

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

In re:	:	
	:	
KENNETH D. KOSSOW,	:	Case No. 03-27115-BKC-JKO
	:	Chapter 7
Debtor.	:	
_____	:	

**ORDER DENYING DEBTOR’S MOTION
FOR PAYMENT OF ADMINISTRATIVE EXPENSE**

This case came on for hearing on May 15, 2006, on the Renewed Motion for Payment of Administrative Expense (the “Motion”) [CP 281] filed by the Debtor, Kenneth D. Kossow, as assignee of certain claims of Snapp Industries, Inc. The Trustee objected [CP 291] to the relief sought in the Motion and the Debtor filed a reply [CP 298] to that objection. The Court took the matter under advisement at the hearing and is satisfied that it is appropriate to rule.

This chapter 7 case was precipitated by a dispute between the Debtor and Snapp Industries,

Inc., which repaired the Debtor's seawall pursuant to contract.¹ The Debtor disputed the amount of the Snapp bill (some \$8,000) and engaged in extensive litigation with Snapp in the County Court for Broward County – resulting in a judgment after a jury trial in Snapp's favor in the amount of some \$139,000, which included attorneys' fees awarded against the Debtor.² This in turn precipitated the Debtor's filing a petition under chapter 13 of the Bankruptcy Code in September 2003, followed some eleven months later by conversion to chapter 7 in August 2004.

Although the Debtor was represented by counsel during part of these proceedings, he has been representing himself *pro se* in this case since prior to the transfer of this case to the undersigned judge in February 2006. The Debtor is a member of The Florida Bar.

The litigation between the Debtor and Snapp continued during the course of this case, and included Snapp's carrying the laboring oar in challenging the Debtor's homestead exemption because the property exceeds the Florida Constitution's one-half acre limitation on homesteads located within a municipality. Snapp also filed a complaint against the Debtor seeking determinations that the Debtor's obligations to Snapp were non-dischargeable under 11 U.S.C. § 523 and that the Debtor should be denied a discharge under 11 U.S.C. § 727.

As a result of Snapp's homestead challenge, joined in by the Trustee, the Debtor settled the litigation for a payment of \$30,000 to the estate. Snapp thereafter filed a motion for payment of administrative expense (the "Snapp Motion") [CP 95], seeking to recover fees and costs incurred

¹The Debtor resides in a \$1.4 million waterfront house which is unencumbered by a mortgage. Had a timely motion been filed under 11 U.S.C. § 707(b), the Court is satisfied that a determination would have been made that the Debtor's bankruptcy petition was a substantial abuse.

²As discussed below, it is both fair and restrained to characterize the Debtor as a vexatious litigant.

by its counsel in the homestead litigation under the provisions of 11 U.S.C. § 503(b)(4).

Section 503(b)(4) provides that “reasonable compensation for professional services,” including attorneys’ fees and costs, for a entity whose expense claim is allowable under § 503(b)(3), may be paid as an administrative expense. Section 503(b)(3) defines the universe of entities whose professionals’ expenses may be paid to include a list of six discrete categories of entities which have provided various services to the estate, none of which are directly applicable to this situation. The closest category arises under 11 U.S.C. § 503(b)(3)(B), which permits expenses for “a creditor that recovers, after the court’s approval, for the benefit of the estate any property transferred or concealed by the debtor.”

Although there is some case law in this district holding that the preliminary language of § 503(b) that “there shall be allowed administrative expenses, ... *including* – ” the six narrow categories means that other administrative expenses can be awarded for creditors providing other kinds of services, *In re George*, 23 B.R. 686 (Bankr. S.D. Fla. 1982), there is other authority in this district holding that a challenge to a debtor’s exemptions cannot be the subject of an award under §§ 503(b)(3) or 503(b)(4) unless the challenge is previously authorized by the Court and is of “property transferred or concealed by the debtor,” *In re Monahan*, 73 B.R. 543 (Bankr. S.D. Fla. 1987). Neither of the conditions required by *Monahan* is present in this case.³

In 2005, in connection with the litigation brought by Snapp challenging the Debtor’s

³The Snapp Motion suggests that Snapp “exposed the Debtor’s attempt to conceal, through the use of the homestead exemption, assets that were rightfully property of the estate.” The Court interprets the reference in § 503(b)(3)(B) to “property transferred or concealed by the debtor” to mean property transferred or *the existence of which* is concealed by the debtor, not property whose existence is disclosed, albeit property which exceeds the land-area limitation of exempt homestead property.

entitlement to a discharge under § 727 and seeking a determination that the Debtor's obligations to Snapp were non-dischargeable under § 523, Adv. Pro. 03-6706-BKC-PGH, the Debtor and Snapp entered into a settlement agreement approved by the Court under which the Debtor paid \$20,000 to Snapp and Snapp assigned to the Debtor all of its claims against the Debtor. Thereafter, on September 16, 2005, the Debtor filed a pleading [CP 235] in which he "hereby withdraws Snapp's motion for payment of administrative expense dated May 18, 2004."

The Debtor's Motion seeks the relief sought in the Snapp Motion, and thereby seeks to recover *for the Debtor* Snapp's attorneys' fees and expenses in the amount of \$8,218.50 – fees incurred by Snapp in successfully litigating against the Debtor.

From the Court's review of the files in this case and in the Snapp adversary proceeding and from the Court's own experience in dealing with the Debtor since this case was transferred to it, the Court is satisfied that the Debtor has consistently engaged in gonzo litigation tactics which are designed, and have the effect, of multiplying the proceedings unreasonably and vexatiously.⁴

Although Snapp clearly provided benefit to the estate through its challenge to the Debtor's homestead exemption, it is not clear that Snapp would be entitled to recover its attorneys' fees and costs under § 503(b)(4) because it is not clear that Snapp falls within any category of entities set forth in § 503(b)(3). In the Debtor's hands, however, the assertion of Snapp's § 503(b)(4) claim is outrageous. The Debtor withdrew the Snapp Motion in September 2005 and the Debtor has offered no good reason why the administrative expense request should be resuscitated now.

⁴Were the bankruptcy court a "court of the United States" within the meaning of 28 U.S.C. § 1927, the Court would favorably consider a motion to assess costs and fees against the Debtor under that statute. As a unit of the district court, this Court does not have jurisdiction under § 1927. *In re Burt*, 179 B.R. 297 (Bankr. M.D. Fla. 1995).

Even if the administrative expense claim were allowed, the Court would, because of the Debtor's unrelenting inequitable conduct, subordinate that claim in the Debtor's unclean hands to all other claims in the case under 11 U.S.C. § 510(c). Given that result, allowing the claim here would be an act of futility in which the Court will not engage.

For the foregoing reasons, it is ORDERED that the Motion is DENIED.

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The Clerk is directed to serve a copy of this Order on all parties in interest.