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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,

Adversary No. 07-01167

MEMORANDUM IN RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT AND CROSS MOTION
FOR SUMMARY JUDGMENT

vs.

ALLEN JANISCH, a single man; and KAI
MOLDSKRED and JOYCE MOLDSKRED,
husband and wife, and the marital community
comprised thereof,

Defendants.

COMES NOW Defendants Kai & Joyce Moldskred by and through their attorney of record,
Jeffrey B. Wells, and for their memorandum in opposition to the Trustee's motion for summary
judgment and for summary judgment in their favor, states as follows.

FACTUAL BACKGROUND

As set forth in the Declaration of Kai Moldskred, he is a long-term friend of Alen Janisch,
the sole shareholder and officer of the Debtor, Court Reporting Institute, Inc. hereinafter CRI.

1 Defendant Kai Moldskred loaned funds to CRI and Alan Janisch over an extended period of time,
2 providing both long-term and short-term financing.

3 As set forth in the Declaration of Kai Moldskred, he made long-term loans to CRI and Alan
4 Janisch as far back as January 8, 1988. On May 22, 1996, all of the outstanding notes which at that
5 time totaled \$165,710.09 as of December 31, 1995 were restructured at Alan Janisch's request
6 whereby he became personally liable for the notes. However, all of the funds loaned had been paid
7 over to and used by the Debtor CRI who was the original borrower of the funds. Payments on the
8 notes continued over the years either from Alan Janisch and/or CRI.

9 During 2006 CRI paid Kai Moldskred \$123,000 between January 1, 2006 and August 2,
10 2006, the time period which is the subject of Plaintiff's complaint. These payments were applied
11 to the various outstanding notes by Kai Moldskred leaving a balance owing as of August 31, 2006
12 of \$48,954.31.

13 The other form of financing provided by Kai Moldskred to Alan Janisch and CRI was short-
14 term financing. On December 29, 2005, Kai Moldskred loaned Alen Janisch and CRI a total of
15 \$150,000 through two payments, one a transfer in the amount of \$101,300 from his Washington
16 Mutual account and second, a check in the amount \$48,700 from his BECU account. Kai
17 Moldskred received repayment for this loan on January 2, 2006 with a check of \$ 50,000 and
18 \$100,000. Even though these funds were paid to Alen Janisch, Alan Janisch paid over these funds
19 to CRI and had CRI repay the loans directly to Kai Moldskred.

20 Kai Moldskred entered into these transactions with CRI and Alan Janisch in good faith and
21 with full confidence that Alan Janisch and CRI could repay the money loaned. Kai Moldskred's
22 confidence was subsequently supported by the 2005 audited financial statements and accompanying
23 documents which indicated that for 2005 CRI had a net income of \$302,914, had a cash balance of
24 \$434,328 and had owner's equity of \$273,954. Kai Moldskred was also given financial reports
25 showing CRI had a net income for the first 4 months of 2006 of \$119,528. Thus it was his
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1 expectation that CRI would earn \$300,000 plus for 2006 just as it had for 2005.

2 What lead to CRI's demise was a negative Seattle Times article published at the end of
3 March, 2006 which by the summer of 2006 lead to a drastic reduction in the number of students.
4 Enrollment decreased from approximately 400 to 300, and led to the closure of the school on August
5 21, 2006.

6 LEGAL ANALYSIS

7 1. SUMMARY JUDGMENT

8 The legal standards for summary judgment are well known to the Court and therefore have
9 not been set forth. The filing of a summary judgment puts into issue the entire case so that the Court
10 can award summary judgment to the defending party if so requested. In re Envirodyne Industries, Inc.
11 176 B.R. 825 (Bkrcty N.D. Ill. 1995). Defendants Kai and Joyce Moldskred respectfully request
12 that summary judgment be rendered in their favor dismissing them from Plaintiff's adversary
13 complaint.

14 2. INDIRECT BENEFIT RULE

15 Plaintiff's argument against Defendants Kai and Joyce Moldskred is that the Debtor CRI did
16 not have a direct obligation to them and therefore payments by CRI to Mr. And Mrs. Moldskred
17 were therefore necessarily fraudulent. This argument has been considered and rejected in the Ninth
18 Circuit and other circuit courts in a long line of cases which have established the "indirect benefit
19 rule". The leading Ninth Circuit case is Frontier Bank v. Brown, 371 F.3d 1056,(9th Cir. 2004). In
20 that case, which is strikingly similar to the one presently before the Court, Frontier Bank loaned to
21 the shareholders of the corporation which ultimately filed for bankruptcy, monies which were
22 deposited with the corporation. The corporation gave a security interest to Frontier Bank even
23 though the Debtor corporation had no direct obligation to Frontier Bank. The Trustee, Ron Brown,
24 sought to set aside the giving of the security interest as fraudulent since the Debtor corporation had
25 no direct obligation to Frontier Bank.

1 The Ninth Circuit In Frontier Bank, supra, adopted what it termed the “indirect benefit rule.”

2 The Court stated:

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4 11 U.S.C. § 548(a)(1) provides:

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6 The trustee may avoid any transfer of an interest of the debtor
7 in property, or any obligation incurred by the debtor, that was made or
8 incurred on or within one year before the date of the filing of the
petition, if the debtor voluntarily or involuntarily . . . received less than
a reasonably equivalent value in exchange for such transfer or
obligation.

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10 It is well settled that “reasonably equivalent value can come from one other than the
11 recipient of the payments, a rule which has become known as the indirect benefit rule.”
Harman v. First Am. Bank (In re Jeffrey Bigelow Design Group, Inc), 956 F. 2d 479, 485
(4th Cir. 1992). For example, in *Rubin v. Manufacturers Hanover Trust Co.*, the Court
explained:

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13 a debtor may sometimes receive “fair” consideration even
14 though the consideration given for his property or obligation goes
15 initially to a third person, . . . although transfer solely for the benefit
16 of third parties do not furnish fair consideration . . . the transaction’s
17 benefit to the debtor need not be direct; it may come indirectly
18 through benefit to a third person . . . If the consideration given to the
third person has ultimately landed in the debtor’s hands, or if the
giving of the consideration to the third person other-wise confers an
economic benefit upon the debtor, then the debtor’s net worth has
been preserved, and [the statute] has been satisfied – provided, of
course, that the value of the benefit received by the debtor
approximates the value of the property or obligation he has given up.

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661 F. 2d 979, 991-92 (2d Cir. 1981) (internal quotation marks and citations omitted).

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21 *Jeffrey Bigelow* is such an example. In *Jeffery Bigelow*, shareholders of a debtor entered into
22 a line of credit agreement with First American Bank for \$1,000,000. 956 F.2d at 481.
Although the shareholders were the makers of the line of credit, “only the debtor received
23 the draws and all payments were made directly from the debtor to First American.” Id.
Subsequently, “ the debtor executed a note for \$1,000,000 to [the shareholders] with
24 substantially the same terms as the line of credit between First American and [the
shareholders].” Id. As the debtor directly repaid First American, its liability on the note to
the shareholders likewise decreased. Id. Holding that the payments made by the debtor on
the shareholders’ line of credit did not constitute fraudulent conveyances, the Fourth circuit
reasoned:

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The proper focus is on the net effect of the transfers on the

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1 debtor's estate, the funds available to the unsecured creditors. As
2 long as the unsecured creditors are no worse off because the debtor,
and consequently the estate, has received an amount reasonable
3 equivalent to what it paid, no fraudulent transfer has occurred.

4 Id. at 484. Because it was "apparent that the transfers [had] not resulted in the
depletion of the bankruptcy estate," but rather "served simply as repayment for
5 money received," the Fourth Circuit held that "no fraudulent transfer
occurred." Id. at 485.

6 As *Jeffery Bigelow* illustrates, the primary focus of Section 548 is on the net
7 effect of the transaction on the debtor's estate and the funds available to the
unsecured creditors.

8 Applying the indirect benefit rule to both long-term and short-term financing provided by Kai
9 Moldskred indicates that the transfers have resulted in the unsecured creditors not being harmed
10 at all. The four day loan of \$150,000 provided on December 29, 2005 and repaid by CRI on January
11 2, 2006 is a wash. This transaction had absolutely no adverse effect on unsecured creditors and
12 therefore no fraudulent transfer occurred. Rather CRI merely repaid the money it received.

13 The Trustee in Frontier Bank v. Brown, supra. argued as follows:

14 Trustee contends that Debtor's grant of the security interest to
15 Frontier resulted in a \$150,000 loss to Debtor's estate and thus the
funds available to the unsecured creditors. Trustee reasons that
16 because the transfer of \$150,000 from Shareholders to Debtor was
technically a capital contribution, rather than a loan, debtor was under
17 no legal obligation to grant a security interest to Frontier. Therefore,
Trustee argues, Debtor would have been justified to not grant the
18 security interest to Frontier, which would have resulted in an
additional \$150,000 in Debtor's estate.

19 This is the same argument presented by the Trustee in the present case. The Court
20 rejected this argument and stated:

21 We reject this formalistic view. Although debtor was not a
22 party to the October loan, it clearly received a benefit from that loan.
In fact, Frontier deposited the \$150,000 proceeds of the October Loan
23 directly into Debtor's checking account. Because Debtor benefitted
from the October Loan in the amount of \$150,000, its grant of a
24 security interest to Frontier to secure shareholder's indebtedness on
that loan, which totaled \$150,000, resulted in no net loss to Debtor's
25 estate nor the funds available to the unsecured creditors. To hold

1 otherwise would result in an unintended \$150,000 wind-fall to
2 Debtor's estate. Accordingly, debtor received reasonably equivalent
3 value in exchange for the security interest it granted to Frontier.

4 To allow the Trustee's argument to prevail in the present case would similarly result in a \$150,000
5 windfall to the bankruptcy estate.

6 The same legal principles apply to the long-term financing. The Debtor, CRI, received the
7 loan proceeds from Kai Moldskred and was making payments on the outstanding balance. To
8 recover those payments would result in a windfall to the Debtor whose unsecured creditors have not
9 suffered as a result of such payments i.e. the debtor has received more present value money than it
10 has repaid. Indeed, Kai Moldskred has an outstanding balance, despite the \$123,000 paid during
11 2006, of \$48,954.31. To that extent, the unsecured creditors have been the unintended beneficiaries
12 of \$48,954.31.

13 GOOD FAITH

14 11 U.S.C. § 548(c) states:

15 . . . "a transferee or obligee of such a transfer or obligation that takes
16 for value and in good faith has a lien on or may retain any interest transferred
17 . . . to the extent that such transferee or obligee gave value to the debtor in
18 exchange for such transfer of obligation."

19 In *In re Jeffrey Bigelow Design Group, Inc.* 956 F. 2d 479,485 (4th Cir. 1992) the court
20 discussed good faith and stated:

21 It seems apparent that the transfers have not resulted in the depletion
22 of the bankruptcy estate. The transfers by the debtor served simply as
23 repayment for money received. Other creditors should not be able to
24 complain when the bankruptcy estate has received all of the money which it
25 is obligated to repay. Otherwise, the creditors would receive not only the
26 benefit of the money received from the draws on the lines of credit, but also
27 the windfall of avoided transfers designed to repay the draws. In essence, the
28 estate, and hence the unsecured creditor, would be paid twice. Consequently,
we hold that no fraudulent transfer occurred.

There is absolutely no evidence that Defendant Kai Moldskred was operating other than in
good faith. He believed that CRI was profitable and could repay loans as they became due. How

1 else can Kai Moldskred's unsecured loan of \$150,000 on December 29, 2005 be viewed? He fully
2 expected the funds to be repaid which they were on January 2, 2006. Likewise, ongoing payments
3 received by him during 2006 were but a continuation of payments which he had been receiving from
4 CRI since the initial loans back in 1988. The money was received by him in the belief that CRI was
5 profitable and making payments in the normal course of business, a belief which was supported by
6 CRI's audited financial statements ending December 31, 2005.

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8 SUMMARY

9 In none of the transactions between Kai Moldskred and the Debtor was there a loss to the
10 estate. With the short-term loan, the transaction was a wash. The money was paid in and then, four
11 days later, paid out. With the long-term loans, the Debtor was merely repaying money it had
12 received. These payments were cut short by the bankruptcy filing leaving Kai Moldskred unpaid
13 \$48,954.31. Obviously, the only injured party is Kai Moldskred and not the bankruptcy estate which
14 has received a present value benefit of \$48,954.21 as of August 31, 2006. There has been no loss
15 and therefore no fraud. The Trustee's motion is without merit and summary judgment should be
16 granted in favor of Kai and Joyce Moldskred.

17 DATED this 19th day of November, 2007.

18 /s/ Jeffrey B. Wells
19 Jeffrey B. Wells, WSBA #6317
20 Attorney for Defendants
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