

**FILED**

**APR 13 2006**

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

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4 In re: ) Chapter 7  
5 OSMOND BURTON, JR., )  
6 ) No. 4:00-bk-00790-JMM  
7 )  
8 ) **MEMORANDUM DECISION**  
9 ) (Opinion to Post)  
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On March 13, 2006, this court heard creditor Jan Oller's Motion for Allowance and Payment of Administrative Expenses. Oller was represented by Jonathan Rothschild of Mesch, Clark & Rothschild. Neither Debtor nor the Trustee made an appearance. After reviewing the record and the law, this court now rules.

**FACTS**

Osmond Burton, Jr. ("Debtor") filed a chapter 7 bankruptcy petition on March 8, 2000 and was granted a discharge on September 8, 2000. Creditor Jan Oller ("Oller") filed a nondischargeability complaint against Debtor based on a promissory note executed by Debtor. Oller was represented by Mesch, Clark & Rothschild ("MCR"). A settlement agreement was entered into and approved by this court on August 30, 2005. Pursuant to the terms of the settlement agreement, Debtor agreed to settle with his brother-in-law, Burt Kinerk, for a debt he owed Debtor in the amount of \$28,000. The settlement monies were paid to the Trustee. Creditor subsequently filed a Motion for Allowance and Payment of Administrative Expense in the amount of \$4,807.50 in attorneys' fees. The motion was unopposed.

1 DISCUSSION

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3 Oller alleges that MCR was instrumental in recovering the settlement monies and that MCR  
4 provided a direct and valuable benefit to the estate by bringing the settlement monies into the estate.  
5 Oller also asserts that the fees incurred by MCR were actual and necessary costs of recovering the  
6 settlement monies.

7 Section 503(b)(1)(A) provides that “[a]fter notice and a hearing, there shall be allowed  
8 administrative expenses . . . including the actual, necessary costs and expenses of preserving the  
9 estate . . . .” While the court has broad discretion to approve administrative expenses, “it is required  
10 to construe § 503(b) narrowly to keep costs to a minimum and preserve the limited assets of the  
11 bankruptcy estate for the benefit of unsecured creditors.” *In re Cent. Idaho Forest Products*, 317  
12 B.R. 150, 155 (Bankr.D.Idaho 2004) (citations omitted).

13 In order to qualify for an administrative expense under § 503(b)(1)(A), the creditor must  
14 demonstrate “that the debt asserted to be an administrative expense (1) arose from a transaction with  
15 the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave  
16 consideration to the debtor-in-possession); and (2) directly and substantially benefitted the estate.”  
17 *Id.* at 156, citing *Texas Comptroller v. Megafoods Stores, Inc. (In re Megafoods Stores, Inc.)*, 163  
18 F.3d 1063, 1071-72 (9th Cir. 1998); *In re TSB, Inc.*, 302 B.R. 84, 87 (Bankr.D.Idaho 2003).

19 First, the requested administrative expense did indeed arise from a transaction with Debtor.  
20 Oller filed a nondischargeability complaint against Debtor based on a promissory note executed by  
21 Debtor. The attorneys’ fees were incurred prosecuting the adversary proceeding, and also included  
22 fees for telephone calls, writing letters, drafting motions and negotiating the settlement agreement.  
23 Therefore, the first element has been met.

24 Second, the requested administrative expense must have directly and substantially benefitted  
25 the estate. Clearly, this is the case. The work performed by MCR resulted in the increase in value of  
26 the estate by \$28,000. The settlement money was paid directly to the trustee, which in turn

1 substantially benefitted Debtor's estate. Therefore, the second element has been met.

2 Finally, a review of MCR's bill shows that all fees were actual and necessary costs of  
3 recovering the money. Therefore, Oller's Motion for Allowance and Payment of Administrative  
4 Expense in the amount of \$4,807.50 is hereby GRANTED. A separate order will be entered. *Bankr.*  
5 *R. 9021.*

7 DATED: April 18, 2006

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9   
10 JAMES M. MARLAR  
UNITED STATES BANKRUPTCY JUDGE

11 COPIES served as indicated below this 18  
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