

Honorable Karen A. Overstreet
Hearing date: February 27, 2009; 9:30 a.m.
Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
Responses due by: February 20, 2009; by 4:30 p.m.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:) Chapter 7
COURT REPORTING INSTITUTE, INC.) Bankruptcy No. 06-14202
Debtor(s).)
) SUPPLEMENTAL RESPONSE TO
) MOTION RE ACCOUNTS
) RECEIVABLE

COMES NOW, Judy McKinney, a creditor and ex-student of the debtor, Court Reporting Institute ("CRI") and requests the court's and Mr. McCarty's indulgence in allowing her to file a supplemental response to the CRI Trustee's Motion Re Accounts Receivable.

If the collection company(ies) contracts were executory then they are already null and void pursuant to 11 U.S.C. § 365 which states in pertinent part:

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, *subject to the court's approval*, may assume or reject any executory contract or unexpired lease of the debtor.

. . . .

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time

1 as the court, for cause, within such 60-day period, fixes, then such
2 contract or lease is deemed rejected.

3 *Emphasis added.*

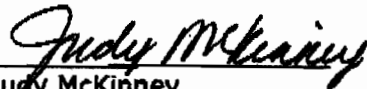
4 Mr. McCarty never sought or received the court's approval to assume the
5 collection company(ies) contracts with CRI. If the contracts were executory then
6 they were deemed rejected and the collection company(ies), having no contract,
7 had no right to pursue any collection activity after 60 days from the order of relief.
8 This would have included the "voluntary" payments from prior students and should
9 therefore refund all the money received from the students after the 60 days.

10 The law on what constitutes an executory contract is complex, turgid and
11 variable. However, it could be competently argued that the collection
12 company(ies) contracts are executory as there was performance due on both sides.
13 See, e.g., *In re Columbia Gas Sys., Inc.*, 50 F.3d 233 (3d Cir. 1995) (settlement
14 agreement may be an executory contract). This proposition is based on the
15 sample contract on page 3 of Mr. Rigby's Motion for an Order Authorizing Trustee to
16 Employ Collection Agency which was filed March 23, 2007. Of course, the actual
17 pre-petition contract that governed Elliot Bay's activities could be different and a
18 copy of it is not in the record.

19 Potentially most telling, Mr. McCarty, who has an abundance of experience in
20 bankruptcy law, referred to the collection company(ies) contracts as executory at
21 the 341 Meeting of Creditors. See McKinney Sup. Declaration, Ex. "A", p. 6. Of
22 course, at that point, he had not seen the contract(s).

23 The issue of whether or not the contract in question is executory is better left
24 to minds more seasoned in the complexities and intricacies of bankruptcy law.

1 Suffice to say, if the court determines the contract to be executory, then it was
2 rejected by virtue of Mr. McCarty never seeking court approval to reaffirm it.

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5 Judy McKinney
6 Student/Creditor

Dated: February 23, 2009

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SUPPLEMENTAL RESPONSE TO MOTION RE ACCOUNTS
RECEIVABLE -3

Judy McKinney
12250 Greenwood Ave. N.
No. 316
Seattle, WA 98133
Student Creditor

1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 23, 2009, I served a true and correct copy of the
3 foregoing document on the following parties by sending a copy via facsimile:

4 Michael B. McCarty, Esq.
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14 Alphonso Quashie
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26 SUPPLEMENTAL RESPONSE TO MOTION RE ACCOUNTS
RECEIVABLE -4

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