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

In re:)	Chapter 7
)	Bankruptcy No. 06-14202
COURT REPORTING INSTITUTE, INC.,)	
)	
Debtor(s).)	
_____)	
BANKRUPTCY ESTATE OF COURT)	Adversary No. 07-01167
REPORTING INSTITUTE, INC., by and)	
through Michael B. McCarty, Bankruptcy)	
Trustee,)	
)	
Plaintiff,)	
)	
v.)	
)	PLAINTIFF'S REPLY TO RESPONSE
ALEN JANISCH, a single man; and)	TO SECOND MOTION FOR
KAI MOLDSKRED and JOYCE)	SUMMARY JUDGMENT
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 Michael B. McCarty, Bankruptcy Trustee, through counsel, The Rigby Law Firm, and James Rigby, and files this reply to the Memorandum in Response to Second Motion for Summary Judgment filed by defendants Kai and Joyce Moldkred ("Moldskred").

Moldskred's defense is basically that his loans have deceived the auditors so many times, that deception is an acceptable business practice. In addition, counsel artfully misstates the issue to be solvency, and then provides a defense to the wrong issue.

Moldskred states in the memorandum at page 5, beginning on line 9, that his "belief that the \$150,000 loan would be used by Alen Janisch to increase his capital account in CRI is not inherently

1 knowledge of a fraudulent scheme.” Good so far as it goes. However, Moldskred also knew that
2 the purpose of increasing the capital account was to deceive the United States Department of
3 Education (“DOE”) inasmuch as the increase would last only a week, thus misrepresenting the
4 financial condition of CRI. Moldskred supports his statement by relying upon the fact that the DOE
5 had audited CRI’s books and records, and that they passed the audit. The fact that the DOE,
6 however, did not discover the deceptively inflated capital account of Alen Janisch (“Janisch”) is not
7 evidence that the DOE condones deceptive financial statements. If that was the case, there would
8 be no point in the DOE requiring financial statements in the first place.

9 In his memorandum at page 7, line 2, Moldskred misstates the issue of whether or not he
10 acted in good faith and without knowledge of the avoidability of the transfers, by focusing upon
11 CRI’s insolvency. He bases his lack of knowledge of CRI’s insolvency upon the fraudulent
12 financial statements, which simply does not follow. One cannot rely upon a fraudulent financial
13 statement to prove solvency or, for that matter, any other purpose. More importantly, this court
14 found that the transfers from CRI to Janisch were intentionally fraudulent. There was an effort by
15 Janisch, aided and abetted by Moldskred, to intentionally prepare deceptively false financial
16 statements and to present them to the DOE. Moldskred participated in the deception by providing
17 the significant amount of \$150,000 as a short term loan. Presumably, Moldskred was motivated in
18 this by preserving the viability of CRI and, thus, preserving his cash flow. When CRI failed, Janisch
19 failed. When Janisch failed, Moldskred stopped receiving payments. As he said, he still believes
20 he is owed over \$100,000.

21 Moldskred presents the Declaration of William A. Hanlin, Jr. (“Hanlin”) as an expert CPA.
22 Again, Hanlin focuses on the knowledge of the insolvency of CRI, opining that, even after taking
23 \$150,000 out of Janisch’s capital account, CRI had a positive net equity of \$123,954 according to
24 the audited financial statements. Of course, if one were to follow that line of logic, one would have
25 to reduce the net equity posited by Hanlin by an additional \$150,000, which would then leave CRI
insolvent. Moldskred was aware that he was not the only person making the “short term loans.” In

1 response to the question of why Janisch would need \$150,000 for a week, Moldskred states as a part
2 of his answer that he knew Janisch had such loans with other people besides himself. *See* Moldskred
3 deposition, page 37, beginning on line 12, and Plaintiff’s Memorandum, page 5, line 3. The trustee
4 herein has filed a similar action under Section 550 against Janisch’s landlord, the Fleischman Family
5 Limited Partnership, for an additional \$150,000 loaned at the same time as the Moldskred transfer
6 at issue. Hanlin’s declaration, wherein he states that CRI was solvent, notwithstanding this court’s
7 ruling on the issue, *See* Hanlin declaration, page 3, line 9, is neither well informed nor well
8 considered. Hanlin’s argument concerning Moldskred’s hypothetical investigation is ludicrous, as
9 he would have Moldskred look at the financial statements which were fraudulently prepared in order
10 to deceive the DOE.

11 Hanlin also argues in his declaration at page 3, line 18, that the Statement of Stockholder’s
12 Equity does not show an infusion of capital in 2005 or 2004. Well, it should not. On page 5, line
13 11 of his declaration he states Moldskred made similar “short term loans” near the end of each year,
14 beginning in 1998 through 2005. After Moldskred made the initial loan he was in the position of
15 having to make a similar loan in each subsequent year or a reduction in the capital account would
16 take place. Consequently, the reduced capital account may have caused the DOE to terminate
17 student loans to CRI students. That could have resulted in CRI ceasing to conduct business, ending
18 Janisch’s payments to Moldskred.

19 In the same way that participating in a Ponzi scheme indicates a lack of good faith by a
20 transferee, when Moldskred loaned money to Janisch so that Janisch could transfer the money to
21 CRI to artificially inflate his equity account in order to deceive the DOE, participating in such a
22 deception indicates a lack of good faith and a knowledge of the avoidability of the transfer.

23 DATED this 19th day of August, 2008.

24 THE RIGBY LAW FIRM

25 /s/ James Rigby

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