

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF )  
 )  
ELLEN R. JONES, ) CASE NO. 01-35405 HCD  
 ) CHAPTER 11  
 )  
DEBTOR. )

Appearances:

R. William Jonas, Jr., Esq., counsel for debtor, Hammerschmidt, Amaral & Jonas, 137 North Michigan, South Bend, Indiana 46601;

Patricia Primmer, Esq., counsel for movant Palm & Associates, Inc., May Oberfell Lorber, 4100 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545; and

Robin W. Morlock, Esq., Assistant United States Attorney, counsel for United States of America on behalf of Farm Service Agency, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 19, 2007.

Before the court is the Motion for Allowance and Payment of Administrative Claim filed by Palm & Associates, Inc. (“Palm & Associates”), on May 26, 2006. Chapter 11 debtor Ellen R. Jones (“Ellen Jones” or “debtor”) filed her objection to the motion on June 9, 2006. On June 14, 2006, the United States of America, on behalf of its agency the Farm Service Agency, also objected to the motion. However, it withdrew its objection at the hearing held on September 7, 2006. After a trial was held on November 15, 2006, the court took the motion and objection under advisement. For the reasons that follow, the court grants the motion and allows Palm & Associates an administrative claim.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding

within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

The debtor decided to sell by auction her 226 acres of land (158.2 acres of it tillable farmland) in Olive and Lincoln Townships. She hired Ball Auction & Realty, Inc. (“Ball Auction”), to manage the auction and closing. *See* Ex. 3. On May 3, 2002, Ball Auction auctioned her land in 6 parcels, ranging from 3 acres to 81.7 acres. *See id.* After the auction, a survey of the parcels was needed to certify or establish boundaries and easements. Ball Auction asked Palm & Associates, consulting engineers and land surveyors, to submit a proposal to perform four surveys and some additional survey work on Ms. Jones’ property. Palm & Associates’ proposal was accepted.

When Palm & Associates began the surveys, however, it encountered some difficulties concerning a boundary line and the marker for that boundary. As it was explained in another adversary proceeding in this case, title to the land parcels was “in question because a marker was misplaced by some 50 feet during a Works Progress Administration (‘WPA’) survey.” Case No. 01-35405, Adv. Proc. No. 03-3153, R. 2 (Amended Complaint at 2, ¶ 5). Palm & Associates, as land surveyors licensed in Indiana, followed statutory requirements in completing the survey. In this case, after more research and field work, Palm & Associates resolved the boundary and monument issues and completed the surveys. Palm & Associates also was asked by the debtor to complete two additional projects: to survey a farm lane easement (one related to the property that had the disputed monument) and to survey an additional easement.

Once it completed the survey work, on November 26, 2002, Palm & Associates submitted an invoice for professional services in the amount of \$14,888.00. Its invoice of January 28, 2003, for its services in providing a description of the ingress/egress easement on the debtor's property, sought payment of \$605.00. Its June 12, 2003 invoice charged \$350.00 for Palm & Associates' services in finding and marking irons on parcel C and an easement. *See Exs. 5, 6, 7.* Palm & Associates' three invoices thus sought payment for all its survey services in the total amount of \$15,843.00. On May 30, 2003, it was paid \$6,359.00. On April 28, 2006, it was paid \$1,709.50. *See Ex. 8.* The survey company filed its Motion for Allowance and Payment of Administrative Claim on May 26, 2006, seeking the balance owed to Palm for its professional services. *See R. 151.* Palm & Associates claims the entire amount as an administrative claim and seeks the amount remaining on its bill, \$7,774.50.

The debtor asserts that these two checks, in the total amount of \$8,068.50, are payment in full for the survey work done that was of benefit to the debtor's bankruptcy estate. Her position at trial is that the surveys of the farm lane easement and one of the four boundaries were not used for the debtor's benefit and therefore that the remaining balance is not owed. In her Objection to the Palm & Associates motion, Ellen Jones asserted that she "contracted with Palm & Associates to perform a survey on certain real property owned by the debtor."<sup>1</sup> R. 155 at 1. She raised many objections: (1) the survey report was unreasonably expensive; (2) it ignored accepted rules of surveying; (3) it cast doubt on the ownership of an easement road whose boundaries had been established for more than forty years; and (4) it caused the debtor to file a quiet title action, creating much delay and increased attorney fees. The debtor explained that she paid "a portion of the survey expense through deduction from earlier closings of certain parcels of property sold at auction and reported those payments to the court. The debtor believes Palm & Associates have been paid all that is reasonable for services rendered." *Id.* at 2.

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<sup>1</sup> There is no evidence of a contract between Ellen Jones and Palm & Associates. The evidence at trial indicates that Ball Auction, the auctioneer that sold the debtor's real property, selected Palm & Associates to perform the surveys as part of the sales process. However, the court finds that the contract between Ellen Jones and Ball Auction indicates that the debtor is responsible for the costs of surveys. *See R. 23, Ex. A.*

*A. Trial testimony and evidence*

At trial, the claimant called two witnesses. The first was Douglas William Bolles, the survey manager of Palm & Associates. He testified that he has been with the company 17 years. He handles a new client's work orders and is in charge of the field crews. He also works with Mr. Palm on boundary surveys. He submitted the final proposal to Bob Powell, at Ball Auction, for the survey work requested on Ellen Jones' farm. *See Ex. 1.* Each of the 7 survey items had an estimated fee next to it. He testified that Bob Powell then faxed the proposal back to him, with Powell's comments concerning each item. *See Ex. 2.* After he received the fax, Bolles spoke with Powell to confirm the work items and to discuss the scope of the work. Bolles wrote "Gave go-ahead" on the proposal after the conversation with Powell. Then he wrote a work order to begin the work.

Once the survey work began, however, Palm & Associates found evidence of prior surveys and monuments, both ancient and modern, which suggested several discrepancies between title lines. Bolles testified that he kept his clients, both Ellen Jones and Bob Powell, informed of the issues and advised them that additional work was needed. He believed that Ellen Jones and Bob Powell were at his office at least once, and that Powell was there more often.

On cross examination, Bolles stated that he thought Palm & Associates' surveys were used for the auction sales of the parcels and for other uses. He did not recall whether the sale of parcel number 6, the 3-acre parcel, resulted in a completed sale or whether the farm lane easement description drafted by Palm & Associates was actually used by the parties when the sale was consummated. Because he was not at the closing, he was unsure. He was aware, however, that there was an adversary proceeding held to clear the title to the farm lane easement.

Bolles explained to the court the reason that Palm & Associates researched ancient surveys and compared them with the modern ones. He said that a surveyor is charged with following in the footsteps of prior surveys. Although he is not a licensed surveyor, Bolles works with Palm on surveys. In this case, they found gross errors in recent surveys. The old surveys showed where the original government corners would have been,

even though they were obliterated. Palm & Associates found, by following the old evidence, that the county reference marker was in conflict with the obliterated corner. Bolles noted that the county surveyor maintains the surveys and perpetuates the original corners. The surveyor's office is also a repository for ancient surveys made prior to the recording laws, he explained, and Palm & Associates uses that information in its survey work. Palm & Associates found legal surveys done in the late 1800s and early 1900s which documented the original monuments at issue. There was a discrepancy of 50 feet between the ancient evidence of certain corners and the present county section corner markers, they found. Bolles testified that the company was required to do the additional work in order to determine the proper boundaries. He informed Ellen Jones of that problem.

Bolles reported another error, as well. Palm & Associates discovered that, in an area adjacent to a portion of the property they surveyed, a more modern survey was blatantly not in compliance with the Indiana statute. The surveyors were obligated professionally to look into it. Again, Bolles said he kept Ellen Jones and Ball Auction informed. His phone records indicated that, between the date he submitted the Palm & Associates proposal and the date he sent the invoice for the surveys, he spoke to Ms. Jones three times (on July 12, August 15, and November 15, 2002) and to Ball Auction seven times. On re-cross examination, Bolles stated that, in the phone call on July 12, 2002, he told Ellen Jones of the progress of the surveys. He recollected that he spoke with her directly, rather than leaving a message for her on an answering machine.

The claimant's second witness was Robert David Palm, the president of Palm & Associates. He is a registered professional engineer and registered land surveyor in Indiana. As a licensed professional, he is bound by Title 865 of the Indiana Administrative Code, he stated.

Palm reviewed the plat of the survey which was prepared under his direction for Ball Auction and certified on January 28, 2003. Because the Palm & Associates proposal (Exhibit 1) referred to the Jones land parcels by numbers, the Ball Auction flyer (Exhibit 3) used different number references for the parcels, and the plat of Palm & Associates' survey (Exhibit 4) referred to them by letters, he explained the correspondence of the three documents:

The survey's Parcel D is identical to proposal item #1 and Auction flyer Parcel #2 (25.4 acres).  
The survey's Parcel B is identical to proposal item #3 and Auction flyer Parcel # 3 (40 acres).  
The survey's Parcel C is identical to proposal item #5 and Auction flyer Parcel # 4 (40 acres).  
The survey's Parcel A is identical to proposal item #7 and Auction flyer Parcel #6 (3 acres).

Palm then explained that he began his surveys with research in the courthouse, in the surveyor's and recorder's offices, and in the field, doing investigations of survey points. He learned that a section corner, the southwest corner in section 6 of the county surveyor's records, was different from the monumentation shown in the county records, which was a WPA monument. He pointed out that it was the southwest corner of parcel D on the survey. He placed the southwest corner at approximately 51.88 feet north and 15.51 feet east of the WPA monument that was recorded in the county surveyor's office. When he discovered the discrepancy, he first verified the information and then notified the County Surveyor and clients Ellen Jones and Ball Auction of it.

Palm testified that the debtor's attorney, Mr. Jonas, contacted Palm and asked him to prepare an easement description that would encompass the existing farm lane which runs from the highway south to parcel D. Because his survey indicated that the title line (which was the west line of section 6) was 30-40 feet east of the established fence line, Palm understood that a farm lane easement was necessary and that the easement description would be used in the documents for the easement owners. Then he added that easement information to the survey. Palm testified that the original survey was dated October 21, 2002; it then was updated with the easement information and finally was certified on January 28, 2003.

After the survey was completed, Ellen Jones came to Palm & Associates' office. She said that she suspected some tampering with the iron markers on Parcel C (which had been sold), and perhaps some encroachment with the driveway. She wanted Palm & Associates to re-mark the north line of the parcel, to find the irons Palm & Associates placed as marks in 2002, and to re-verify markers in the field. He performed that job for her, as well. He then submitted three invoices: The first invoice itemized the original survey work done on the Jones parcels (Exhibit 5); the second billed for the description of the easement for parcel D, done at

debtor's counsel's request (Exhibit 6); and the third charged for the re-marking of irons and boundary lines of parcel C, at the debtor's request (Exhibit 7).

On May 30, 2003, Palm & Associates received a check for \$6, 359.00. On April 28, 2006, the surveyors received a second check for \$1,709.50. The company does not know how those amounts were determined. Palm testified that those were the only payment checks the company received. Palm & Associates sent a letter to Mr. Jonas on June 6, 2005, requesting payment in full. *See* Ex. 9. It received the second check ten months later but did not get a response from Mr. Jonas to its letter.

Palm stated that he would not have done any of the work differently. He pointed out that Rule 12 of Title 865 says that the information in the County Surveyor's office is only prima facie evidence of a land survey corner and is not the only information to be researched. Surveyors are obligated to research the location of the original government monuments and to reset the section corner in the location that is closest to the original government placement under the 1834 original government survey. The early survey markers and original monuments can still be found, he said. County surveyors sometimes replace the original stakes from 1834 with stones with an identifiable point on it or boulders marked with the section number chiseled in it.

When resolving a boundary location, the decision of a licensed land surveyor like Palm is final, he testified. He noted that another surveyor can challenge his decision. However, in this case the County Surveyor agreed with Palm's conclusion. Palm stated that his job was not to determine land ownership, but rather to collect evidence and then to establish deed lines and property lines. He did what he was bound to do under Title 865, he stated.

On cross examination, Palm clarified that the survey job was higher in cost than estimated because of the errors with the southwest corner of section 6 and with an adjacent survey done by another surveyor north and adjacent to Parcel D. Those problems took extra time and created a title discrepancy, a title line difference between the lane location and the title or deed line, which is the section line, he said. When he determined those discrepancies, he discussed it with Mr. Lichtenbarger, a land owner who came to Palm's office and talked to his

crews in the field. However, Palm did not know Joe Burkas or Joe Wilson (apparently adjacent land owners) and did not recall discussing the discrepancies with them. He explained that his survey records referred to record document numbers and legal descriptions, not to property owners. He therefore did not contact land owners to check to see if lines of occupation had been honored for a significant period of time, he said.

The claimant Palm & Associates then rested, and the debtor took the stand.

Ellen Jones stated that her property was sold at auction by Ball Auction and was surveyed by Palm & Associates. However, from the time that Palm & Associates' proposal for the land surveys was submitted, on July 9, 2002, to the present time, Doug Bolles of Palm & Associates contacted her only by leaving messages on her answering machine. If she had a question, she said, she had to contact him. She only had three direct conversations with Mr. Bolles, and she initiated them, she recollected. However, she asserted that she was not informed that the cost would be higher than originally estimated.

On cross examination, Ms. Jones explained that she became aware that there were problems with the boundary markers when Mr. MacLeod decided he did not want to buy the property. Mr. MacLeod was the person who had the highest bid for parcels A and D on the survey. He subsequently petitioned the court to withdraw his bid because of the delay in closing. She realized the marker problem when she received notice of a hearing on whether to allow Mr. MacLeod to withdraw his offer. As the court proceedings took place, it became apparent to her that there needed to be an egress established that was acceptable to all parties involved. Because there was a need for a definition of an easement lane, she said, she and her attorney wanted the survey line to be drawn. However, Ellen Jones also informed the court that parcel D eventually was re-sold to the buyer who purchased parcel C. She agreed with her attorney that the fact that the same purchaser bought C and D eliminated the need for the easement to be extended all the way back.

The debtor stated that she also asked Palm & Associates for additional markers on Parcel C after the surveys were completed. She explained that farmers are notorious for moving lines and markers, and that

someone would have no way of getting property back once the land was occupied. Because she could not find a particular mark, she called Palm's office, spoke with Doug Bolles, and asked him to make sure of the marks.

Ms. Jones also testified that the three-acre parcel known as Parcel A was not re-sold. Because her financial resources were sufficient to cover her expenses, she decided that she did not need to resell it yet.

At that point, the debtor rested and the parties' counsel offered concluding arguments. The court then took the matter under advisement.

#### *B. Positions of the Parties*

Palm & Associates stated that its company was asked to provide surveys and to do other related jobs, and it did everything it was asked to do. The initial proposal had a base estimate of \$12,300.00. To that amount was added \$605.00 for the farm lane easement and \$350.00 for the additional easement markers on parcel C. The total base amount requested in compensation, therefore was \$13,255.00. Palm & Associates was paid \$8,068.50. The balance to be paid is \$5,186.50, the surveying company asserted, even if nothing more was allowed for the increased costs of the surveys.

Because boundary issues arose soon after the surveys began, more field work and research had to be done to complete the surveys. The original proposal cost rose from the base estimate of \$12,300.00 to \$14,888.00 because of this additional work. The other two jobs, drawing the farm lane easement (\$605.00) and re-marking the parcel C boundaries (\$350.00), were requested by the debtor and her attorney in addition to the survey work. The compensation requested for all the services rendered, therefore, was \$15,843.00. Since only \$8,068.50 has been paid, Palm & Associates moved for \$7,774.50 as an administrative expense.

Palm & Associates insisted that all the surveys were necessary for the closings and thus were beneficial to the estate. It pointed out that parcel A was not sold because the debtor herself chose to keep the 3-acre parcel. Nevertheless, Palm & Associates had been asked to do the survey of parcel A, performed the survey, and should be compensated for it. In addition, Palm & Associates asserted that it should be paid for the easement

it drafted. Even though the quiet title action was settled and the easement was not used, Palm & Associates did draft the easement and was entitled to payment for the work. Palm & Associates contended that it was entitled to payment for all its professional survey services.

Palm & Associates also asserted that the compensation should be allowed as an administrative claim. First, it was a claim for compensation for services performed at the request of the debtor post-petition. Second, all the surveys were used to complete the sale of her real property, and all the debtor's land was sold except the 3-acre parcel which she decided to keep.

The debtor's position was that Palm & Associates should be paid, but only for the services that were of benefit to the estate. For the claim to be allowable as an administrative claim under § 503(b)(1), Palm & Associates was required to show that the expenses were actual and necessary expenses for the preservation of the debtor's estate. The debtor insisted that such proof was not made with respect to the easement and the survey cost for the 3-acre parcel.

The debtor also asserted that the actual invoices were considerably higher than the amounts originally proposed. Although she recognized the boundary marker problems, she claimed that the added costs were unreasonable. (Counsel for the debtor presented calculations, for the first time in closing argument, that the final charges were 16-31.6% higher than the original proposal.) She also insisted that Palm & Associates never initiated contacts with her and that its recovery for an administrative claim should be limited to the base amount for the items that she actually used.

The debtor acknowledged that the surveys were made to consummate the auction sale closings. She even agreed that Palm & Associates should be paid for those items where the sales did close. Nevertheless, counsel for the debtor in closing argument stated that Palm ignored existing physical boundaries and did not talk to the existing land owners involved in order to get the true status of those boundaries. For that reason, the debtor and those land owners had to bring to this court a quiet title action, one which the attorneys rather than the surveyor resolved. In the end, the parties settled the problems with the easement. Because Palm & Associates

did not establish that its survey work benefitted the estate, the debtor insisted that it should not receive the preferred treatment of an administrative claim.

### Discussion

In determining whether Palm & Associates' claim should be afforded administrative expense status, the court begins with 11 U.S.C. § 507(a)(1), which grants first priority in the distribution of bankruptcy estate assets to administrative expenses that are allowed under § 503(b). Section 503(b), in turn, provides:

- (b) After notice and a hearing, there shall be allowed administrative expenses, . . . , including –
  - (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after commencement of the case.

11 U.S.C. § 503(b)(1)(A). The Seventh Circuit Court of Appeals acknowledged that “expenses incurred by the debtor-in-possession in attempting to rehabilitate the business during reorganization are within the ambit of § 503.” *In re Jartran Inc.*, 732 F.2d 584, 586 (7th Cir. 1984). It (like many other courts) adopted the First Circuit’s two-part test for determining whether the debt should be afforded administrative priority:

[A] claim will be afforded priority under § 503 if the debt both (1) “arise[s] from a transaction with the debtor-in-possession” and (2) is “beneficial to the debtor-in-possession in the operation of the business.”

*Id.* at 587 (quoting *In re Mammoth Mart, Inc.*, 536 F.2d 950, 954 (1st Cir. 1976)); *see also Caradon Doors & Windows, Inc., v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 447 F.3d 461, 464 (6th Cir. 2006) (using same two-part test). The Seventh Circuit added that “administrative priority is granted to post-petition expenses so that third parties will be moved to provide the goods and services necessary for a successful reorganization.” *Id.* at 588. Nevertheless, it is important to note that, “[d]espite the statute’s potentially broad reach, administrative priority claims are to be strictly construed because the presumption in bankruptcy cases is that the debtor has limited resources that will be equally distributed among creditors.” *In re National Steel Corp.*, 316 B.R. 287, 299 (Bankr. N.D. Ill. 2004); *In re Dena Corp.*, 312 B.R. 162, 171 (Bankr. N.D. Ill. 2004).

The claimant bears the burden of proving that its claim is entitled to priority as an administrative expense, and must make that proof by a preponderance of the evidence. *See In re National Steel Corp.*, 316 B.R. at 300 (citing cases). The claim must be for goods or services that were “provided pursuant to a post-petition transaction” and that “benefit the estate as a whole.” *See id.* (citing cases).

Under the *Jartran* test, Palm & Associates’ claim first must have arisen from a transaction with the debtor that occurred after she filed bankruptcy. Ellen Jones filed a bankruptcy petition on October 29, 2001. Palm & Associates’ proposal to conduct surveys on the debtor’s property was accepted on or around July 9, 2002. The parties do not disagree that Palm & Associates’ claim clearly arose out of a post-petition transaction between Palm & Associates and the debtor. The court finds, therefore, that the first *Jartran* criterion has been met.

The dispute between the parties arises under the second prong of *Jartran*: whether the debt owed to Palm & Associates benefitted the operation of the debtor’s business. Ellen Jones is the owner of more than 200 acres of land; it was her intention, in filing bankruptcy, not to operate a business but to sell her property for the benefit of her creditors. She employed Ball Auction five months after she filed bankruptcy to accomplish that goal. *See* R. 30, 38. Palm & Associates conducted the necessary surveys of the debtor’s property as part of the sales process. It is clear that the auction sale was necessary to the debtor’s plan of reorganization. In the earlier adversary proceeding in this case, the debtor expressly stated her intention under her chapter 11 plan to sell her land for the benefit of her creditors:

9. Plaintiff Ellen Jones, as a part of her Chapter 11 Plan to satisfy creditors, conducted an auction sale of real property pursuant to this court’s order on May 3, 2002.
10. The sale brought excellent prices for various parcels of real estate – prices in excess of appraised value.
11. The sale was in various parcels to various individuals. Because of the manner of division of the individual parcels sold, there arose a question of entitlement to use of the easement property for access to certain of the parcels sold.
12. Investigation by the plaintiffs and their surveyor revealed that title to the easement property is in question because of the error in misplacing a marker during the WPA survey.

Case No. 01-35405, Adv. Proc. No. 03-3153, R. 22 at 3 (“Amended Complaint to Determine Ownership of Easement Property Ownership and Grant Easement Right”).

The parties do not dispute that the sale of the debtor’s farmland was beneficial to the debtor in the completion of her chapter 11 reorganization. Nor do they dispute that surveys were required in order to accomplish the closing of auction sales. The debtor’s position, as stated at trial, was that Palm & Associates indeed should be compensated, but only for those services that were of benefit to the estate. In the debtor’s view, the checks totaling \$8,068.50 are full payment for the services that the debtor found useful to her bankruptcy estate. According to debtor’s counsel in opening argument, Palm & Associates’ surveys of the farm lane easement and of one of the four boundaries were not prepared for the debtor’s benefit. In his closing argument, debtor’s counsel insisted that Palm & Associates failed to prove that the survey costs for the easement and for the 3-acre parcel were expenses of benefit to the estate or necessary for the preservation of the debtor’s estate.

The evidence proffered at trial, both testimonies and exhibits, was presented by two experienced, highly skilled trial attorneys. It was intended to show what services Palm & Associates provided, whether or not those services were of benefit to the debtor’s estate, and whether or not they were actual, necessary costs of preserving the estate. That demonstration became unduly complicated when Palm testified that the farm property had been given different designations on three documents being reviewed by the court. For example, when Exhibit 1, Palm & Associates’ Proposal, was tendered, the court noted the first professional service listed on it:

1. A Boundary Survey of a new parcel of land being approximately 25.4 acres in the Southwest corner of Section 6, Township 36 North, Range 1 E., St. Joseph County, Indiana. Parcel shown as “Parcel #2” in May 3, 2002 auction flyer.

Ex. 1, Proposal. The court then was told that Palm & Associates’ proposal item #1 is the same as Ball Auction flyer’s parcel #2 and is the same as the survey’s Parcel D – all those designations were used for the 25.4-acre property of the debtor. The witnesses switched from one designation to another in their testimony, as well.

Numerous other confusions arose. Bolles and Palm testified concerning two discrepancies or errors they found and investigated, but they failed to make clear which parcels were affected by those more time-

consuming surveys. Ellen Jones testified that parcel D was re-sold to the buyer who had purchased parcel C; she then agreed with her attorney that the fact that there was one purchaser for the two parcels eliminated the need for the easement to be extended all the way back. *See supra* text at p. 8. The court, after examining the plat of survey and the Ball Auction flyer, finds that parcels C and D do not abut one another. The debtor did not clarify why the purchase of parcels C and D by one person leads to the conclusion that there no longer is a need to extend the easement all the way back. If this point was intended to persuade the court that the easement did not benefit the debtor's estate, it failed. Indeed, if the easement in question<sup>2</sup> is the same farm lane easement that Ellen Jones and her attorney asked Palm & Associates to draw – precisely because “it became apparent to [the debtor] that there needed to be an egress established that was acceptable to all parties involved” and “[b]ecause there was a need for a definition of an easement lane,” *supra* text at 8 – the court finds that the debtor and her counsel clearly believed that the easement lane was necessary and would allow a sale of some portion of the debtor's property to proceed. The court finds that the surveyor's easement lane definition was provided pursuant to the post-petition request of the debtor's attorney; it was an actual and necessary cost of preserving the debtor's estate and it benefitted the estate as a whole. The court determines that the cost of the requested “8-foot wide dirt farm lane easement” drawn on the plat of survey is allowed as an administrative expense whether or not the easement should have been extended and whether or not it was used after the debtor ordered its creation.

Ellen Jones also failed to explain which portions of the survey costs of Palm & Associates benefitted the estate and deserved compensation and which did not. Two payments were made; the amounts do not correspond to any items on the invoices, and the debtor has given no explanation of their computation to the fact-finder in this proceeding.

The court declines to mention other poorly presented evidence. It finds it more appropriate to focus on the burden placed on Palm & Associates of proving its entitlement to an administrative claim.

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<sup>2</sup> The court notes that two easements are marked with particularity on the plat of survey, Exhibit 4: the easement on the northwest corner of parcel C and the easement along the western edge of parcel D, extending north to the Crumstown Trail. The latter easement appears to be the one on which the parties focused.

The court finds first that Palm & Associates, when offering to perform four boundary surveys and to create legal descriptions of easements, announced that it would be bound by the requirements of Title 865 of the Indiana Administrative Code. Its "Proposal for Professional Land Surveying Services" stated:

All Boundary Surveys shall be in compliance with the requirements of Title 865 of the Indiana Administrative Code pertaining to property surveys. All found monuments on the parcels will be marked and identified. All placed corners will be marked with 5/8" capped iron bars. The survey plats will be recorded in the Office of the Recorder of St. Joseph County, Indiana.

Ex. 1, Proposal at 2. It also set forth the circumstances that might cause additional charges:

This estimate was made without Legal Descriptions of the subject properties or any preliminary research of reconnaissance. Discovery of major Plat or Deed discrepancies, encroachments or disputes, and lack of accuracy or availability of controlling monumentation shall be brought to the attention of the client before additional charges are incurred.

Changes or modifications in the scope of the work shall be charged on an hourly basis.

*Id.* at 2. The court finds that the evidence at trial confirms that Palm & Associates performed all the services it agreed to do under the proposal, complying with statutory requirements (which led to additional surveying) and providing full disclosure of possible additional charges, both to Ball Auction and to Ellen Jones.

The court further finds that Palm & Associates fulfilled the additional professional services requested of it by the debtor's attorney (surveying and describing the new farm lane easement) and by the debtor (finding marks and providing additional marks on Parcel C). The easement clarified a boundary, so that the sale could proceed, and the re-marking on parcel C kept other farmers from encroaching on that property. In the view of the court, both requests clearly were made to benefit the estate. Palm & Associates completed all the surveys and boundary descriptions it said it would do; it is clear that the debtor and her counsel were satisfied enough with Palm & Associates' survey work to ask him to perform additional services. The court finds that the costs of those two additional survey projects were actual and necessary and beneficial to the debtor's estate.

Because problems arose in the original survey project and Palm & Associates spent additional hours resolving the issues in order to determine proper boundaries and to present proper descriptions of boundaries and easements, the cost of their surveys increased from the base estimate of \$12,300 to \$14,888. The debtor objected

to the “unreasonably expensive” survey report, one which “ignored accepted rules of surveying” and “cast doubt on the ownership of an easement road whose boundaries had been established for more than forty years.” The court finds, however, that Palm & Associates complied with the rules imposed on licensed surveyors; the surveyors investigated discrepancies in boundary monumentation and found the correct boundaries. Title 865 of the Indiana Administrative Code establishes the rules of practice for registered land surveyors like Palm. It states:

Sec. 30. (a) This section outlines the procedures and requirements for registered land surveyors when perpetuating the location of original public land survey or grant corners. As used in this section, “grant” means a subdivision, parcel, or tract of land that existed, or the parent tract of which existed, prior to the commencement of the United States Public Land Survey adjoining such subdivision, parcel, or tract.

865 IN ADC 1-12-30(a). This provision mandates the procedures for registered land surveyors to follow if a parcel corner does not have a monument or if it is improperly situated.

(c) If the . . . (2) registered land surveyor discovers evidence, or otherwise has reason to believe, that a monument purporting to mark the location of an original public land survey or grant corner is not in the proper location;

and if that corner is necessary for purposes of conducting an original, retracement, or route survey as defined in this rule, the registered land surveyor shall contact the county surveyor and perpetuate that corner’s location in accordance with this section if the county surveyor is unable to perpetuate the corner in the time frame required by the registered land surveyor.

865 IN ADC 1-12-30(c)(2). Rule 12 presents a nonexclusive list of the kind of evidence that may assist in determining the original location of a corner. *See* 865 IN ADC 1-12-30(d).

Palm explained that he, a registered land surveyor, was obligated to research the location of the original government monument and to reset the section corner to reflect the 1834 original government survey. He noted that the County Surveyor agreed with his evidence and monumentation. The preponderance of the evidence indicates that Palm & Associates conducted its professional services in accordance with Title 865 and did not ignore accepted rules of surveying, as the debtor claims. Moreover, rather than casting doubt on the ownership of an easement road whose boundaries had been “established” by the property owners for more than forty years, it determined the proper monument locations and reset the boundaries with accuracy and certainty.

The court finds that Palm & Associates' services moved the debtor's reorganization forward. The surveys and other work certainly were beneficial to the debtor because the central plan in her chapter 11 plan of reorganization was the sale of her property – a sale that could not be completed without the surveys of the parcels sold at auction. In spite of the delay, caused by the surveyor's discovery of misplaced markers and determination that the errors be corrected in compliance with Title 865, it appears that the reorganization did succeed: The quiet title action settled, the sale brought excellent prices, and the debtor was able to keep Parcel A. In addition, the debtor now is secure in her knowledge that the irons marking Parcel C (as well as the boundaries of other parcels, the court believes) have been properly and clearly marked for the future.

The debtor has raised other criticisms of Palm & Associates that are tangential to any benefit to the debtor's estate. Ellen Jones claimed, for example, that Palm & Associates did not initiate contact with her, but admitted that she spoke with Bolles three times and later asked him to re-mark the irons on Parcel C. Bolles testified, referring to business telephone records, that he spoke with Ellen Jones three times and Ball Auction seven times in a four-month period to tell them of developments. The court finds that Palm & Associates showed by a preponderance of the evidence that it kept the debtor informed of the monument and boundary errors it found. The debtor also complained that the surveyor did not notify her of the added costs. Palm & Associates proposed a base estimate of \$12,300 for its survey work before it began – before it had the legal descriptions of the properties or had done any research or investigation. In its proposal, it warned of possible additional charges due to discoveries of discrepancies or inaccurate monuments. It promised to bring that information to the attention of the client. Bolles and Palm testified that they kept the debtor informed of problems as they developed. Even though the debtor stated that she was not aware of the higher costs, she admitted that she received at least three telephone calls, and testified that, when Bolles left messages on her answering machine, she returned the call. The court finds that Bolles' testimony, based on written telephone records, demonstrates by a preponderance of the evidence that the debtor and auctioneer were told of the difficulties Palm & Associates encountered before additional charges were incurred.

Ellen Jones contended, as well, that Palm & Associates failed to talk to adjacent property owners about the disputed easements. Title 865 allows parol evidence as one type of evidence to consider in determining the original location of a corner, but certainly does not require it. *See* 865 IN ADC 1-12-30(d). Palm reviewed documents, historical and contemporary, and examined the field locations. The clear, intricate plat of survey reflects the many sources of evidence gathered by the surveyors. *See* Ex. 4. The court does not find that Palm & Associates, by declining to seek information from adjacent property owners, provided services that were not actual, necessary, or beneficial to the estate. Moreover, Ellen Jones' comment that "farmers are notorious for moving lines and markers" persuades the court that she trusts the Palm & Associates iron marks indicating historically correct corners rather than the word of her neighbor land owners.

Finally, the debtor insisted that the surveyor's costs were unreasonable. The court examined the invoice, which listed in detail the number of hours spent by survey team members, the reimbursable expenses, and the cost breakdowns for each parcel of land, and found that it presents a clear accounting of the professional services performed by Palm & Associates. It found nothing in the invoice that suggested unreasonable or unnecessary charges or expenses, and the debtor failed to indicate any specific excessive costs. The debtor argued, as well, that the claim should be limited to the base estimate and only to the items that benefitted the estate. However, she did not indicate to the court which services, as itemized on the invoices or presented in the proposal or on the plat of survey, were or were not beneficial to the estate. Moreover, the debtor did not explain how she calculated her payments of \$8,068.50. The court is unable to discern how the debtor arrived at the payment amounts already made and which amounts, in the debtor's opinion, should not be paid because the services were not of benefit to the estate.

The court finds, therefore, based on the record herein, that the services rendered by Palm & Associates were actual and necessary and were beneficial to the estate of Ellen Jones. It determines that the claimant Palm & Associates has succeeded in its burden of demonstrating that its administrative claim in the amount of \$7,774.50 arises out of a post-petition transaction with the debtor and was beneficial to the operation of the

debtor's business, the sale of her real property. Palm & Associates satisfied both elements of the *Jartran* test. Accordingly, the court finds that Palm & Associates is entitled to an administrative expense claim under § 503(b)(1)(A).

Conclusion

For the reasons stated above, the court grants the Motion for Allowance and Payment of Administrative Claim filed by Palm & Associates.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
Harry C. Dees, Jr., Chief Judge  
United States Bankruptcy Court