

1 statutory objective: fairness to all persons having claims against
2 an insolvent." Id. at 477.

3 This "fundamental fairness" doctrine has been applied in
4 various contexts to allow an administrative expense claim if
5 needed to deter the trustee or debtor from injuring third parties
6 for whom fundamental fairness requires recompense. For example,
7 the estate was liable to the state comptroller for an
8 administrative claim including interest for delinquent sales taxes
9 which had been collected by debtor and deposited into its personal
10 bank account in violation of state law. See Megafoods Stores, 163
11 F.3d at 1072.

12 The parameters of Reading, as applied to a chapter 11
13 reorganization, have also been stretched to accommodate
14 fundamental fairness in the context of a chapter 7 administration.
15 In In re Met-L-Wood Corp., 115 B.R. 133, 136 (N.D. Ill. 1990),
16 attorneys' fees incurred by law firms to defend against the
17 chapter 7 trustee's unsubstantiated charge of fraud in a
18 preconversion sale of assets were determined to be an
19 administrative expense. In In re Good Taste, Inc., 317 B.R. 112
20 (Bankr. D. Alaska 2004), the bankruptcy court expanded the
21 doctrine to cover a prevailing defendant's attorney's fees in the
22 chapter 7 trustee's postpetition action to avoid a prepetition
23 transfer. Id. at 120-21 (noting inconsistent interpretation of
24 Reading in the Ninth Circuit).

25 Thus, administrative priority is allowable when the trustee
26 has injured a third party by his or her illegal action or
27 inaction. In the case at bar, Mosier maintains that Trustee
28 failed to object to administrative claims that were obviously

1 excessive or unfounded, and that caused him to incur expenses in
2 objecting to the claims himself. However, such expenses are not
3 "damages" in the Reading tradition, even painting the facts with a
4 broad brush, nor are they contractual.

5 Mosier sought compensation for taking on the claim objections
6 as a volunteer or, as Trustee contends, a de facto professional.¹⁰
7 We are aware of case law which describes a volunteer as one who
8 proceeds without court approval, but, here, Mosier had court
9 approval. The distinction is this: Mosier requested permission
10 to bring claim objections on his own behalf in order to minimize
11 his chapter 11 fee disgorgement. The bankruptcy court's order
12 stated that "Robert Mosier and/or the Chapter 7 Trustee, Arnold
13 Kupetz" were authorized "to object to certain Chapter 11
14 administrative claims, the outcome of which objections may reduce
15 the amounts to be disgorged pursuant to the OSC." Such order
16 recognized Mosier's individual standing as a party in interest due
17 to the OSC. See Lawrence v. Steinfeld Holding B.V. (In re
18 Dominelli), 820 F.2d 313, 317 (9th Cir. 1987) (secured creditor
19 had standing to object to settlement of claim because his
20 interests conflicted with the chapter 7 trustee's).

21 No doubt Trustee and the estate benefitted from Mosier's
22 expertise and investigative skills. Mosier freely provided them,
23 however. In addition, as a former president and CEO of Debtor,
24 Mosier had the knowledge to seek an order of employment for his
25 company as a professional under § 327. See Juniper Dev. Group. v.

27 ¹⁰ Mosier's skills were evident, as he had served as a
28 chapter 7 panel trustee in over 4,000 cases. See Decl. of Mosier
(Dec. 10, 2003), p. 5 ¶ 10.

1 Kahn (In re Hemingway Transport, Inc.), 993 F.2d 915, 929 n.17
2 (1st Cir. 1993) (claimant which voluntarily contracted with
3 chapter 11 estate was denied an administrative claim).
4 "Compensation under § 503 does not allow the professional to side
5 step the requirements of § 327 and § 330--the professional must
6 still be disinterested and not hold any adverse interests."
7 Mehdipour v. Marcus & Millichap (In re Mehdipour), 202 B.R. 474,
8 479 (9th Cir. BAP 1996), aff'd, 139 F.3d 1303 (9th Cir. 1998).

9 Equity in bankruptcy court may only be exercised in a manner
10 that is consistent with the provisions of the Code. Unsecured
11 Creditors' Committees v. Pioneer Commercial Funding Corp. (In re
12 Pac. Express, Inc.), 69 B.R. 112, 115 (9th Cir. BAP 1986). The
13 Code does not incorporate state law theories of quantum meruit.
14 See Shapiro Buchman LLP v. Gore Bros. (In re Monument Auto Detail,
15 Inc.), 226 B.R. 219, 224-25 (9th Cir. BAP 1998). Therefore, it
16 would be an abuse of the Code to allow Mosier to claim an
17 administrative expense as a creditor or professional when he did
18 not meet the requirements of § 503(b)(3), nor of § 502(b)(2),
19 which requires a professional to be employed under § 327 and
20 awarded compensation under § 330(a) in order to receive
21 administrative expense priority.

22 We conclude that Mosier's claim was not allowable as an
23 administrative expense under § 503(b) or its equitable exceptions,
24 nor did the bankruptcy court abuse its discretion in refusing to
25 carve out a new exception for the claim.

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1 CONCLUSION

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3 While § 503(b) (3) acknowledges the substantial contributions
4 of creditors to a chapter 9 or 11 bankruptcy estate, even an
5 equitable approach cannot vary its plain meaning in order to allow
6 such priority for services rendered in a chapter 7 case.
7 Moreover, it would be improper to expand the "fundamental
8 fairness" exception for an allowance of Mosier's claim under
9 § 503(b). Therefore, we AFFIRM the bankruptcy court's order
10 denying Mosier's application for an administrative expense claim.

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