THE HONORABLE KAREN A. OVERSTREET
Chapter 7

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re: COURT REPORTING INSTITUTE, INC., Debtor.	NO. 06-14202
BANKRUPTCY ESTATE OF COURT REPORTING INSTITUTE, INC., by and through Michael B. McCarty, Bankruptcy Trustee, Plaintiff, vs. ALEN JANISCH, a single man; and KAI MOLDSKRED and JOYCE MOLDSKRED, husband and wife, and the marital community comprised thereof, Defendants.	Adversary No. 07-01167 MOTION FOR RECONSIDERATION

COME NOW the Defendants Kai & Joyce Moldskred by and through their attorney of record, Jeffrey B. Wells, and moves the court for reconsideration of the judgment entered against them in the amount of $123,000 on July 11, 2008.

Motions for reconsideration are not favored. However, the Order on Partial Summary Judgment entered by the court on July 11, 2008 does not address the assertions of the Defendants Moldskred that they have a valid defense against the allegation of fraudulent transfer under the

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provisions of 11 USC § 548(c). That section states:

> . . . a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

There is no question that the Debtor, Court Reporting Institute, Inc., initially received the benefit of the loans from Kai Moldskred. It is also uncontradicted in Kai Moldskred's declaration that he was proceeding in good faith, believed the Debtor to be solvent during the repayment period, and applied the payments to the outstanding loans as they were made.

Kai Moldskred in his declaration stated:

> During this repayment period, it is my belief that the Debtor was solvent. As far as I know, all rents, utilities, sales tax, payroll taxes and payrolls were current through August of 2006. I was given an audited financial reports for the year ending December 31, 2005 which indicated that the retained earning of CRI was a $182,000. Furthermore, I was informed by Alen Janisch that CRI had a net income of approximately $100,000 for the first quarter of 2006. I was aware that a buyer for CRI had offered $1.5 million in January 2006 but the Department of Education and the Washington State Workforce and Training would not approve any transfer. .
>
> The cause of CRI's demise was a critical newspaper report form the Seattle Times in late March, 2006 which resulted in a sharp decrease in students in the summer of 2006. It was this decrease in students which lead to the closing and ultimate bankruptcy of CRI.

The central question, therefore, is the effect of the agreement of May 22, 1996 in which the debt of Court Reporting Institute, Inc was released by Kai Moldskred and taken over by Alan Janisch individually. But for this agreement, the payments by Court Reporting Institute, Inc to Kai Moldskred and his wife would not be fraudulent. The fact that the agreement makes the payments fraudulent as the court has found, does not in and of itself dispose of the question as to whether or not Defendant Kai Moldskred can take advantage of 11 USC § 548(c). This section is a safe harbor for transferees of otherwise fraudulent transfers.

Does the May 22, 1996 release mean that Kai and Joyce Moldskred have not given value to the debtor, Court Reporting Institute, Inc? The answer must be no because the funds loaned to the

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debtor remained with the debtor even after the agreement. The court has stated that documents carry consequences and the agreement of May 22, 1996 resulted in Court Reporting Institute, Inc not having a legal obligation to repay the money it had received from Kai Moldskred. That is the same situation presented to the Ninth Circuit in Frontier Bank vs Brown, 371 F. 3d 1056 (9th Cir. 2004). The corporation gave a security interest to Frontier Bank even though the corporation had no direct obligation to Frontier Bank. In the Jeffrey Bigelow case (In re Bigelow Design Group, 956 F. 2d 479 (4th Cir. 1992)) which was cited by the Ninth Circuit Court in Frontier Bank, the same situation occurred as in the present case. The obligation was to share holders. The corporation, debtor, received the funds and the payments were from the debtor corporation to the creditor in that case, First American Bank. The fact that the transferor had no legal obligation to the transferee does not invalidate the value received by the transferor, debtor.

The question therefore becomes whether the subsequent transfer to Alen Janisch of the legal obligation to repay Kai Moldskred his loans to Court Reporting Institute, Inc make a difference. In other words, under the Jeffrey Bigelow case, *supra,* had Alen Janisch originally signed for the loans of monies which were paid over to Court Reporting Institute, Inc the subsequent payments by Court Reporting Institute, Inc to Kai Moldskred would be fully protected under the provisions of 11 USC § 548(c). Is this defense not be available when there is subsequent transfer to the shareholder of the legal obligation to pay all of the parties? A review of the statute itself is instructive. There is no provision in 11 USC § 548(c) which states that the transfers have to be simultaneously. The Jeffrey Bigelow case involved a series of payments by the corporation to First American Bank over a period of time. There appears to be no requirement of a simultaneous exchange of value. Furthermore, the provisions of 11 USC § 548(c) speak to the value given to the debtor by the transferee. There is no inquiry as to whether there was a legal obligation or the timing of the transaction but rather whether money was given to the transferor. There is no question that the entire series of loans were given to Court Reporting Institute, Inc. 11 USC § 548(c) provides the statutory foundation for the court's

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statement in Frontier Bank v Brown, 371 F. 3d 1056, 1059 (9th Cir. 2004), that, "We reject this formalistic view. Although Debtor was not a party to the October loan, it clearly received a benefit from that loan." The key is the money. Did the transferee give the money? This is the focal point of 11 USC § 548(c).

The final question is whether the subsequent agreement of May 22, 1996 prevents a finding that Kai and Joyce Moldskred acted in good faith. In other words, were the actions of Kai Moldskred in 1996 an attempt to defraud creditors. In order for the summary judgment to stand the court has to find that the answer to this question of fact is yes. It is respectfully submitted that there is no such evidence, especially on a summary judgment motion where any inferences from the evidence are to be construed in favor of Kai and Joyce Moldskred.

There is nothing insidious about Alen Janisch being the obligee. He was previously obligated as a guarantor. Likewise there is nothing inherently insidious about Kai Moldskred receiving payments from Court Reporting Institute, Inc. Kai Moldskred had no control over who wrote out the checks nor does the record indicate that Kai Moldskred had any knowledge of whether the payments by the corporation were recorded on the corporate books as draws by Alen Janisch. Such payments, properly recorded, would not be inherently improper.

All of the transactions between Kai Moldskred and Court Reporting Institute, Inc were not intended to nor did they result in any net loss to debtor's estate. This was the finding of the examination done by William Hanlin, a CPA and Certified Fraud Examiner. This was also the cornerstone upon which the court in Frontier Bank v Brown, 371 F. 3d 1056, 1060 (9th Cir. 2004), found that the bank had operated in good faith and was entitled to keep the payments received under 11 USC § 548(c). The court stated:

> There is no evidence in the record that Frontier's receipt of the security interest was an attempt to defraud Debtor's creditors. Rather, the transactions were simply a means for Debtor to obtain a loan that it would otherwise not be able to receive. The transactions were not intended to, nor did they result in, any net loss to Debtor's estate. Therefore, Frontier acted in good faith in receiving the security interest.

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Because there was no net loss to Debtor's estate because of these payments, the granting of a judgment against Kai and Joyce Moldskred will result is an unintended windfall to Debtor's estate. The provisions of 11 USC § 548(c) are designed to prevent such an inequitable result.

Value was clearly given to the debtor by Kai and Joyce Moldskred. At a minimum, the question of good faith is a material question of fact which requires a trial. Because the present judgment as entered, does not, nor can it answer that question, the court should reconsider its decision and render a ruling only after a trial.

DATED this 21st day of July, 2008.

/s/ Jeffrey B. Wells
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