

Honorable Karen A. Overstreet  
Hearing date: August 22, 2008; 9:30 a.m.  
Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101  
Responses due by: August 15, 2008; by 4:30 p.m.

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

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

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 \$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.

## 6 II. FACTS

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

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

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.<sup>4</sup> While Moldskred’s present occupation is investing in real estate and stock,<sup>5</sup> in his last  
19 job Moldskred was the in-house accountant for CRI.<sup>6</sup> He kept the accounting records and prepared  
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21 <sup>1</sup>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 <sup>2</sup>See Moldskred Dep., pg. 13, Ins. 12-25.

24 <sup>3</sup>See Moldskred Dep., pg. 14, Ins. 6-25.

25 <sup>4</sup>See Moldskred Dep., pg. 11, Ins. 12-17.

<sup>5</sup>See Moldskred Dep., pg. 13, Ins. 6-10.

<sup>6</sup>See Moldskred Dep., pg. 12.

1 profit and loss sheets and financial statements for CRI.<sup>7</sup> He worked for CRI during the years 1993  
2 through 2000, and he had worked part time for CRI<sup>8</sup> 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.<sup>9</sup> During late 1997 and 1998, Moldskred  
6 deferred his salary so as to loan the funds to CRI at 12 percent interest.<sup>10</sup> That loan was not paid off  
7 until August of 2005.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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 <sup>7</sup>*Id.*

22 <sup>8</sup> *Id.*

23 <sup>9</sup>*See* Moldskred Dep., pg. 15, ln. 22 through pg. 16, ln. 8.

24 <sup>10</sup>*See* Moldskred Dep., pg. 27, lns. 9-16.

25 <sup>11</sup>*See* Moldskred Dep., Ex. 3 - Moldskred Declaration, Ex. B-2.

<sup>12</sup>*See* Moldskred Dep., Ex. 3 - Moldskred Declaration, pg. 1, ln. 24.

<sup>13</sup>*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,<sup>14</sup>  
3 Moldskred did not want to have financial dealings directly with CRI.<sup>15</sup>

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.<sup>16</sup> He also made a similar loan in December of 2004,  
7 which was paid early the next month.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>  
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.<sup>20</sup> 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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21 <sup>14</sup>See Moldskred Dep., pg. 35, lns. 10-19.

22 <sup>15</sup>See Moldskred Dep., pg. 41, lns. 3-18.

23 <sup>16</sup>See Moldskred Dep., pg. 37, ln. 4.

24 <sup>17</sup>See Moldskred Dep., pg. 39, lns. 6-12.

25 <sup>18</sup>See Moldskred Dep., pg. 40, lns. 12-17.

<sup>19</sup>See Moldskred Dep., pg. 36.

<sup>20</sup>See 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  
9 a bunch of requirements. There’s in-the-zone where you don’t - - or very few  
10 reporting requirements. And then there’s out-of-the-zone where you’re considered  
11 safe, and you don’t need any extra reporting requirements. So it’s just a matter of  
12 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  
15 earnings of the corporation is probably the heaviest weighted. And the corporation  
16 was profitable in 2005 - - to my understanding, it was over 300,000 - - when I gave  
17 him the loan. So the other ratio was just to boost up his capital to help that portion  
18 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  
17 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.

18 Q. Right. But my point is that the money was used to increase the capital  
19 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  
23 to the Department of Education?

23 A. That is what I understand.<sup>21</sup>

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

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<sup>21</sup> 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.

3 III. LEGAL ANALYSIS

4 The issue reserved by the Order of Partial Summary Judgment is whether Moldskred acted  
5 in good faith and without knowledge of the avoidability of the transfers which were avoided,  
6 referring to the transfers from Janisch to CRI and back again. These funds were used to repay the  
7 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 (9<sup>th</sup> 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 (3<sup>rd</sup> 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).  
24 In this vein, some facts suggest the underlying presence of other  
25 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  
6 conveyance in the chain. 'Knowledge' is a stronger term than  
7 'notice', see *Smith v. Mixon*, 788 F.2d at 232. A transferee that lacks  
8 the information necessary to support an inference of knowledge need  
9 not start investigating on his own."

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

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

#### 22 IV. CONCLUSION

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

DATED this 18<sup>th</sup> day of July, 2008.

THE RIGBY LAW FIRM

/S/ James Rigby

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