

FILED
Western District of Washington
at Seattle

Honorable Karen A. Overstreet
June 20, 2008; 9:30 a.m.

JUL 11 2008

U.S. Bankruptcy Court

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

In re:)
COURT REPORTING INSTITUTE, INC.,)
Debtor(s).)

Chapter 7
Bankruptcy No. 06-14202

BANKRUPTCY ESTATE OF COURT)
REPORTING INSTITUTE, INC., by and)
through Michael B. McCarty, Bankruptcy)
Trustee,)
Plaintiff,)

Adversary No. 07-01167

v.)

ORDER OF PARTIAL
SUMMARY JUDGMENT

ALEN JANISCH, a single man; and)
KAI MOLDSKRED and JOYCE)
MOLDSKRED, husband and wife, and the)
marital community comprised thereof,)
Defendants.)

THIS MATTER having come on regularly before the below-signed Judge of the above-entitled court, upon the plaintiff's Motion for an Order of Partial Summary Judgment, the court having reviewed the pleadings and files herein, and having heard argument of counsel, now, therefore, it is hereby

ORDERED as follows:

1. The plaintiff is the duly qualified and acting trustee of the estate of the above-named debtor.

1 2. Defendant Alen Janisch (“Janisch”) is a single man who resides in King County, State
2 of Washington.

3 3. Defendants Kai Moldskred and Joyce Moldskred (“Moldskred”) are a marital
4 community residing in King County, State of Washington. The acts referred to herein were for the
5 benefit of the martial community and it is liable therefor.

6 4. This adversary proceeding is one arising in the Chapter 7 case of the above-named
7 debtor now pending in this court. This court has jurisdiction over this adversary proceeding pursuant
8 to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §§ 544, 547, 548 and 550. This is a core proceeding under
9 28 U.S.C. § 157(b)(2)(A), (E), (F), (H) and (O).

10 5. Defendant Janisch is the 100 percent shareholder, sole director and sole officer of the
11 debtor.

12 6. Defendant Janisch solely controlled the debtor.

13 7. On or about April 20, 2006, the debtor filed with the Internal Revenue Service its U.S.
14 Income Tax Return for an S Corporation for the year ending December 31, 2005. That tax return
15 represents to the United States government that as of December 31, 2005, the debtor had loaned
16 \$137,000 to defendant Janisch. That tax return also represents to the United States government that
17 as of December 31, 2004, the debtor had loaned \$295,000 to defendant Janisch. That tax return also
18 represents that Janisch did not owe the debtor a loan as of December 31, 2004, or December 31,
19 2005.

20 8. The debtor held a special meeting of the board of the directors on or about June 27,
21 2005. Minutes of that meeting were prepared and those minutes recite:

22 “Discussion was had regarding the disclosure, by the Corporation’s
23 Certified Public Accountant, that an audit for financial ratios for tax
24 period ending December 31, 2004, for the Department of Education
25 would be improved by an additional pledge of security. The
 additional pledge of security needed would be \$295,000.00.

1 In order to improve this ratio, Alen Janisch agreed to pledge to the
2 Corporation, the needed capital by signing a Promissory Note in the
3 amount of \$295,000.00. The pledged amount pursuant to the
4 Promissory Note will be secured by a Second Deed of Trust on his
5 personal residence in the amount of \$126,000.00; together with
6 personal property valued at \$82,485.00, secured by a UCC Financing
7 Statement; and a partial assignment to the corporation of NetVest
8 stock totaling \$86,575.00.”

9 The minutes adopt a resolution accordingly.

10 10. Pursuant to the aforementioned corporate resolution, defendant Janisch executed a
11 promissory note in favor of the debtor in the amount of \$295,000 dated June 29, 2005.

12 11. Pursuant to the corporate resolution, defendant Janisch executed a second place deed
13 of trust in the amount of \$126,000 against his residence in favor of the debtor. The legal description
14 of the residence is as follows:

15 The East 112 feet of the South 190 feet of the East 1/2 of the
16 Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of Section 19,
17 Township 26 North, Range 4 East, Willamette Meridian, in King
18 County, Washington.

19 This property is referred to herein as the “Subject Property.”

20 12. Pursuant to the aforementioned corporate resolution, defendant Janisch executed a
21 UCC Financing Statement providing the debtor with a security interest in certain personal property.
22 Said personal property includes one 14 karat yellow gold diamond ring, an 18 karat yellow gold
23 diamond ring, and a 1998 Toyota Tacoma. A partial assignment of stock account was also executed
24 by defendant Janisch.

25 13. On or about June 26, 2006, the debtor’s board of directors held a special meeting.
Minutes were produced and those minutes recite:

“Discussion was had regarding the disclosure, by the Corporation’s
Certified Public Accountant, that an audit for financial ratios for tax
period ending December 31, 2005, did not meet the Department of
Education requirements, absent an additional pledge of security. The
additional pledge of security needed would be \$137,000.00.”

1 Those minutes adopt the following resolution:

2 "RESOLVED, that the Shareholder Promissory Note to the
3 Corporation in the amount of \$295,000.00, given as security for the
4 tax period ending December 31, 2004, be reduced to \$137,000.00.
5 The Shareholder and Corporation will sign a Modification of
6 Promissory Note to reflect the balance due from Shareholder of
7 \$137,000.00. The second Deed of Trust will be reduced to
8 \$76,000.00, and the UCC Financing Statement will be reduced to
9 \$61,000.00. The Corporation will release the personal property set
10 forth in Paragraph 1 of the UCC Financing Statement, filed June 30,
11 2005 under File Number 2005-187-2860-5, and the Corporation will
12 release, assign, transfer and set over to Shareholder, the value of
13 \$86,515.00 of the NetVest Stock Account Number 13641688,
14 assigned to the Corporation June 30, 2005, to secure partial payment
15 of the Promissory Note, dated June 29, 2005."

16 14. Pursuant to that resolution, the debtor and Janisch entered into a Modification of
17 Promissory Note, reducing the sum of the note to \$137,000, reducing the balance owed on the deed
18 of trust to \$76,000, and reducing the balance on the UCC financing statement to \$61,000. The
19 security interest in paragraph 1 of the UCC financing statement was released. The NetVest stock
20 assignment was released and the stock or its value was transferred to Janisch.

21 15. On or about August 21, 2006, the debtor's board of directors held a special meeting
22 and minutes were prepared. Those minutes provided:

23 "Discussion was had regarding the Shareholder Note receivable to the
24 Corporation in the amount of \$137,000.00, plus interest at the rate of
25 five (5%) per annum, given as Security for the tax period of ending
December 31, 2005, and the Shareholder tendering payment to the
Corporation in the amount of \$165,000.00 for 2006 year-to-date; and
after motion duly made, seconded and passed, the following
resolution was unanimously adopted:

RESOLVED, that the Shareholder Note to the
Corporation in the amount of \$137,000.00, given as
security for the tax period ending December 31, 2005,
be cancelled as fully paid, and the Deed of Trust,
recorded June 30, 2005 under recording number
20050630001092, be reconveyed releasing the
secured interest, and the security interest, pursuant to
paragraphs 2 and 3 of the UCC-1 Financing Statement
filed June 30, 2005, under Filed Number 2005-187-
2860-5, be released."

1 16. Pursuant to the minutes in the aforementioned paragraph, the deed of trust was
2 released and the UCC financing statement was released.

3 17. Reserved.

4 18. During the time frame from January 1, 2006, until September 7, 2006, the debtor
5 issued a series of checks made payable to defendant Janisch, and defendant Janisch negotiated those
6 checks for his benefit. Those checks are set forth as follows:

7	<u>Check Number</u>	<u>Check Date</u>	<u>Amount</u>
8	21202	01/02/2006	\$ 2,700.00
	21203	01/02/2006	\$ 8,000.00
9	21204	01/02/2006	\$ 10,000.00
	21205	01/02/2006	\$ 48,000.00
10	21206	01/02/2006	\$ 50,000.00
	21207	01/02/2006	\$ 50,000.00
11	21208	01/02/2006	\$ 100,000.00
	21209	01/02/2006	\$ 100,000.00
12	21279	01/12/2006	\$ 15,000.00
	21328	01/23/2006	\$ 15,000.00
13	21412	01/26/2006	\$ 15,000.00
	21464	02/02/2006	\$ 15,000.00
14	21530	02/09/2006	\$ 15,000.00
	21532	02/10/2006	\$ 5,000.00
15	21601	02/21/2006	\$ 5,000.00
	21697	03/01/2006	\$ 4,500.00
16	21706	03/02/2006	\$ 5,000.00
	21940	04/04/2006	\$ 5,000.00
17	22705	07/20/2006	\$ 5,000.00
	22775	07/31/2006	\$ 5,000.00
18	22886	09/07/2006	\$ <u>9,160.00</u>
19	TOTAL:		\$ 487,360.00

20 19. During the period of January 1, 2006, through August 2, 2006, the debtor made a
21 series of checks payable to defendant Moldskred, which defendant Moldskred negotiated for his
22 benefit. Those checks are as follows:

23	<u>Check Number</u>	<u>Check Date</u>	<u>Amount</u>
24	21199	01/01/2006	\$ 10,000.00
	21455	02/01/2006	\$ 10,000.00
25	21465	02/02/2006	\$ 50,000.00
	21696	03/01/2006	\$ 10,000.00
	21927	04/01/2006	\$ 10,000.00
	22176	05/01/2006	\$ 10,000.00

1	22400	06/01/2006	\$ 3,000.00
	22594	07/01/2006	\$ 10,000.00
2	22806	08/02/2006	\$ <u>10,000.00</u>
3	TOTAL:		\$ 123,000.00

4 20. The checks made payable to defendant Moldskred were for the benefit of defendant
5 Janisch. Defendant Moldskred was not a creditor of the debtor during the stated time frame.

6 21. The debtor received no consideration from Moldskred for the transfers to him. The
7 transfers to defendant Janisch were made for no consideration.

8 22. The debtor ceased doing business by the end of August 2006.

9 23. The debtor was insolvent at all times mentioned herein, or became insolvent as the
10 result of each transfer.

11 24. The transfers referred to in the preceding paragraphs enabled the defendants to receive
12 more than they would have received under Chapter 7 of the Bankruptcy Code if the transfers had not
13 been made.

14 25. On or about October 10, 2006, defendant Moldskred recorded a deed of trust executed
15 by defendant Janisch encumbering the Subject Property.

16 26. Out of the \$487,360 in checks paid to defendant Janisch referred to above, \$150,000
17 was thereafter paid to defendant Moldskred.

18 27. Defendant Moldskred is the immediate or mediate transferee of \$150,000.

19 28. The debtor's retained earnings on December 31, 2005, were \$182,418.

20 29. At the time of each transaction mentioned herein, the debtor was unable to pay its
21 liabilities as they became due in the usual course of business.

22 30. At the time of each transfer mentioned herein, the debtor's total assets were less than
23 the sum of its total liabilities.

24 31. By reason of the foregoing, the defendants are liable to the plaintiff in the sums above
25 stated, pursuant to 11 U.S.C. §§ 544, 547, 548 and 550. Therefore, it is hereby

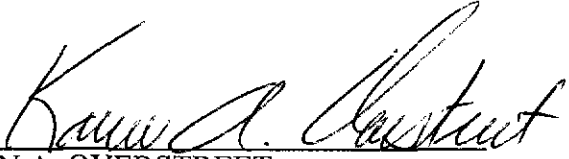
1 ORDERED, ADJUDGED AND DECREED that the plaintiff has a judgment against
2 defendant Janisch for \$905,360; such amount being comprised of \$487,360 for cash transfers to
3 Janisch, \$123,000 for payment Court Reporting Institute, Inc. ("CRI") made to Moldskred on the
4 Janisch obligation to Moldskred, and \$295,000 for the reduction and satisfaction of the promissory
5 note owed by Janisch to CRI.

6 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED the plaintiff has a
7 judgment against defendant Moldskred in the principal amount of \$123,000; that each such transfer
8 was property of the debtor, made within two years of the date the CRI petition in bankruptcy was
9 filed, made with the actual intent to hinder, delay or defraud a creditor, made for no consideration
10 and made while the debtor was insolvent.

11 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that, there being no
12 just reason for delay, the clerk shall enter the above judgment as a final judgment in this matter.

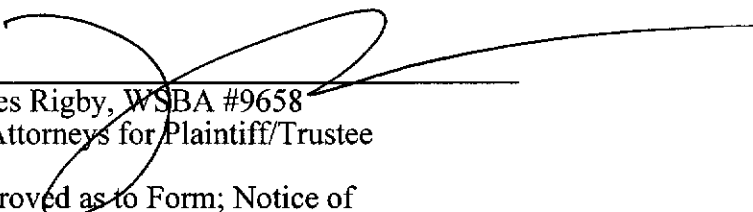
13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff
14 has established that Moldskred is the immediate transferee of Janisch under 11 U.S.C. § 550(a)(2)
15 of \$150,000 out of the \$487,360 transferred fraudulently by CRI to Janisch, and Moldskred has
16 established that such transfer from Janisch of \$150,000 was for value running to Janisch under
17 11 U.S.C. § 550(b)(1); the remaining issues under that section of whether Moldskred acted in good
18 faith and without knowledge of the voidability of the transfers avoided are reserved for trial or
19 further motion.

20 DONE IN OPEN COURT this 11th day of July 2008.

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22 
23 KAREN A. OVERSTREET
24 UNITED STATES BANKRUPTCY JUDGE
25

1 Presented By:

2 THE RIGBY LAW FIRM

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4 _____
5 James Rigby, WSBA #9658
6 Of Attorneys for Plaintiff/Trustee

7 Approved as to Form; Notice of
8 Presentation Waived by:

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10 _____
11 Kathryn A. Ellis, WSBA# 14333
12 Of Attorneys for Janisch Trustee

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14 _____
15 Jeffrey B. Wells, WSBA# 6317
16 Of Attorneys for Defendants Moldskred

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