

MAR 17 2010

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NOT FOR PUBLICATION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

5 In re:)
6 ROBERT W. NICHOLS and)
MARY ANN NICHOLS,) BAP No. AZ-09-1325 PaDJu
7) Bk. No. 02-02215-EWH
Debtors.)
8 _____)
9)
10 ROBERT W. NICHOLS;)
MARY ANN NICHOLS,) **M E M O R A N D U M**¹
11 Appellants,)
12 v.)
13 SHARON MAXWELL, Chapter 7 Trustee;)
LOUISE WHIPPLE,²)
14 Appellees.)
15 _____)

Argued and Submitted on February 17, 2010
at Tucson, Arizona

Filed - March 17, 2010

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

Honorable Eileen W. Hollowell, Bankruptcy Judge, Presiding

24 ¹ This disposition is not appropriate for publication.
25 Although it may be cited for whatever persuasive value it may have
26 (see Fed. R. App. P. 32.1), it has no precedential value. See
27 9th Cir. BAP Rule 8013-1.

28 ² Appellee Whipple has not filed a brief or appeared in this
appeal. She earlier filed a motion to dismiss the appeal or
remand to the bankruptcy court, which was denied by the Panel's
order of December 29, 2009.

1 Before: PAPPAS, DUNN and JURY, Bankruptcy Judges

2 Robert W. Nichols and Mary Ann Nichols ("Mrs. Nichols")
3 appeal the bankruptcy court's order denying Mrs. Nichols' request
4 for approval and payment of alleged administrative expenses. We
5 AFFIRM the bankruptcy court's order.
6

7
8 **FACTS³**

9 On May 9, 2002, the Nichols filed a voluntary petition under
10 Chapter 7⁴ of the Bankruptcy Code. Sharon Maxwell ("Trustee") was
11 appointed trustee of the Nichols' bankruptcy estate. Among the
12 assets listed in the Nichols' petition was a one-third interest in
13 a lakeside cabin in Michigan (the "Property") which Mrs. Nichols
14 owned as a joint tenant with right of survivorship with her two
15 brothers.

16 Trustee investigated the Property to determine if there was
17 any value to be realized for the estate if it were administered.
18 Under the Arizona law of community property, Trustee determined
19 that Mrs. Nichols held her interest in the Property independently
20

21 ³ This is the fifth appeal to the BAP arising from the
22 Nichols' bankruptcy case. Three of the previous appeals were
23 addressed in our memorandum decision, Nichols v. Whipple
24 (In re Nichols), BAP Nos. AZ-05-1360, 06-1002 and 06-1013 KPaD
(9th Cir. BAP, January 3, 2007), aff'd mem. 300 F. App'x 513
(9th Cir. 2008), which contains a more detailed recitation of the
background facts. We have not repeated all of those facts here.

25 ⁴ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as
27 enacted and promulgated prior to the effective date (October 17,
28 2005) of the relevant provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
April 20, 2005, 119 Stat. 23, and to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9037.

1 from her husband. See ARIZ. REV. STAT. § 25-213(A). Under Michigan
2 law applicable to rights of joint tenants of real property located
3 in that state, an interest in Michigan real property held by co-
4 tenants with the right of survivorship is deemed a joint life
5 estate followed by contingent remainders. See Albro v. Allen,
6 454 N.W.2d 85, 88 (Mich. 1990). Trustee concluded that the only
7 interest held by the estate in the Property which she could sell
8 was a life estate in the Property based on the life of
9 Mrs. Nichols. Id. at 93 (holding that dual contingent remainders
10 are not subject to partition, i.e., the purchaser of a life estate
11 has no right to the contingent remainder). Trustee therefore
12 determined that this life interest had little or no market value
13 as an estate asset, nor did any other assets, and filed a "No
14 Asset Report" in the bankruptcy case on May 26, 2005.

15 Trustee's conclusion concerning the value of the Property was
16 not shared by creditors Louise Whipple and the estate of Edson
17 Whipple ("Whipple"). On January 20, 2009, Whipple filed a motion
18 to compel Trustee to sell assets of the estate, including
19 Mrs. Nichols' interest in the Property. Then, on or about
20 February 11, 2009, Trustee received an unsolicited offer from a
21 third party to purchase the estate's interest in the Property for
22 \$50,000 cash.

23 Trustee withdrew her No Asset Report. The bankruptcy court
24 conducted a series of status conferences concerning Whipple's
25 motion to compel the sale of the Property. On April 9, 2009, the
26 court directed Trustee either to move to sell or to abandon the
27 Property within 90 days.

28

1 On the same day, Mrs. Nichols, together with her brothers/
2 co-tenants William and Robert Cambridge, submitted their original
3 application for allowance and payment of administrative expenses
4 of \$37,343.00, representing what they alleged was one-third of the
5 post-petition costs of preserving and maintaining the Property
6 during the bankruptcy case. Whipple objected to the original
7 application on April 14, 2009, arguing, among other points, that
8 the claimants had provided inadequate documentation of their
9 claim.

10 Trustee submitted a motion seeking authority to sell the
11 Property (the "Sale Motion") on May 11, 2009. In the Sale Motion,
12 Trustee proposed to sell at auction in the bankruptcy court
13 "whatever interests the estate [held in the Property and other
14 real property⁵], via quitclaim conveyance, on an 'as is-where is'
15 basis, without any warranty of any type or manner whatsoever."

16 The bankruptcy court considered the Sale Motion at a hearing
17 on June 16, 2009. Mrs. Nichols and her brothers, Trustee, and
18 Whipple were represented by counsel and heard. At that time,
19 Mrs. Nichols and her brothers bid \$50,010.00 for Mrs. Nichols'
20 interest in the Property, which was the highest and best bid. The
21 Minute Entry for the hearing reflects that the bankruptcy court
22 ruled that: "The backup bid for \$50,000 [the third party's bid]
23 will be accepted if within ten business days of today \$50,010 [the
24 Nichols' bid] is not delivered to the trustee."

25 There is no subsequent entry in the docket regarding the Sale
26 Motion, nor was any order approving a sale ever entered by the

27 ⁵ The proposed sale also included two small parcels of
28 undeveloped land in Arizona.

1 bankruptcy court. However, Trustee has informed the Panel that
2 Mrs. Nichols' brothers paid Trustee the \$50,010 purchase price.

3 After the hearing, Mrs. Nichols⁶ filed an Amended Application
4 for Allowance and Payment of Administrative Expenses relating to
5 the Property. The Amended Application reduced the requested
6 administrative expense claim to \$14,280, representing one-third of
7 the alleged expenses from the petition date through 2009 for
8 property hazard insurance, real property taxes, utility costs, and
9 non-labor "out of pocket expenses" for the Property. The attached
10 documentation included copies of bills and lists indicating
11 amounts due for the various expenses. However, there was no
12 evidence submitted with the Amended Application to show that any
13 payments had actually been made for these expenses, or by whom
14 such payments were made.⁷

15 Whipple objected to the Amended Application on August 20,
16 2009. Whipple argued that: (1) the expenses in question had not
17 been paid based on any transaction with the trustee; (2) the
18 expenses were incurred for the Nichols' personal benefit, and not
19 for the benefit of the bankruptcy estate; (3) there was no
20 evidence that Nichols in fact paid any of the expenses; and
21 (4) Nichols had failed to carry her burden of proof.

22

23

24 ⁶ Although the original application was filed in the names
25 of Mrs. Nichols and her two brothers, the Amended Application was
only filed in Mrs. Nichols' name.

26 ⁷ Additional deficiencies in Nichols' evidence include:
27 (1) there were no records of utility bills except for a brief
28 period, with all others estimated at \$50 per month; and (2) there
were records for actual property taxes only for 2001 and 2008,
with the other years estimated.

1 Trustee also filed an objection to the Amended Application on
2 September 22, 2009. Trustee noted that she had never been
3 contacted regarding the expenses for which Nichols sought an
4 administrative expense and had never approved any of the expenses.
5 Additionally, Trustee argued that the expenses were not "actual,
6 necessary costs and expenses of preserving the estate."

7 The bankruptcy court conducted a hearing on the Amended
8 Application on September 22, 2009, at which Mrs. Nichols, Trustee,
9 and Whipple were represented by counsel and heard. At the
10 conclusion of the hearing, the court orally denied the Amended
11 Application, stating:

12 The reason that I can't find that its an administrative
13 expense is simply the trustee never authorized it, the
14 trustee never knew about it, to have to come in now
15 seven, eight, nine years later and try to figure out
16 whether it was reasonable or not, that's why, you know,
17 you have to try to work these things through. . . . If
18 the Debtor did make these payments she was a volunteer
19 because she did not have the right, without the
20 trustee's consent, to incur the costs.

21 Hr'g Tr. 9:6-16 (September 22, 2009).

22 The bankruptcy court entered its order denying the Amended
23 Application on September 29, 2009. Nichols filed a timely appeal
24 on October 7, 2009.

25 **JURISDICTION**

26 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
27 and 157(b)(2)(A) and (B). We have jurisdiction under 28 U.S.C.
28 § 158.

1 In order to hold administrative expenses to a minimum and to
2 maximize the value of the bankruptcy estate, § 503(b) is narrowly
3 construed. Burlington N.R.R. Co. v. Dant & Russell, Inc.
4 (In re Dant & Russell, Inc.), 853 F.2d 700, 706 (9th Cir.1988)
5 (citing Otte v. United States, 419 U.S. 43, 53 (1974)).
6 Administrative expense claims are to be strictly construed because
7 of the presumption that the debtor has limited resources to
8 equally distribute among creditors. In re Amarex, 853 F.2d 1526,
9 1530 (10th Cir. 1988); see also In re Mammoth Mart, Inc.,
10 536 F.2d 950, 953 (1st Cir.1976) ("To give priority to a claimant
11 not clearly entitled thereto is inconsistent with the policy of
12 equality of distribution; it dilutes the value of the priority for
13 those creditors Congress intended to prefer."). The
14 administrative expense applicant must prove entitlement to the
15 requested reimbursement by a preponderance of the evidence.
16 Gull Indus. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386,
17 388 (9th Cir. BAP 1994)

18 In her brief, Mrs. Nichols states that she seeks:

19 reimbursement^[8] for her actual out-of-pocket costs for
20 one-third of the utilities, taxes, insurance premiums,
and repair and maintenance costs of the subject property

21
22 ⁸ The use of the term "reimbursement" also necessarily
implies that a previous payment was made for which the claimant
23 seeks to be repaid. United States v. Serafini, 233 F.3d 758
(3d Cir. 2000) (quoting with approval the district court's
24 "straightforward" definition of reimbursement: "As it is used in
its common parlance, reimbursement means the delivery of money to
25 a person to pay back that person for money that the person
expended for some matter."). This definition is also consistent
26 with Black's Law Dictionary 1399 (9th ed. 2009) defining
reimbursement as "repayment." See also WEBSTER'S THIRD NEW INT'L
27 DICTIONARY 1914 (Encyclopedia Britannica, 1961) (defining
"reimbursement" as "the action of reimbursing" and "reimburse" as
28 "to pay back (an equivalent for something taken, lost, or
expended) to someone.").

1 during the time it remained an estate asset. The total
2 amount of such costs sought by Debtor Mary Ann Nichols
3 is \$14,280.00, which claim was supported by extensive
4 documentation evidencing the actual payment, and in some
5 cases estimation of accounts, paid by Mary Ann Nichols
6 on account of her one-third interest in the property.

7 Appellant's Opening Br. at 6 (emphasis added). This statement is
8 simply incorrect. We have carefully examined the record on
9 appeal, as well as all entries in the bankruptcy court docket, and
10 there is no indication at all that Mrs. Nichols paid any of these
11 expenses, let alone "extensive documentation evidencing the actual
12 payment" by Mrs. Nichols.

13 This statement is all the more striking because it follows
14 multiple challenges in the bankruptcy court and in this appeal
15 that Mrs. Nichols provided no evidence that she paid the expenses.
16 In response to Mrs. Nichols' first application on April 9, 2009,
17 Whipple objected, challenging whether any of the claimed expenses
18 were actually incurred by Mrs. Nichols. Whipple's response was
19 later joined by another creditor, David Weston, who likewise
20 challenged whether the expenses were incurred by Mrs. Nichols.
21 Presumably in response to these challenges, Mrs. Nichols submitted
22 her Amended Application on August 17, 2009 due to, in her own
23 words, her "inability to locate documents to verify, or
24 documentation from which amounts can be extrapolated in order to
25 substantiate the various components of the claim." However, the
26 Amended Application contains no evidence that Mrs. Nichols paid
27 any of the expenses. Indeed, with the possible exception of
28 property taxes,⁹ there was no evidence that anyone had paid any of

⁹ The tax records attached to the Amended Application merely show that taxes were incurred by Mrs. Nichols and her brothers, and that as of 2008 there were no taxes in arrears. The records do not show who paid those taxes.

1 the expenses. There is a five-page printout summarizing
2 categories of expenses from 2002 to 2009, but these are not
3 contemporaneous records of the expenses and do not indicate
4 whether they were paid or by whom. A few months of utility bills
5 are presented with the application,¹⁰ but most were simply
6 estimated at \$50 per month, again with no indication that they
7 were paid or by whom.

8 Whipple also responded to the Amended Application on August
9 20, 2009, specifically charging that "there is no evidence that
10 Nichols paid any of the expenses." Counsel for Whipple repeated
11 this charge at the hearing on the Amended Application on September
12 22: "There's absolutely no evidence, or even allegation made, that
13 Mary Ann Nichols paid these expenses." Hr'g Tr. 5:19-20.
14 Mrs. Nichols, through counsel or otherwise, never effectively
15 addressed this charge in the hearing or elsewhere in the
16 bankruptcy court.

17 In this appeal, Trustee also asserts that there is no
18 evidence that Mrs. Nichols paid the expenses.

19 There is nothing in the record to indicate that any of
20 the payments were made by [Mrs. Nichols]. From evidence
21 before this Court, it cannot be determined if any []
22 such payments were ever, in fact, made at all. It could
23 just as easily be supposed that the payments were made
24 (if at all) by the other joint tenants in the property.
Those other joint tenants had obligations to make all of
the sought payments, they benefitted, to the extent
anyone at all benefitted, from such payments, and they
had the right and opportunity for use and enjoyment at
all times of the Michigan property.

25
26 ¹⁰ For the few months with itemized utility bills, they
27 included telephone and cable television expenses. Even if it
28 could be established that Mrs. Nichols paid them or her
proportional share of them, they were never requested by Trustee
and it is doubtful that such expenses could be considered a
benefit to the bankruptcy estate and reimbursable under
§ 503(b)(1)(A).

1 Trustee's Reply Br. at 14. This argument was not addressed in the
2 Nichols' briefing; indeed, Mrs. Nichols did not file a reply brief
3 in this appeal. Then, counsel for Mrs. Nichols was questioned by
4 all three members of this Panel at oral argument as to what
5 evidence had been presented that Mrs. Nichols had paid the
6 expenses for which she sought reimbursement from the estate.
7 Counsel conceded that there was no evidence in the record.
8 Instead, counsel asked the Panel to remand this contest to the
9 bankruptcy court so that such evidence could be submitted.

10 In this procedural setting, we decline to allow Mrs. Nichols
11 a chance to reopen the evidentiary record in the bankruptcy court.
12 The record on appeal supports a conclusion that Mrs. Nichols has
13 had numerous opportunities to offer proof of this essential
14 element of her case. She ignored these challenges at her peril.

15 Although the bankruptcy court did not consider this failure
16 to address an essential element of her burden of proof, we may
17 affirm on any basis supported in the record. Hemmen, 51 F.3d at
18 891; In re Leavitt, 209 B.R. at 940. Because she bore the burden
19 of proof as to any administrative expense claim and failed to
20 show, or even address, that she had paid the expenses in question,
21 we conclude that the bankruptcy court's decision denying her claim
22 should not be disturbed.

23 **B.**

24 Section 501(b)(1)(A) provides that, "After notice and a
25 hearing, there shall be allowed administrative expenses . . .
26 including - (1)(A) the actual, necessary costs and expenses of
27 preserving the estate[.]" The bankruptcy court has "broad
28 discretion" in making or denying such awards. Microsoft Corp. v.
DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995).

1 In the Ninth Circuit and elsewhere, to secure an allowed
2 administrative expense under § 501(b)(1)(A), the claimant must
3 show that the claim in question "(1) arose from a transaction with
4 the [trustee] (or alternatively, that the claimant gave
5 consideration to the [trustee]), and (2) directly and
6 substantially benefitted the estate." Abercrombie v. Hayden Corp.
7 (In re Abercrombie), 139 F.3d 755, 756-57 (9th Cir. 1998) (quoting
8 Microsoft Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091,
9 1094 (9th Cir. 1995); accord In re Merry-Go-Round Enters., Inc.,
10 180 F.3d 149 (4th Cir. 1999); In re Sunarhauserman, Inc., 126 F.3d
11 811, 816 (6th Cir. 1997); Trustees of Amalgamated Ins. Fund v.
12 McFarlin's, Inc., 789 F.2d 98, 100 (2d Cir. 1986).¹¹ The purpose
13 of the administrative expense priority afforded by the Code is to
14 encourage third parties to enter into agreements with the trustee
15 for the benefit of the estate. Boeing v. N. Am., Inc. v. Ybarra
16 (In re Ybarra), 424 F.3d 1018, 1026 (9th Cir. 2005);
17 In re Kadjevich, 220 F.3d 1016, 1019 (9th Cir. 2000) (noting that
18 the policy underlying administrative priority status is to
19 encourage parties to take risks in entering agreements with

21 ¹¹ These four courts of appeals employ almost identical
22 language in requiring a postpetition transaction with the trustee
23 or debtor in possession or some consideration.

24 There is one Supreme Court decision, however, decided under
25 the Bankruptcy Act, that carves out an exception to the
26 requirement for a postpetition transaction with the trustee. In
27 Reading v. Brown, 391 U.S. 471 (1968), the Supreme Court held that
28 an award of tort damages to victims of a fire caused by the
chapter 11 receiver's negligence was entitled to an administrative
expense priority under Bankruptcy Act § 64(a)(1) (repealed 1978,
the predecessor of § 503(b)(1)(A)). In the interests of "fairness
to all persons having claims against the insolvent," id. at 477,
the Court held that tort claims arising postpetition were "actual
and necessary expenses" of preserving the estate. Id. at 482,
485. Here there is no suggestion by Mrs. Nichols that any
tortious activity by the trustee occurred, so this one exception
to the transaction requirement is not applicable.

1 trustee); In re Abercrombie, 139 F.3d at 757 (citing encouragement
2 of third parties to deal with the trustee).

3 In determining whether there was a transaction with the
4 trustee, the creditor asserting an administrative expense claim
5 must prove there was some inducement by the trustee causing the
6 creditor to incur the expense. In re United Trucking Servs.,
7 Inc., 851 F.2d 159, 162 (6th Cir. 1988). The alternative to
8 proving a transaction, a showing that the claimant gave
9 consideration to the trustee, requires that the creditor prove
10 that the trustee induced the creditor's performance, and that
11 performance was then rendered by the creditor to the estate.
12 In re White Motor Corp., 831 F.2d 106, 110 (6th Cir. 1987).

13 Here, the bankruptcy court had repeated, uncontroverted
14 statements from Trustee that she had never been contacted
15 regarding the expenses for which Nichols sought administrative
16 expense approval and had never approved any of the expenses.
17 Mrs. Nichols never contradicted Trustee's assertions or attempted
18 to prove that there was a transaction or inducement from Trustee
19 for Mrs. Nichols to incur the expenses. Consequently, the
20 bankruptcy court had ample factual grounds for its finding that,
21 "the trustee never authorized it, the trustee never knew about
22 it."

23 Having found that there was no contact or approval from
24 Trustee, necessarily implying that there was no transaction with
25 or inducement from Trustee, the bankruptcy court was not required
26 to address the second prong of the DAK Indus. test, whether the
27 alleged administrative expense claim directly and substantially
28 benefitted the estate. However, had the bankruptcy court

1 considered the question, it is clear that Mrs. Nichols provided no
2 evidence or reasoned argument that incurring the expenses directly
3 and substantially benefitted the estate. Her only conclusory
4 statement in the opening brief was that, "Clearly, the expenses
5 for which the Debtor sought an allowance as an administrative
6 expense were both actual and necessary and benefitted the estate
7 by allowing it to recover a substantial sum for these assets even
8 though the sale did not occur until years after the filing of the
9 petition." Appellants' Open. Br. at 8. Mrs. Nichols simply
10 provides no explanation how the expenses she incurred benefitted
11 the estate, directly or indirectly, let alone substantially.

12 On the other hand, there is an admission in Mrs. Nichols'
13 pleadings that her intent was not to benefit the estate, but to
14 benefit herself:

15 All of the expenses set forth in the summary attached
16 hereto were reasonable and necessary to preserve and
17 protect the subject property, and the majority of which
18 were paid after the time that the chapter 7 trustee
19 herein filed a no asset report, indicating initially
20 that the Trustee did not intend to sell the subject
21 property. Had it been clear from the onset that the
22 Trustee did not intend to abandon the property, these
23 costs and expenses would have been a direct cost of the
24 estate, and would not have been paid [by] the debtor.

25 Amended Application at 2-3 (emphasis added). In short, in her own
26 words, Mrs. Nichols admits that she would not have paid the
27 expenses in order to preserve or benefit the estate. She assumed
28 that her interest in the Property would be abandoned by Trustee
and she would pay the expenses, if in fact she paid any of them,
to benefit herself.

To qualify as an administrative expense under § 503(b)(1)(A),
the expenses must not be incurred with the intent to benefit the
person making the expenditure. In re Sierra Pac. Broadcasters,

1 185 B.R. 575, 577 (9th Cir. BAP 1995) (holding that the cost
2 incurred to benefit the claimants' own interest is not entitled to
3 administrative priority under § 503(b)(1)(A)); In re Leedy
4 Mortgage Co., Inc., 111 B.R. 488, 493 (Bankr. E.D. Pa.
5 1990)(same).

6 For these reasons, we conclude that the bankruptcy court
7 applied the correct legal rule on allowance of administrative
8 claims under § 503(b)(1)(A) and that the court's application of
9 this standard to the facts was neither illogical, implausible nor
10 without support in inferences that may be drawn from the facts in
11 the record. Consequently, the bankruptcy court did not abuse its
12 discretion in denying the administrative claim as to those
13 expenses that might be allowable under § 503(b)(1)(A), i.e., for
14 property hazard insurance, utility costs, and non-labor "out of
15 pocket expenses."

16 **C.**

17 Mrs. Nichols' Amended Application sought, in part, an
18 administrative claim for payment of property taxes for the
19 Property. The Bankruptcy Code provides for allowance of an
20 administrative claim for payment of property taxes under
21 § 503(b)(1)(B)(i): "After notice and a hearing, there shall be
22 allowed administrative expenses . . . including - (1)(B) any tax
23 (i) incurred by the estate, whether secured or unsecured,
24 including property taxes, for which liability is in rem, in
25 personam, or both[.]"

26 Historically, American bankruptcy law has treated
27 administrative claims for taxes as a separate category from other
28 priority claims. The Bankruptcy Act of 1898 provided for

1 administrative claims similar to the Bankruptcy Code's
2 § 503(b)(1)(A) in repealed § 64 (a)(1)-(3). Administrative claims
3 for payment of tax obligations under the Bankruptcy Act, however,
4 were addressed in repealed § 64(a)(4). Both the former Bankruptcy
5 Act and the current Code require that administrative expenses for
6 non-tax claims be actual and necessary for the preservation of the
7 estate. In contrast, no such requirement, or implied requirement
8 that the administrative claim benefit the estate, is included in
9 either § 503(b)(1)(B) or repealed § 64(a)(4) dealing with taxes.
10 On the contrary, bankruptcy courts have held that the requirement
11 under § 503(b)(1)(B) for a tax payment to be accorded
12 administrative expense priority under the Code is that it be
13 incurred by the bankruptcy estate postpetition. In re Balt.
14 Marine Indus., 344 B.R. 407, 414 (Bankr. D. Md. 2006);
15 In re Tri-City Health Ctr., 283 B.R. 204, 207 (Bankr. N.D. Tex.
16 2002) ("Section 503(b)(1)(B)(I), on the other hand, does not
17 require that the taxes be incurred to preserve the estate, but
18 merely that the taxes be incurred by the estate."); In re Farris,
19 205 B.R. 461, 464 (Bankr. E.D. Pa. 1997). Therefore, the
20 requirements for an administrative claim under § 503(b)(1)(B) are
21 less detailed than one under § 503(b)(1)(A).

22 There is no requirement that the trustee authorize or induce
23 the payment of taxes and, indeed, no prohibition on self-interest.
24 However, as the Babb court ruled, there is still the irreducible
25 threshold requirement that a claimant asserting an administrative
26 claim for reimbursement of a tax debt that she paid for the estate
27 must prove that she did pay it. Counsel for Mrs. Nichols has
28 conceded that there is no evidence in the record that Mrs. Nichols
paid the tax debt. Thus we affirm the bankruptcy court's decision

1 not to allow an administrative expense for alleged payment of
2 property taxes.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The bankruptcy court's order is AFFIRMED.