

1 KAREN A. OVERSTREET
Chief Bankruptcy Judge
2 United States Courthouse
700 Stewart St., Suite 6310
3 Seattle, WA 98101
206-370-5330
4

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

8 In re
9 MICHAEL B. MCCARTY, Trustee,
10
11 Debtor.

Chapter 13

Case No. 06-14202

12 BANKRUPTCY ESTATE OF COURT
REPORTING INSTITUTE, INC., by and
13 through Michael B. McCarty,
Bankruptcy Trustee,
14

Plaintiff,

Adversary No. 07-01167

15 vs.

16 ALEN JANISCH, a single man, and
17 KAI MOLDSKRED and JOYCE
MOLDSKRED, husband and wife, and
18 the marital community comprised
thereof,
19

Defendants.
20

ORDER ON MOTION FOR
RECONSIDERATION OF PARTIAL
SUMMARY JUDGMENT

21 This matter came before the Court on Defendants Moldskreds'
22 Motion for Reconsideration, filed herein on July 21, 2008.
23 Defendants seek reconsideration of the Order Granting Partial
24 Summary Judgment entered on July 11, 2008 (the "Order"). Partial
25 summary judgment was entered after a hearing and oral argument on
26 June 20, 2008. The Moldskreds did not file an objection to the
form of order when presented to the Court on July 11, 2008.

ORDER

1 Motions for reconsideration are disfavored in this district.

2 The local federal district court rules direct that a court should:

3 [O]rdinarily deny such motions in the absence of a showing
4 of manifest error in the prior ruling or a showing of new
5 facts or legal authority which could not have been brought
6 to its attention earlier with reasonable diligence.

7 Civil Rule 7(h)(1), Local Rules W.D. Wash.

8 A motion for reconsideration that does not specify a federal
9 rule of civil procedure will be treated (i) as a motion for
10 amended findings under Federal Rules of Civil Procedure
11 52(b)(applicable to contested proceedings and adversary
12 proceedings pursuant to Bankruptcy Rule 7052) or a motion for a
13 new trial under Rule 59(e) (applicable to adversary proceedings
14 pursuant to Bankruptcy Rule 9023), if it is filed within 10 days
15 after entry of the order or judgment, or (ii) as a motion for
16 relief from judgment under Federal Rule of Civil Procedure 60(b)
17 (applicable to contested and adversary proceedings under
18 Bankruptcy Rule 9024), if it is filed more than 10 days after
19 entry of the order or judgment. *American Ironworks & Erectors,*
20 *Inc. v. N. American Construction Corp.*, 248 F.3d 892, 898-99 (9th
21 Cir. 2001); *Captain Blythers, Inc. v. Thompson (In re Captain*
22 *Blythers, Inc.)*, 311 B.R. 530, 539 (9th Cir. BAP 2004), *aff'd mem.*,
23 2006 WL 1478849 (9th Cir. 2006).

24 The motion at issue was filed within 10 days of the entry of
25 the Order. Accordingly, the court will treat it as arising under
26 Rule 52(b) and Rule 59(e).

A motion under F.R.Civ.P. 59(e) "should not be granted absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling

1 law". *McDowell v. Calderon*, 197 F.2d 1253, 1255
2 (9th Cir. 1999)(en banc)(quoting 389 *Orange St.*
3 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.
4 1999); see also F.R.Civ.P. 60(b).

5 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001).

6 Similarly, Rule 52(b) provides the court an opportunity to
7 correct manifest errors of fact or law, or to consider new
8 evidence not available at trial, or consider a change in the
9 controlling law. See, *Antoninetti v. Chipotle Mexican Grill,*
10 *Inc.*, 2008 WL 1805828 (S.D. Cal. 2008). A motion under Rule 52(b)
11 is not proper where the proposed additional facts do not alter the
12 outcome of the case or are immaterial to the court's conclusions.
13 *Id.* (citing *Weyerhaeuser Co. v. Atropos Island*, 777 F.2d 1344,
14 1352 (9th Cir. 1985).

15 In their Motion for Reconsideration, the Moldskreds contend
16 that the Order does not address their assertion of a valid defense
17 under Bankruptcy Code § 548(c) as to the Moldskreds' receipt of
18 \$123,000 in transfers directly (as the initial transferee) from
19 the debtor, Court Reporting Institute, Inc. ("CRI"). The Court
20 held that because the Moldskreds had released the debt owing to
21 them by CRI prior to the time they received \$123,000 in direct
22 payments from CRI, CRI received no consideration in exchange for
23 those transfers. The cases cited by the Moldskreds in the Motion
24 for Reconsideration, *Frontier Bank v Brown*, 371 F. 3d 1056, 1060
25 (9th Cir. 2004) and *In re Bigelow Design Group*, 956 F. 2d 479 (4th
26 Cir. 1992) are not on point. In those cases, there was no
affirmative release of the debtor/transferor's debt prior to the
making of the transfers at issue.

1 Under Section 548(c), the Moldskreds must prove both value
2 and good faith. As they have failed to prove that they gave value
3 to CRI in exchange for \$123,000 in direct payments from CRI, they
4 are not entitled to avail themselves of the Section 548(c) defense
5 and good faith is irrelevant.

6 The Court also found that the Moldskreds had given value in
7 exchange for the \$150,000 in transfers they received from
8 Defendant Janisch. As to these transfers, the Order specifically
9 reserved for trial or further motion the issue of whether the
10 Moldskreds acted in good faith and without knowledge of
11 voidability of the transfers under section 550(b)(1). Indeed,
12 subsequent to entry of the Order, the Trustee filed a motion for
13 summary judgment on the issue of good faith with respect to the
14 \$150,000. The issue of the Moldskreds' good faith for the
15 purposes of section 550(b) and section 548(c) will be resolved
16 either on the upcoming motion for partial summary judgment or at
17 trial.

18 For the foregoing reasons, it is hereby ordered that:

- 19 1. The Moldskreds' motion for reconsideration is DENIED.
- 20 2. The Trustee shall file an amended Order on Partial Summary
21 Judgment that includes a finding that the Moldskreds were the
22 initial transferees of \$123,000 from CRI.

23 **** END OF ORDER ****

24
25 
26 United States Bankruptcy Judge
(Dated as of Entered on Docket date above)