

1 Honorable Karen A. Overstreet
2 Hearing date: August 22, 2008; 9:30 a.m.
3 Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
4 Responses due by: August 15, 2008; by 4:30 p.m.
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8 IN THE UNITED STATES BANKRUPTCY COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 In re:) Chapter 7
11) Bankruptcy No. 06-14202
COURT REPORTING INSTITUTE, INC.,)
12)
13 Debtor(s).)
14 _____)
15 BANKRUPTCY ESTATE OF COURT) Adversary No. 07-01167
16 REPORTING INSTITUTE, INC., by and)
through Michael B. McCarty, Bankruptcy)
17 Trustee,)
18 Plaintiff,)
19 v.)
20 ALEN JANISCH, a single man; and)
KAI MOLDSKRED and JOYCE)
MOLDSKRED, husband and wife, and the)
marital community comprised thereof,)
Defendants.)
_____)

NOTICE OF SECOND MOTION FOR AN
ORDER OF SUMMARY JUDGMENT

21 TO: Alen Janisch, Kai and Joyce Moldskred, and their attorneys of record.

22 PLEASE TAKE NOTICE that the Second Motion for an Order of Summary Judgment will
23 be heard on the 22nd day of August, 2008, at 9:30 a.m., at the United States Courthouse, 700
24 Stewart Street, Seattle, Washington, in Room 7206, and the clerk is requested to note the motion on
25 the motion docket for that day.

1 YOU ARE FURTHER NOTIFIED that responses or objections must be made in writing
2 and must be served upon the above named judge and the undersigned attorney by 4:30 p.m. on
3 August 15, 2008.

4 DATED this 18th day of July, 2008.

THE RIGBY LAW FIRM

/S/ *James Rigby*

James Rigby, WSBA #9658
Of Attorneys for Plaintiff/Trustee

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**NOTICE OF SECOND MOTION FOR AN
ORDER OF SUMMARY JUDGMENT**

THE RIGBY LAW FIRM
600 Stewart Street, Suite 1908
Seattle, WA 98101 - (206) 441-0826

Honorable Karen A. Overstreet
August 22, 2008; 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:) Chapter 7
COURT REPORTING INSTITUTE, INC.,) Bankruptcy No. 06-14202
Debtor(s).)

BANKRUPTCY ESTATE OF COURT) Adversary No. 07-01167
REPORTING INSTITUTE, INC., by and)
through Michael B. McCarty, Bankruptcy)
Trustee,)
Plaintiff,)
v.)
ALEN JANISCH, a single man; and)
KAI MOLDSKRED and JOYCE)
MOLDSKRED, husband and wife, and the)
marital community comprised thereof,)
Defendants.)

COMES NOW the plaintiff, the Bankruptcy Estate of Court Reporting Institute, Inc. (“CRI”), by and through the duly appointed trustee, Michael B. McCarty, through counsel, The Rigby Law Firm, and James Rigby, and presents this Plaintiff’s Memorandum in Support of Second Motion for Summary Judgment.

I. SUMMARY

On July 11, 2008, this court entered an Order of Partial Summary Judgment, granting the plaintiff a final judgment against defendants Kai and Joyce Moldskred (“Moldskred”) in the amount of \$123,000, and a Partial Order of Summary Judgment against defendant Moldskred for the

**PLAINTIFF'S MEMORANDUM IN SUPPORT
OF SECOND MOTION FOR SUMMARY JUDGMENT**

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1 \$150,000 transferred by Alen Janisch (“Janisch”) to Moldskred as the immediate transferee of
2 Janisch. The Order of Partial Summary Judgment reserved the issue of whether Moldskred acted
3 in good faith and without knowledge of the avoidability of the transfers which were avoided.
4 Moldskred did not act in good faith and was aware of the avoidability of the transfers. A final order
5 of summary judgment against Moldskred in the amount of \$150,000 should be issued.

II. FACTS

Moldskred was well aware that his \$150,000 loan to Janisch would be transferred to the Janisch capital account in CRI so that it would place CRI in a better “zone” in terms of reporting to the U.S. Department of Education (“DOE”).¹

Moldskred was keenly aware of the purpose of his \$150,000 loan to Janisch in December of 2005 because they had extensive business deals which went back for decades. Janisch and Moldskred have had extensive business dealings since they were roommates.² During the past 20 to 25 years, Janisch and Moldskred have owned several condominiums together. Moldskred has purchased Janisch's interest in three condominiums they own together, plus one condominium and one house that Janisch owned himself.³

16 Moldskred is well versed in business in general and CRI's business in particular. Moldskred
17 has a Bachelor of Arts degree in accounting from the University of Washington which he received
18 in 1977.⁴ While Moldskred's present occupation is investing in real estate and stock,⁵ in his last
19 job Moldskred was the in-house accountant for CRI.⁶ He kept the accounting records and prepared

²¹ See attachment to Second Declaration of James Rigby, Deposition Upon Oral Examination of Kai Moldskred
²² taken June 13, 2008 (“Moldskred Dep”), page 38, line 16.

²³ See Moldskred Dep., pg. 13, Ins. 12-25.

³See Moldskred Dep., pg. 14, lns. 6-25.

⁴See Moldskred Dep., pg. 11, lns. 12-17.

⁵See Moldskred Dep., pg. 13, lns. 6-10.

⁶See Moldskred Dep., pg. 12.

1 profit and loss sheets and financial statements for CRI.⁷ He worked for CRI during the years 1993
2 through 2000, and he had worked part time for CRI⁸ in 1989.

3 Over the years, Moldskred has made a series of loans to CRI and Janisch. In fact, Moldskred
4 and Janisch had invested in a computer printer business and printers from that business were sold
5 to CRI in exchange for a promissory note in the late 1980's.⁹ During late 1997 and 1998, Moldskred
6 deferred his salary so as to loan the funds to CRI at 12 percent interest.¹⁰ That loan was not paid off
7 until August of 2005.¹¹ During May of 1996, the various loans Moldskred made to CRI totaling
8 \$165,710.90 were forgiven as to CRI and assumed by Janisch.¹² Those various loans ran through
9 the years and were not paid off until recently. In fact, in 2005 Janisch paid Moldskred interest on
10 the loans in the amount of \$250,000.¹³

11 Through the years, Moldskred has been a good friend to Janisch. He has loaned Janisch
12 money from time to time as necessary. In exchange, Moldskred became the owner of Janisch's
13 interest in all of their jointly owned real properties and Moldskred became the owner of at least one
14 condominium and one house which Janisch owned individually. Additionally, Janisch has paid
15 Moldskred hundreds of thousands of dollars in cash to pay off loans running at 12 percent interest
16 which were initiated over a decade ago.

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21 ⁷*Id.*

22 ⁸*Id.*

23 ⁹*See* Moldskred Dep., pg. 15, ln. 22 through pg. 16, ln. 8.

24 ¹⁰*See* Moldskred Dep., pg. 27, lns. 9-16.

25 ¹¹*See* Moldskred Dep., Ex. 3 - Moldskred Declaration, Ex. B-2.

¹²*See* Moldskred Dep., Ex. 3 - Moldskred Declaration, pg. 1, ln. 24.

¹³*See* Moldskred Dep., pg. 21, lns. 8-11.

1 It is more than curious that, although Moldskred worked for CRI maintaining its accounting
2 records and working with students to issue them financial aid disbursement for their expenses,¹⁴
3 Moldskred did not want to have financial dealings directly with CRI.¹⁵

4 Moldskred also had a history of making what he called “short term loans” to Janisch in late
5 December, which is the end of the CRI tax year, which loans were paid early the following month.

6 He made such a loan in December of 2005.¹⁶ He also made a similar loan in December of 2004,
7 which was paid early the next month.¹⁷ Although Moldskred did not remember in his deposition
8 whether or not he had made loans for the years 2000 through 2003, he did remember making a loan
9 in December of 1999 which was repaid shortly thereafter.¹⁸

10 While Moldskred was not involved in the DOE compliance issues while he worked as the
11 in-house accountant for CRI, he was clearly aware that the CRI equity as reflected on its financial
12 statement was critical to the DOE’s continued approval of student loans for students attending CRI.¹⁹
13 He had the impression that, while there were no standards for specific ratios of equity for schools
14 prior to 1994, in around 1995 or 1996 the DOE adopted regulations requiring certain ratios with
15 respect to equity and schools authorized to accept student loan proceeds on behalf of students.²⁰ It
16 is noteworthy that this is about the same time that Moldskred forgave \$165,710.90 in loans to CRI
17 which were then assumed by Janisch. This would have improved CRI’s equity ratios by the amount
18 of the debt forgiven, or \$165,710.90, a significant amount for a relatively modest company.

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20 ¹⁴See Moldskred Dep., pg. 35, lns. 10-19.

21 ¹⁵See Moldskred Dep., pg. 41, lns. 3-18.

22 ¹⁶See Moldskred Dep., pg. 37, ln. 4.

23 ¹⁷See Moldskred Dep., pg. 39, lns. 6-12.

24 ¹⁸See Moldskred Dep., pg. 40, lns. 12-17.

25 ¹⁹See Moldskred Dep., pg. 36.

26 ²⁰See Moldskred Dep., pg. 36, lns. 13-25.

1 Moldskred explained his understanding of the use of the “short term loan” funds in his
2 deposition as follows:

3 “Q. Why would he need \$150,000 for a week?

4 A. From my understanding, when you talk about these financial ratios,
5 I think he mentioned - - well, he has done this in prior years, so this wasn’t an
6 unusual transaction, and I know he has done it with other people besides me. But
7 from what I understand, it would have alleviated - - there’s several different zones,
8 from what I understand, that he tells me. There’s a below-the-zone where you have
a bunch of requirements. There’s in-the-zone where you don’t - - or very few
reporting requirements. And then there’s out-of-the-zone where you’re considered
safe, and you don’t need any extra reporting requirements. So it’s just a matter of
how much he had to do, as far as reporting to the Government and what level zone.

9 Q. What do you mean by “zone”?

10 A. The ratio that these numbers - - the \$150,000 would have gone into
11 his capital account, from what I understand. And there’s like three ratios. I can’t
12 even tell you what the third ratio is. But one of them is capital, and one of them is
13 net income. I assume - - I don’t know how much weighting each of those are, and
14 I don’t know what the third one is. But I know probably the retained earnings - - or
earnings of the corporation is probably the heaviest weighted. And the corporation
was profitable in 2005 - - to my understanding, it was over 300,000 - - when I gave
him the loan. So the other ratio was just to boost up his capital to help that portion
of the ratio to increase a little bit.

15 Q. So Alen was going to use your \$150,000 to pay into CRI’s capital
16 account to increase CRI’s net worth so it would place in a higher zone or a better
zone for CRI in terms of reporting to the Department of Education?

17 A. Yeah. He was going to place it in - - it was going to be his capital in
18 the company.

19 Q. Right. But my point is that the money was used to increase the capital
account in the company, right?

20 A. Yes.

21 Q. And the purpose of that was so the company would have a better
22 showing with the Department of Education to reduce the requirements for reporting
to the Department of Education?

23 A. That is what I understand.²¹

24 In summary, a subsequent transferee could not be more aware of the source of the funds and
25 the illegitimate deceptive purpose of the transfer than Moldskred in this case. The purpose of the

²¹ See Moldskred Dep., pg. 37, ln. 12 to pg. 39, ln. 5.

1 Moldskred transfer to Janisch was not to actually increase CRI's equity, but to make it appear to the
2 DOE that CRI's equity was larger than reality.

III. LEGAL ANALYSIS

The issue reserved by the Order of Partial Summary Judgment is whether Moldskred acted in good faith and without knowledge of the avoidability of the transfers which were avoided, referring to the transfers from Janisch to CRI and back again. These funds were used to repay the short term loans Moldskred made to Janisch, most recently in the amount of \$150,000.

8 The burden of proving the defense of good faith and without knowledge of the avoidability
9 of the transfer is upon Moldskred. *In re AVI, Inc.*, 2008 Bankr. LEXIS 1849 (9th Cir. BAP).

10 The law on the “good faith and without knowledge of the avoidability of the transfer” has
11 been recently summarized in *In re Bressman*, 327 F.3d 229, 235 (3rd Cir. 2003), as follows:

12 “We accept, as the controlling law, the precepts articulated in the following quotation
13 from the Trustee’s brief (quoting from *In re Sherman*, 67 F.3d 1348, 1357 (8th Cir.
1995):

14 ‘No one supposes that ‘knowledge of voidability’ means complete
15 understanding of the facts and receipt of a lawyer’s opinion that such
16 a transfer is voidable; some lesser knowledge will do.’ *Bonded Fin.*
17 *Servs.*, 838 F.2d [890, 898 (7th Cir. 1988)] (citations omitted). . . .
18 Accordingly, we believe that a transferee has knowledge if he “knew
19 facts that would lead a reasonable person to believe that the property
20 transferred was recoverable.” *In re Nordic Village, Inc.*, 915 F.2d
21 1049, 1055 (6th Cir. 1990) (quoting *Smith v. Mixon*, 788 F.2d at 229,
22 232 n.2), rev’d on other grounds sub nom. *United States v. Nordic*
23 *Village, Inc.*, 503 U.S. 30, 117 L. Ed. 2d 181, 112 S. Ct. 1011 (1992).
In this vein, some facts suggest the underlying presence of other
facts. If a transferee possesses knowledge of facts that suggest a
transfer may be fraudulent, and further inquiry by the transferee
would reveal facts sufficient to alert him that the property is
recoverable, he cannot sit on his heels, thereby preventing a finding
that he has knowledge. In such a situation, the transferee is held to
have knowledge of the voidability of the transfer. *In re Agric.*
Research & Tech. Group, 916 F.2d [528, 536 (9th Cir. 1990)];
Bonded Fin. Servs., 838 F.2d at 898; *In re Goodwin*, 115 B.R. 674,
677 (Bankr. C.D. Cal 1990).

Appellant/Trustee's Br. at 41.

We will, however, supplement this quotation with the following observations of the Court in *Bonded Financial Services v. European American Bank*, 838 F.2d 890, 898 (7th Cir. 1988), from which the *Sherman* Court took its law:

1 Some facts strongly suggest the presence of others; a recipient that
2 closes its eyes to the remaining facts may not deny knowledge. See
3 *Bosco v. Serhant*, 836 F.2d 271 (7th Cir. 1987). But this is not the
4 same as a duty to investigate, to be a monitor for creditors' benefit
5 when nothing known so far suggests that there is a fraudulent
conveyance in the chain. 'Knowledge' is a stronger term than
'notice', see *Smith v. Mixon*, 788 F.2d at 232. A transferee that lacks
the information necessary to support an inference of knowledge need
not start investigating on his own."

6 *Wasserman v. Bressman (In re Bressman)*, 327 F.3d 229, 236 (3d Cir. N.J. 2003).

7 As the former in-house accountant of CRI, it is likely that no one better understands the
8 transaction in question than Moldskred. While he may view the transaction as ordinary, it is not
9 ordinary to puff up a financial statement in order to deceive the U.S. Government. There must be
10 a purpose behind the issuance of a financial statement, and that is to accurately reflect the financial
11 well being of a school receiving student aid in the form of tuition. No reasonable person would
12 believe that the manipulation of the financial statement by briefly depositing \$150,000 into the
13 debtor's checking account is an acceptable means of puffing up a financial statement. Any
14 reasonable person who knew the purpose for the loan would be put on notice of the avoidability of
15 the loan. While Moldskred may not have known the precise code section under the Bankruptcy
16 Code which authorizes the trustee to avoid the transaction, any reasonable person who engages in
17 fraud would expect that there would be a legal remedy for the transaction.

18 IV. CONCLUSION

19 Moldskred has profited handsomely over the years from both Janisch and CRI. During 2005
20 Janisch paid Moldskred \$250,000 in interest on the loans Moldskred had made over the years to
21 Janisch enabling CRI to operate. By enabling CRI to continue in business, Moldskred fed the goose
22 that laid the golden eggs, so that he could collect them.

23 DATED this 18th day of July, 2008.

24 THE RIGBY LAW FIRM

25 /S/ *James Rigby*

James Rigby, WSBA #9658
Of Attorneys for Plaintiff/Trustee