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Honorable Karen A. Overstreet
Hearing Date: June 20, 2008
Hearing Time: 9:30 a.m.
Response Date: June 13, 2008
Chapter 7
Location: Seattle

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

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,

Adv. No. 07-01167

Plaintiff,

DEFENDANT/CROSS-PLAINTIFF'S
RESPONSE TO MOTION FOR SUMMARY
JUDGMENT

vs.

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

Defendants.

ALEN JANISCH, by and through Edmund J.
Wood, in his capacity as Bankruptcy Trustee,

Cross-Plaintiff,

vs.

KAI MOLDSKRED and JOYCE
MOLDSKRED, husband and wife, and the
marital community Comprised thereof,

Cross-Defendants.

1 COMES NOW the Defendant/Cross-Plaintiff, Edmund J. Wood, by and through the
2 undersigned attorney, and responds to the Motion for Summary Judgment as follows:

3 **I. RESPONSE TO FACTS**

4 The Chapter 7 Bankruptcy Trustee of the estate of Alen Janisch, Edmund J. Wood, and the
5 Trustee of the estate of CRI, Michael B. McCarty, have reached an agreement, subject to Court
6 approval, regarding the division of assets and litigation claims in the two estates. Accordingly,
7 Edmund J. Wood supports the relief sought as against Cross-Defendants Kai and Joyce Moldskred on
8 behalf of CRI. Should the Court find that Moldksred is not the immediate transferee, the Janisch
9 Trustee responds as follows:

11 There is no dispute that Cross-Defendants Kai and Joyce Moldskred received the funds at
12 issue, nor that funds in the amount of \$152,000.00 were paid by debtor Janisch. The CRI Trustee
13 contends that Cross-Defendants Moldskred is the immediate or mediate transferee of funds paid by
14 CRI to Janisch, and Janisch to Moldskred. If the Court disagrees that Moldskred is the immediate or
15 mediate transferee, the Janisch estate should receive judgment against Cross-Defendants Moldskred
16 pursuant to 11 U.S.C. § 548, as Janisch was not obligated to pay the short term advances made to
17 CRI.

19 Specifically, Cross-Defendant Moldskred states that the short-term loans that are at issue
20 herein, were made to CRI and were “for the benefit of CRI”. See Declaration of Kai Moldskred,
21 page 2, lines 24 - 26. Moldskred later admits that the only ‘personal loans’ to Janisch were in August
22 of 2006, and totaled only \$15,000. See Declaration of Moldskred page 3, lines 5 - 13. The Deed of
23 Trust at issue secures a pre-existing obligation of CRI, not Janisch. The total personal advances of
24 \$15,000.00 are more than adequately secured by a security interest in the jewelry, valued in excess of
25 \$56,800.

1 **II. ISSUES**

- 2 2.1 **Whether reasonably equivalent value was received in connection with the**
- 3 **transfers.**
- 4 2.2 **What is the appropriate remedy to make the estate whole.**

5 **III. DISCUSSION**

6 **Law and Argument**

- 7 3.1 **Reasonably equivalent value was not received by the debtor in exchange for the**
- 8 **payments of CRI debts.**

9 11 U.S.C. § 548 (a)(1) provides:

10 The Trustee may avoid any transfer of an interest of the debtor in property, or any
11 obligation incurred by the debtor, that was made or incurred within one year before
the date of the filing of the Petition, if the debtor voluntarily or involuntarily - -

- 12 (B)(i) received less than reasonably equivalent value in exchange for such a transfer
- 13 or obligation; and
- 14 (ii)(I) was insolvent on the date that such transfer was made or such obligation was
incurred, or became insolvent as a result of such transfer or obligation.

15 Regarding the first element, it cannot be disputed that the payments to Cross-Defendants Moldskred
16 in the amount of \$152,000.00 constitute a transfer of a property interest of Janisch. 11 U.S.C. § 101
17 (54).

18 The determination of reasonably equivalent value is a two step analysis. The first inquiry is
19 what the debtor received in exchange for the transfer and secondly whether the value of what was
20 received was “reasonably equivalent” to what was transferred. *In re RML Inc.*, 92 F.3d 139 (3rd Cir.
21 1996); *In re Hedged-Investments Associates Inc.*, 84 F.3d 1286 (10th Cir. 1996). Defendant
22 Moldskred admits that the loans were to CRI and “for the benefit of CRI” and that the only
23 “personal” loans made to Janisch totaled the sum of \$15,000. Accordingly, when Janisch repaid
24 these loans, he did not receive anything for his payments to Moldskred, and certainly not reasonably
25 equivalent value for funds paid in the amount of \$152,000.
26

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1 The recognized test is whether the investment conferred an economic benefit on the debtor,
2 which benefit is appropriately valued as of the time the investment was made. *Butler Aviation Int'l*
3 *vs. Whyte (In re Fairchild Aircraft Corporation)*, 6 F.3d 1199 (5th Cir. 1993). The primary
4 consideration in analyzing the exchange of value for any transfer is the degree to which the
5 transferor's net worth is preserved. *Warfield vs. Byron*, 436 F.3d 551 (5th Cir. 2006). The focus is
6 whether the net effect of the transaction has depleted the bankruptcy estate. Here, debtor Janisch's
7 net worth was diminished by the very amount of the transfer, \$152,000. As CRI was insolvent, there
8 was no net benefit to the debtor gained for the debtor's payments.

10 Benefit to a third party is not 'reasonably equivalent value' to the debtor for purposes of §
11 548. While 'indirect benefit' may be argued, the defendant carries the burden of proof to establish
12 that the debtor Janisch received a cognizable indirect benefit by paying a CRI obligation. *Leonard v.*
13 *Mountainwest Fin. Corp. (In re Whaley)*, 229 B.R. 767, 775 (Bankr. D. Minn. 1999). Further, "[t]he
14 indirect benefit must have been both tangible and of concrete economic value." *Leonard*, 229 B.R. at
15 775. Thus, Moldskred would have to show a tangible and direct benefit to Janisch resulting from the
16 transfers in payment of CRI debt and he must be able to quantify it. *Meeks v. Don Howard*
17 *Charitable Remainder Trust (In re Southern Health Care of Arkansas, Inc.)*, 309 B.R. 314, 319 (8th
18 Cir. B.A.P. 2004) *v. Don Howard Charitable Remainder Trust (In re Southern Health Care of*
19 *Arkansas, Inc.)*, 309 B.R. 314, 319 (8th Cir. B.A.P. 2004); *Pummill v. Greensfelder, Hemker & Gale*
20 *(In re Richards & Conover Steel, Co.)*, 267 B.R. 602, 614 (8th Cir. B.A.P. 2001). Where CRI was
21 insolvent at the time, there can be no such quantifiable benefit shown. See, also, *In re Bargfrede*, 117
22 F.3d 1078, 1080 (8th Cir. 1997) (finding debtor did not receive reasonably equivalent value under §
23 548(a) (1)(B)(i) where the transfer benefitted the debtor's wife, not him); *In re Southern Health Care,*
24 *Inc.*, 309 B.R. 314, 320 (B.A.P. 8th Cir. 2004) (noting transfers for the benefit of a third party do not
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1 provide any reasonable equivalent benefit for the debtor under § 548(a)(1)(B)(i)); *In re Fox Bean*
2 *Co.*, 287 B.R. 270, 281-82 (Bankr. D. Idaho 2002) (using debtor's funds to pay off the debt of another
3 entity did not benefit debtor in any way under § 548(a)(1)(B)(i)).

4 Thus, the re-payment by Janisch of the short term CRI advances is recoverable pursuant to 11
5 U.S.C. § 548 by the Janisch Trustee¹.

6
7 3.2 **What is the appropriate remedy to make the estate whole.**

8 A. **Monetary Judgment; Avoidance of Lien**

9 11 U.S.C. § 550 (a) provides that to the extent a transfer is avoided pursuant to § 549, the
10 Trustee may recover either the property transferred or the value of such property from the initial
11 transferee. Here, the Janisch Trustee should receive a judgment in the amount of \$152,000.00 and
12 avoidance of the Deed of Trust to Moldskred. The security interest in the jewelry held by Moldskred
13 should also be avoided except to the extent of the actual value provided to Janisch personally, the
14 sum of \$15,000.

15
16 **IV. SUMMARY**

17 Should the Court decline to find that the Moldskred is the immediate transferee of CRI, the
18 Court should find that Moldskred is the immediate transferee of Janisch, and enter judgment
19 accordingly. Further, as to the extent that Janisch transferred a security interest for debt of CRI, that
20 too should be avoided pursuant to 11 U.S.C. § 548.

21 DATED this 13th day of June, 2008.

22
23 /s/ Kathryn A. Ellis

Kathryn A. Ellis, WSBA #14333

Attorney for Defendant/Cross-Plaintiff

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The Janisch Trustee also alleges that the transfers are recoverable for actual fraud.

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