

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

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7 UNITED STATES BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 In re:) Chapter 7
10 COURT REPORTING INSTITUTE, INC.) Bankruptcy No. 06-14202
11 Debtor(s).)
12) RESPONSE TO SECOND MOTION
13) FOR AN ORDER APPROVING
14) COMPROMISE OF CLAIMS
15) AGAINST MOLDSKRED

16 COMES NOW, Judy McKinney, a creditor and ex-student of the debtor, Court
17 Reporting Institute ("CRI") and responds to the CRI Trustee's Second Motion for an
18 Order Compromising Claims Against Kai Moldskred.

19 As the court may recall, I opposed the CRI Trustee's [First] Motion to
20 Compromise claims against Kai Moldskred because it appeared too generous. The
21 court set the case for trial which now stands ready to commence in early April.

22 Mr. Rigby's second compromise offer is admittedly an improvement over his first.

23 A. Difference Between Settlement Offers

24 Moldskred is giving up his claim to the \$15,000 new financing he provided
25 Janisch which would have come out of either the net proceeds from the sale of
26 Janisch's house (\$45,673.09) or the jewelry, which the court valued at \$40,000 and

RESPONSE TO SECOND MOTION TO COMPROMISE CLAIMS
AGAINST MOLDSKRED-1

Judy McKinney
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Student Creditor

1 Mr. Rigby valued at \$15,000. Mr. Moldskred will return the jewelry to which he had
2 the most tenuous of claims. He is also contributing \$31,173.09 more in cash.
3 Thus the settlement is at least \$46,173.09 better and more if the jewelry can be
4 sold for an amount over \$15,000. Mr. Moldskred is also giving up his claims in the
5 Janisch bankruptcy, claims on which he would only have received what the other
6 creditors would, namely, pennies on the dollar.

7 The claims to be compromised are: (1) \$123,000 which the court granted in
8 the first summary judgment and is on appeal; (2) \$150,000 which the court has
9 already ruled was a fraudulent conveyance from CRI to Janisch, who immediately
10 transferred the money to Moldskred, leaving only the merits of Moldskred's good
11 faith defense to be litigated; and (3) \$15,000 in new financing that Moldskred gave
12 Janisch, the issue being whether that amount is subject to a perfected security
13 interest in either the second deed of trust or the jewelry. That is a total of
14 \$288,000.

15 Moldskred is offering (1) \$140,000 cash and (2) relinquishing his \$15,000
16 claim. That is an offer of \$155,000 or 53.8% of the potential recovery, thus the
17 amount being compromised is \$133,000.

18 B. \$123,000 Judgment.

19 As the court stated before, she does not anticipate being overturned by the
20 BAP. Moldskred had purposely moved all his transactions with CRI to Janisch on or
21 about May 22, 1996. *Declaration of Moldskred In Support of Response to*
22 *Summary Judgment* (signed November 21, 2007), p.1, ln. 25 – 41 and p.2, lns. 1-3
23 and Ex. A., ¶¶ 16-18. That decision greatly enhanced CRI's balance sheet and
24 might well have been a factor in Moldskred's decision, i.e., to make sure that CRI
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1 remained viable so that he could continue to collect the interest on his loans. When
2 he received the series of \$123,000 payments from checks drawn on CRI, knowing
3 that he had had no financial dealings with that entity, and being an accountant, he
4 should have realized the significance of accepting those checks. He should have
5 requested that Janisch re-issue the checks from Janisch's accounts.

6 Moreover, this court has already ruled that CRI was insolvent at the time it
7 made the \$123,000 series of payments to Moldskred or became insolvent as a
8 result of them. Thus, would not the payments have been preferential even if they
9 had come from CRI to Janisch and then to Moldskred who would have been the
10 immediate transferee?

11 C. \$150,000 claim.

12 The court has already ruled that CRI fraudulently transferred \$150,000 to
13 Janisch who immediately transferred it to Moldskred, leaving only the issue of
14 Moldskred's good faith defense. Order Granting Partial Summary Judgment, p.7,
15 ¶¶ 13-19.

16 As stated in Ms. McKinney's opposition to the first settlement and considering
17 the wealth of evidence on the record, it appears that Moldskred was well aware that
18 his original \$150,000 "loan" to Janisch would be transferred to CRI to place it in a
19 better "zone" in terms of qualifying for U.S. Department of Education ("DoE")
20 financial aid which the school's existence depended on. That deed accomplished,
21 the money would be transferred back to him in a week or so and never shown as a
22 loan on CRI's books. That is fraud, plain and simple.

23 Janisch had engaged in this practice while Moldskred was employed at CRI
24 and Moldskred had been making these short term loans to Janisch for almost a
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1 decade, thus the evidence would strongly imply he was aware of this scheme.
2 Moldskred's argument that because the DoE never uncovered the fraud, there was
3 no fraud, is comical. That would be tantamount to stating that no Ponzi scheme is
4 fraudulent unless it is ultimately discovered! Moldskred's contention that he make a
5 massive short term loan to Janisch at the end of every year for a decade without
6 having knowledge of Janisch's intentions and in good faith will surely strain
7 credulity.

8 E. \$15,000 Claim

9 Moldskred's claim of \$15,000 was secured by a second deed of trust which
10 Janisch had originally used to secure a promissory note employed to artificially
11 inflate CRI's balance sheet. The court ruled that the Janisch had unlawfully reduced
12 and satisfied the promissory note for no consideration. *Order for Partial Summary*
13 *Judgment*, p.7, Ins. 4-5. Thus, Moldskred's second deed of trust was arguably
14 voidable as Janisch wrongfully reconveyed it to himself before conveying it to
15 Moldskred.

16 The \$15,000 was also purportedly secured by the jewelry though no
17 documentation of that security has ever been offered and Janisch testified that he
18 gave the jewelry to Moldskred for safe keeping. *Deposition of Alen Janisch*, p.54,
19 In. 16 to p.56, In. 20.

20 Thus, the judge could easily rule at trial that the \$15,000 was unsecured and
21 it would be thrown in with the rest of the unsecured "penny" claims.

22 E. Costs of Further Litigation v. Potential Recovery.

23 Of course, whether to accept or reject a settlement will partially hinge on this
24 issue. Presumably, Mr. Rigby has already been preparing for trial and thus fees
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1 have already been consumed. The question then becomes how many more legal
2 fees would be consumed to prepare for and conduct a trial.

3 As the court indicated at the hearing on the first Motion to Compromise
4 Claims Against Moldskred, the issues to be tried are limited to (i) Moldskred's good
5 faith defense to the \$150,000 transfer; (ii) whether or not Moldskred perfected his
6 security interest in the jewelry and (iii) whether or not Janisch had the right to
7 grant Moldskred a security interest in his home, after he had wrongfully reconveyed
8 that interest from the promissory note to himself. Considering that only \$15,000 is
9 at stake in issues (ii) and (iii) not much time would need to be expended on
10 litigating those points.

11 All these three issues have been extensively briefed having been the subject
12 of two summary judgment motions and the judge indicated that at the trial she
13 would primarily focus on assessing the credibility of Mr. Moldskred. There is the
14 matter of the defense of the BAP appeal which Mr. Rigby estimated to be \$10,000.
15 Even if \$50,000 in legal fees would be expended for further preparation for trial and
16 the actual trial which would center on Mr. Moldskred testimony, a liberal estimate,
17 that would still leave a potential net recovery of over \$70,000.

18 There is the issue of collecting any judgment and in that regard,
19 Mr. Moldskred has been attempting to sell three of his properties and has quit
20 claimed at least four properties to his family trust for dubious or no consideration.
21 See *Declaration of Judy McKinney*, ¶¶ 2-3, Exs. A & B. The transfers to his family
22 trust would appear to be voidable under Washington Uniform Fraudulent Transfer
23 Act, RCW 19.40 et seq.

1 However, inasmuch as Moldskred has indicated a desire to escape the
2 judgment, I would respectfully request that the court rule that any settlement
3 contain the provisions that (i) any funds proffered by Moldskred be by certified
4 check and commensurate with the signing of the agreement and (ii) that the
5 jewelry be inspected by an expert to ensure that it is authentic and not been
6 tampered with.

7 **Conclusion**

8 Respectfully, for the foregoing reasons, I believe that the expenditure of
9 further legal fees is much less than what is being potentially sacrificed in this
10 compromise. I would object to the settlement at hand and suggest that if
11 Mr. Moldskred would be willing to contribute \$35,000 more to the settlement that
12 that would be make it much more palatable. This takes into account the strength
13 of the case against him and the fact that he would be spending that money on
14 litigation which might not affect the size of a judgment against him.

15 /s/

Dated: February 25, 2009

16 _____
17 Judy McKinney
18 Student Creditor
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 25, 2009, I faxed a true and correct copy of the
3 foregoing document to the following parties:

4 Jeffrey Wells, Esq.
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20 Alphonso Quashie
21 Alphonso Quashie

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26 **RESPONSE TO SECOND MOTION TO COMPROMISE CLAIMS
AGAINST MOLDSKRED-7**

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