

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions

Will this opinion be published? No

Bankruptcy Caption: Gerald Jablonski and Carol Jablonski

Bankruptcy No. 95 B 11902

Adversary Caption: Julia Fernandez, Lynn Garrett, Carolyn Hall, Thomas McGrath, Jerry Priest, Wayne Rohr, Terri Seidman and Colleen Wietecha v. Gerald Jablonski and Carol Jablonski

Adversary No. 95 A 01390

Date of Issuance: January 23, 1998

Judge: Susan Pierson Sonderby

Appearance of Counsel:

Attorney for Movant or Plaintiff: Charles S. Stahl, Jr.

Attorney for Respondent or Defendant:

Trustee or Other Attorneys:

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	
GERALD JABLONSKI and CAROL)	
JABLONSKI,)	Case No. 95 B 11902
)	
Debtors.)	
_____)	
)	
JULIA FERNANDEZ, LYNN GARRETT,)	
CAROLYN HALL, THOMAS McGRATH,)	
JERRY PRIEST, WAYNE ROHR,)	
TERRI SEIDMAN and COLLEEN)	Adversary No. 95 A 1390
WIETECHA,)	
)	
Plaintiffs,)	
)	
v.)	
)	Honorable Susan Pierson Sonderby
GERALD JABLONSKI and CAROL)	
JABLONSKI,)	
)	
Defendants.)	

FINDINGS OF FACT and CONCLUSIONS OF LAW

This matter comes before the Court on the Plaintiffs' adversary complaint seeking relief under 11 U.S.C. § 727(a)(3), § 727(a)(4)(A), § 727(a)(5), and § 523(a)(2)(A). The question before the Court is whether Debtors' Chapter 7 discharge should be denied or, in the alternative, whether each of the Plaintiffs' debts should be declared nondischargeable, due to Debtors' creation of and participation in a Ponzi scheme. After conducting a two day trial and reviewing the pleadings, papers and exhibits, the Court holds that Plaintiffs are granted relief on Counts I and III of the adversary complaint. Plaintiffs' motion to

withdraw Count II is granted. Plaintiffs are denied relief without prejudice on Counts IV - XI should the Court's judgment on both Count I and Count III be reversed or vacated on appeal or by reconsideration of this Court. Debtors' discharge is denied under 11 U.S.C. § 727(a)(3) and § 727(a)(5).

FINDINGS OF FACT

1. Carol and Gerald Jablonski (the "Debtors") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on June 13, 1995.
2. Concurrently with the filing of their petition, the Debtors filed the required schedules and statement of financial affairs. Pl. Ex. 1.¹
3. Mrs. Jablonski is employed at Alexian Brothers Hospital (the "Hospital"). She has been employed at the Hospital during all times relevant to the Court's consideration. Her current income from the Hospital is approximately \$23,000 per year.
4. Mr. Jablonski is employed at Creditors Recovery. During 1993 and 1994, he was unemployed for approximately one year due to medical reasons.
5. "Let Me Entertain You" is the Debtors' unincorporated entertainment business. The Debtors are part-time musical performers; Mr. Jablonski plays the drums and Mrs. Jablonski sings.

Loans and the Lenders

6. On Schedule F of their bankruptcy petition, the Debtors listed, inter alia, 20 creditors (collectively, the "Lenders") who made loans to the Debtors and to whom the Debtors are jointly liable in the amount of \$204,400.00. Each of the Plaintiffs in the instant adversary proceeding is one of the Lenders.

1

Plaintiff's exhibits shall be abbreviated as "Pl. Ex. ___" and Debtors' exhibits as "Def. Ex. ___".

7. Debtors knew some of these lenders through Mrs. Jablonski's job at the Hospital. Debtors knew at least one of the lenders through Mr. Jablonski's employment. Some of the lenders were completely unknown to Debtors and were brought to their attention by Allen Dean, a co-worker of Mrs. Jablonski's.
8. Mr. Dean both lent money to the Debtors and found other lenders for them. He volunteered to find these other lenders. After finding prospective lenders, he would negotiate the terms of the proposed loan, then speak with Mrs. Jablonski about the transaction. If she agreed, he would consummate the transaction. July 9@5.
9. At first Mrs. Jablonski was aware of the exact terms of the loans negotiated by Mr. Dean, but eventually Dean took care of all details. July 9@5. The Debtors authorized Dean to offer any rate of interest that was necessary to procure the loans.
10. With the exception of Carolyn Hall, neither of the Debtors has ever spoken with any of the lenders procured by Allen Dean, nor did they make any payments directly to those lenders. The Debtors had to rely on Dean to furnish the names, addresses, and amounts still due and owing to these lenders in order to list their debts on the bankruptcy schedules. Furthermore, with the exceptions of Ms. Hall's loans, the Debtors do not know the terms and conditions of any of the loans made by these lenders.
11. Many of the loans were documented by notes written in Mrs. Jablonski's handwriting on "Let Me Entertain You" stationery. Pl. Exs. 2 - 9 and 13 - 17. Exhibits 2 through 9, inclusive, contain letter agreements prepared by the Debtors to evidence various loans and extensions of credit made by Jerry Priest, Carolyn Hall, Julia Fernandez, Thomas McGrath, Terri Seidman, Colleen Wietecha, Wayne Rohr, and Lynn Garrett (the "Plaintiffs"). Exhibits 13 through 17, inclusive, contain letter

agreements prepared by the Debtors to evidence various loans and extensions of credit made by Mr. and Mrs. Robert Phillips, Peter Sherer, John and Dorothy Cella, Dolores and Regina Pieczynski and Cynthia Takacs.

12. Not all loans made by the Lenders to the Debtors are evidenced in writing. Furthermore, no documents were introduced in evidence to reflect any of the terms and conditions of the loans made by Cathy Fisher, Dorothen Gilpen, Fred and Rita Nehr, James Poyer, Judy Gilpen, Mary Schmidt and Bette Nofen. Based upon the documentary evidence, the loans to the Debtors commenced on July 24, 1992 and ended with the loans made by Wayne and Kathy Rohr during April and June 1994.
13. With few exceptions, none of the loans were repaid when due. Instead, the Debtors typically made interest payments to the Lenders and requested that the maturity date be extended. At the time of the extension of the maturity date, the amount of the loan was often increased as well. During the nearly two year period during which the Debtors borrowed funds from the Lenders, they repaid approximately \$108,000.
14. Mrs. Jablonski testified that although each of the loans had a stated term, most of the lenders were happy to extend the term of their loan because that would result in payment of more interest. July 9@7. She further testified that her intent at the time of borrowing was to pay interest until such time as she could afford to repay the principal. July 9@7.
15. Generally the loans were for 30, 60 or 90 days, and initially paid 10% interest for that term. In other words, the annualized rate of interest was as high as 120%. July 9@5.
16. As the number of loans increased and the Debtors found themselves in deeper debt, the rate of interest increased. While the maturity dates were still generally 30, 60 or 90 days, the Debtors

were paying interest of \$200 or \$250 per \$1000. July 9@5.

17. At the time the initial loans were made to the Debtors by the Plaintiffs, the Debtors represented to each of the Plaintiffs that they needed the funds on a short-term basis in order to meet payroll and other expenses associated with their entertainment business, or to satisfy their day-to-day expenses. Similar representations were made in connection with subsequent extensions of credit.
18. The Debtors used the money from the loans for several purposes. They paid regular bills, met the payroll from "Let Me Entertain You", paid Mr. Jablonski's father's medical bills and paid interest to other lenders. Mrs. Jablonski testified that it was her understanding that none of the lenders cared what she did with the money so long as the interest was paid.
19. When the Debtors paid interest and principal on the loans, they did so by using funds from one or more of several sources -- their paychecks, funds from "Let Me Entertain You", or other loans. Debtors also testified that they obtained some small loans from time to time from family members, although there is no documentary evidence to support this testimony and no members of the Debtors' families are listed in the Debtors' bankruptcy petition as creditors.
20. Based upon the Debtors' tax returns for the years 1990 through 1995, the Debtors' joint adjusted gross income, gross income from the entertainment business, and net income from the entertainment business was:

YEAR	ADJ. GROSS INCOME	GROSS ENT. INCOME	NET ENT. INCOME
1990	\$26,061.00	\$10,184.00	-\$3,463.00
1991	\$30,664.00	\$7,535.00	\$1,659.00
1992	\$25,160.00	\$18,855.00	\$2,657.00
1993	\$23,512.00	\$11,050.00	\$2,111.00
1994	\$19,220.00	\$7,364.00	\$247.00
1995	\$22,325.00	\$3,525.00	\$3,495.00

21. During 1992, 1993 and 1994, Debtors incurred expenses in the entertainment business in the aggregate sum of \$32,254.00. Furthermore, Debtors incurred annual living expenses in the approximate amount of \$27,636.00, based on their monthly expenses in Schedule J of their bankruptcy petition. Because Debtors' income was less than their normal living expenses during the years they were borrowing from the Lenders, the only source of funds which enabled the Debtors to make any payments to the Lenders was the short-term loans.
22. The amounts due and owing to the Plaintiffs are as follows:

PLAINTIFF	SCHEDULED AMOUNT	PROOF OF CLAIM
Jerry Priest	\$11,500.00	\$15,650.00
Carolyn Hall	\$14,000.00	\$17,421.00
Julia Fernandez	\$25,000.00	\$30,288.49
Thomas McGrath	\$25,000.00	\$27,318.71
Terri Seidman	\$15,000.00	\$15,621.38
Colleen Wietecha	\$25,000.00	
Wayne Rohr	\$22,050.00	\$25,287.38
Lynn Garrett	\$4,850.00	\$4,850.00
TOTAL	\$142,400.00	\$161,436.96

23. The amount borrowed from the Plaintiffs, let alone the other Lenders, far exceeds the expenses incurred in the Debtors' entertainment business. In any event, for the years during which the Debtors were borrowing from the Lenders the receipts for the business always exceeded the expenditures. Debtors turned a small profit on their entertainment business.

Failure to Keep or Preserve Recorded Information

24. Pursuant to Plaintiffs' First Request to Defendants For Production of Documents, Plaintiffs asked the Debtors to furnish all documents relating to, inter alia: (a) all loans obtained by the Debtors, payments of principal and interest on the loans, and the amounts still owing; (b) the Debtors' entertainment business; (c) bank accounts, including account statements and canceled checks; (d) credit cards used by the Debtors; (e) medical bills and evidence of payment with respect to medical services provided to the Debtors and to any other person on whose behalf the Debtors paid medical bills in whole or in part; (f) the purchase, lease, sale, or other disposition of any real or personal property; and (g) loans from family members. Pl. Ex. 12. The document request covered the period from January 1, 1990 through December 1996.
25. The Debtors furnished to the Plaintiffs, and the Plaintiffs introduced into evidence, various letter agreements between the Debtors and 13 of the Lenders. Pl. Ex. 2 through 9 and 13 through 17. In addition, the Debtors produced and the Plaintiffs introduced into evidence photocopies of money orders, personal checks and receipts for cashier's checks which purport to reflect payments to certain of the Lenders. Pl. Ex. 18.
26. No documentation was introduced into evidence regarding the loans of at least seven of the Lenders, the loans allegedly made to the Debtors by family members. Furthermore, throughout their testimony, Debtors referred to a "ledger" in which they allegedly kept track of each loan and

how much principal and interest remained to be paid. This ledger was neither produced to the Court nor introduced into evidence.

27. Debtors testified that all receipts, statements and other papers relating to their finances were delivered to their accountant at the end of each tax year. According to Mrs. Jablonski's testimony, "we do nothing with finances." July 9@6. The only information the Jablonskis retained regarding their financial condition were their tax returns.
28. According to the Jablonskis' tax returns, their return preparer was Kocolowski & Associates. No-one appeared from Kocolowski & Associates to discuss whether the Debtors' financial records exist or whether the Debtors provided any supporting documentation at the time the tax returns were prepared.
29. The Debtors did not introduce into evidence any documents regarding banking account statements or any canceled checks other than Pl. Ex. 18 and Defs. Exs. 1, 2 and 3. Furthermore, Debtors provided no documents regarding their entertainment business except for Schedule C of their tax returns.
30. Debtors listed five credit card companies on their bankruptcy schedules. However, no documents were introduced into evidence regarding purchases made with these credit cards. Debtors testified that they are secondary signers on the credit card accounts with Mrs. Jablonski's mother. Schedule H of their bankruptcy petition indicates that "Carol Jay Vega" and "Bernadine J. Wild" are codebtors on the \$10,505.49 debt to Household Bank, FSB. There is no indication on Debtors' bankruptcy schedules that anyone is a co-debtor with the Debtors on any of the following debts:

CARD

ACCOUNT NUMBER

AMOUNT OF DEBT

Discover	6011 0079 7752 2258	\$3,255.47
First Card	4678 001 465 466	\$5,628.21
G.M. Card	5437 0003 1051 2589	\$1,283.89
The Associates-Visa	4621 2102 0014 3259	\$599.06

No copies of credit card account statements were introduced into evidence.

31. Debtors testified that both Mr. Jablonski and his father incurred substantial medical bills commencing in the fall of 1993. The Court asked Debtors to estimate the cost of the medical bills. Debtors testified that all health care expenses were paid in cash. Debtors further testified that after insurance payments, Mr. Jablonski's medical bills totaled \$10,000. July 10@18. His father's medical bills totaled approximately \$20,000 plus the cost of round-the-clock care, for which no estimate was given.
32. Debtors introduced into evidence a bill dated April 30, 1995 from Americana Elk Grove in the amount of \$6,452.09 to substantiate their claim of significant health care expenses. Def. Ex. 5. However, Americana Elk Grove is listed as a creditor in the Debtors' bankruptcy schedules in the amount of \$6,452.00.
33. Furthermore, Debtors introduced into evidence numerous medical reports regarding Mr. Jablonski's medical condition and which reflects Dr. James Kane Sr. as the surgeon who performed Mr. Jablonski's laparotomy on August 17, 1993. Def. Ex. 4. However, no medical bills regarding Mr. Jablonski's treatment were introduced into evidence and at least a portion if not all of Dr. Kane's fee remains unpaid, as the Debtors listed him as a creditor on their bankruptcy schedules in the amount of \$3,870.00.

Failure to Explain Loss or Deficiency of Assets

34. In their bankruptcy schedules and statement of financial affairs, the Debtors listed the fair market value of their interests in real and personal property at \$64,040.00. Their debts to creditors holding security interests in property of the estate were scheduled at \$90,000.00. Debtors testified that the identity and value of their assets did not materially change during 1992, 1993 and 1994 and that their assets during that three year period were substantially the same as in their schedules.
35. During the three years preceding their bankruptcy filing, the Debtors' adjusted gross income remained substantially consistent. Debtors do not claim to have lost any assets during the three years preceding their filing.
36. Debtors repaid approximately \$108,000 of the loans made to them by the Lenders.

CONCLUSIONS OF LAW

1. Plaintiff have alleged that the Debtors were running a Ponzi scheme. Mrs. Jablonski opened the Debtors' case with an attempt to rebut this allegation by pointing out that she had never heard of the term "Ponzi scheme." July 9@2.
2. One of the Court's colleagues on the bench has written a succinct definition of what exactly a Ponzi scheme is:

A "Ponzi" scheme is a term generally used to describe an investment scheme which is not really supported by any underlying business venture. The investors are paid profits from the principal sums paid in by newly attracted investors. Usually those who invest in the scheme are promised large returns on their principal investments. The initial investors are indeed paid the sizable promised returns. This attracts additional investors. More and more investors need to be attracted into the scheme so that the growing number of investors on top can get paid. The person who runs this scheme typically uses some of the money invested for personal use. Usually this pyramid collapses and most investors not only do not get paid their profits, but also lose their principal investments.

Martino v. Edison Worldwide Capital (In re Randy), 189 B.R. 425, 437 n.17 (Bankr. N.D. Ill.

1995) (citations omitted).

3. While they may not have known the term of art, there is no doubt that Debtors were running a Ponzi scheme. They attracted lenders by promising large returns on their loans. There was no underlying business venture supporting repayment of the loans. Initial investors and even the initial loans of later investors were paid the promised returns. The Debtors used these funds both to repay other loans and for personal use. As the hypothetical predicts, the pyramid collapsed. In this case, the Debtors “hit a brick wall,” as they so often testified to the Court, and filed their bankruptcy petition.

Count I

4. In the first count, Plaintiffs request that the Debtors’ discharge be denied pursuant to 11 U.S.C. § 727(a)(3). This section provides that a discharge may be denied when “the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records and papers, from which the debtor’s financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.”
5. The Seventh Circuit analyzed this section of the Bankruptcy Code in a recent decision. In re Juzwiak, 89 F.3d 424 (7th Cir. 1996). The Circuit noted that this section

requires as a precondition to discharge that debtors produce records which provide creditors ‘with enough information to ascertain the debtor’s financial condition and track his financial dealings with substantial completeness and accuracy for a reasonable period past to present.’ The provision ensures that trustees and creditors will receive sufficient information to enable them to ‘trace the debtor’s financial history; to ascertain the debtor’s financial condition; and to reconstruct the debtor’s financial transactions.’ Records need not be kept in any special manner, nor is there any rigid standard of perfection in record-keeping mandated by § 727(a)(3). On the other hand, courts and creditors should not be required to

speculate as to the financial history or condition of the debtor, nor should they be compelled to reconstruct the debtor's affairs.

Juzwiak, 89 F.3d at 427-428 (citations omitted).

6. The burden is first on the Plaintiffs to show a failure to maintain adequate records and that such failure makes it impossible to ascertain the Debtors' transactions. Peterson v. Scott (In re Scott), 209 B.R. 451, 469 (N.D. Ill. 1997). However, the Juzwiak court found that "creditors do not need to prove that the debtor intended to defraud them in order to demonstrate a § 727(a)(3) violation." 89 F.3d at 427-428 (citations omitted). Creditors need not prove scienter.
7. Once Plaintiffs have met their burden of proof, the onus shifts to the Debtors. In fact, the burden is on the Debtors to show that the unique circumstances of their case justified the failure to keep records properly.
8. Throughout their testimony, Debtors referred to a "ledger" in which they allegedly kept track of each loan and how much principal and interest remained to be paid. The Court never saw this ledger. The only documentary evidence of the loans were the handwritten notes for certain of the loans and some money orders, cashier's check receipts and canceled personal checks.
9. Debtors testified that they had a music business, "Let Me Entertain You." They also testified that the best evidence of the receipts and expenses from that business was the final figure for the year that their accountant recorded on their tax return. Mrs. Jablonski testified that she brought all the documentary evidence from the music business to their accountant of 15 years, and that the accountant would produce the tax return. 'Everything in the tax return is what we have.' July 9@12.
10. According to Juzwiak, the Court is supposed to be able to "ascertain the debtor's financial

condition and track his financial dealings with substantial completeness and accuracy for a reasonable period past to present.” 89 F.3d at 427 (quotation omitted). This the Court was unable to do from the evidence presented by the Debtors. The Court is not demanding a highly evolved system of accountancy from the Debtors, since “[t]he test for justification is an objective one, focusing on whether others in like circumstances would ordinarily keep financial records.” Scott, 209 B.R. at 469-470 (citations omitted). See In re Volpert, 175 B.R. 247, 265 (Bankr. N.D. Ill. 1994). However, Debtors admitted that they had a long-time accountant prepare their tax returns. Where was that accountant at trial?

11. Mrs. Jablonski repeatedly insisted that she had given everything she has in terms of receipts and documentary evidence to Plaintiff’s counsel. Defeating this count, however, does not only require that Debtors turn over all of their financial records. It requires both turnover and the existence of adequate financial records. Debtors may have turned over all records in their possession with an innocent intent, but creditors need not prove scienter. The burden is on the Debtors to justify their failure to keep records properly once Plaintiffs have showed a lack of records, as they have here. If the Debtors were incapable of properly organizing their records, as they claim, and they hired an accountant to do that for them, why was the accountant not called to testify and to present proof of these records to the Court?
12. Debtors claimed that some of the loan proceeds were spent on day-to-day bills, yet they have presented the Court with no documentary evidence of their quotidian finances. Debtors claim to have paid substantial medical bills in cash, but they did not introduce into evidence one receipt for payment for health care services. The Court is neither inclined nor required to guess at the Debtors’ financial dealings, but the utter lack of records leaves no other option.

13. The relief sought by Plaintiffs on Count I of the complaint is granted. Debtors' discharge is denied pursuant to 11 U.S.C. § 727(a)(3).

Count II

14. Plaintiffs' motion to withdraw Count II was granted on the record on July 9, 1997.

Count III

15. The third count requests a finding that discharge should be denied under 11 U.S.C. § 727(a)(5). Pursuant to this section, the court may not grant a debtor a discharge if "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities."
16. "The gist of this ground for denying a discharge is that creditors, the court, and the trustee are entitled to an explanation of how the debtor wound up in bankruptcy. The debtor has a duty to make that explanation and to make it adequately -- that is, it must be plausible and accurate." 1 Ginsberg & Martin on Bankruptcy § 11.02[F] (footnote omitted). "The [plaintiff] has the initial burden of identifying the assets in question by showing that the Debtor at one time had the assets but they are no longer available for the debtor's creditors. However, once the creditor has shown . . . the disappearance of substantial assets, the burden shifts to the debtor to explain satisfactorily the losses or deficiencies." Community Bank of Homewood-Flossmoor (In re Bailey), 145 B.R. 919, 925 (Bankr. N.D. Ill. 1992). See Fed. R. Bankr. P. 4005 ("At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.").
17. The case law requires a satisfactory explanation from the debtor. See In re D'Agnese, 86 F.3d 732, 734 (7th Cir. 1996) ("Under § 727(a)(5), a satisfactory explanation 'must consist of more than . . . vague, indefinite, and uncorroborated' assertions by the debtor.") (citation omitted). In

D'Agnese, the Seventh Circuit upheld a bankruptcy court's denial of discharge based on a finding that the debtor had failed to adequately explain the disposition of substantial assets.

18. In the instant case, the Plaintiffs allege that “[t]he Debtors have failed to explain satisfactorily the gross deficiency in their assets with which to meet their liabilities.” Count III ¶ 33. According to the evidence, Debtors borrowed over \$300,000 from various individual lenders during 1992, 1993 and 1994. Although the Debtors had repaid approximately \$108,000, more than \$200,000 of that debt remained at the petition date in the middle of 1995. Plaintiffs have established that the Debtors took this money in and did not repay it. It is now up to the Debtors to provide a satisfactory explanation to the Court for where that money went. See Chalik v. Moorefield (In re Chalik), 748 F.2d 616 (11th Cir. 1984) (affirming denial of discharge where record supported holding that debtor “failed to explain satisfactorily the dissipation of a \$130,000 lagoon he received 11 months before he filed his voluntary petition”).
19. First, “the explanation must be good enough to eliminate the need for the Court to speculate as to what happened to all the assets.” Bay State Milling Co v. Martin (In re Martin), 145 B.R. 933, 950 (Bankr. N.D. Ill. 1992), appeal dismissed, 151 B.R. 154 (N.D. Ill. 1993). Additionally, the “the explanation must be supported by some documentation.” Id. See Banner Oil Co. v. Bryson (In re Bryson), 187 B.R. 939, 955-956 (Bankr. N.D. Ill. 1995).
20. In their bankruptcy schedules and statement of financial affairs, the Debtors listed the fair market value of their interests in real and personal property at \$64,040.00. Their debts to creditors holding security interests in property of the estate were scheduled at \$90,000.00. Debtors testified that the identity and value of their assets did not materially change during 1992, 1993 and 1994 and that their assets during that three year period were substantially the same as in their schedules.

Therefore, none of the \$200,000 appears to be reflected on the Debtors' schedules as real or personal property.

21. Debtors testified that the funds were used for day-to-day bills, expenses from the entertainment business, and Mr. Jablonski's father's medical bills. The Court has no information regarding the day-to-day expenses of the Debtors. As for the entertainment business, according to their tax returns the Debtors made a small profit from that business in each of the years in question. Debtors' Schedule C of their tax returns indicates that in 1992, 1993 and 1994 Debtors' income from the entertainment business was greater than their expenses. Therefore, the \$200,000 could not have gone to cover entertainment expenses; aside from the fact that no documentation of those expenses exists, the income from the business covered those expenses.
22. Therefore, the only remaining question is the amount of Mr. Jablonski's father's medical bills. The Court takes judicial notice of the fact that health care costs can be incredibly high and can rapidly accumulate in a very short period of time. Fed. R. Evid. 201. However, Debtors presented almost no documentary evidence to substantiate their claim of significant medical bills. Their tax returns indicate neither a deduction for extraordinary medical expenses² nor a credit for dependent care expenses. Finally, when the Court directly asked Mrs. Jablonski to estimate the amount of her father-in-law's medical bills, she estimated that amount to be \$20,000.00.
23. There is no question that Debtors have failed to provide a satisfactory explanation for the

2

The Debtors itemized their deductions in 1991. According to Schedule A of their 1991 tax return, their medical and dental expenses were \$2,200, which was less than 7.5% of their adjusted gross income. Therefore, no portion of the itemized deduction was attributable to extraordinary medical expenses. Furthermore, Debtors testified that the expenses due to both Mr. Jablonski's and his father's health care problems did not begin until the fall of 1993.

whereabouts of the over \$200,000 that was borrowed and never repaid. “An explanation that is based primarily upon an estimate of the debtor founded upon nothing by way of books, records or otherwise has been held unsatisfactory. Even though the underlying facts referred to be a debtor may suggest a plausible explanation, the testimony may be so general as to be insufficient. More is required of the debtor in the way of explanation than mere generalities.” Collier on Bankruptcy - 15th Ed. Revised ¶ 727.08 (1996) (footnotes omitted).

24. The relief sought by Plaintiffs on Count III of the complaint is granted. Debtors’ discharge is denied pursuant to 11 U.S.C. § 727(a)(5).

Counts IV - XI

25. Pursuant to Counts IV - XI, Plaintiffs requested that each of their debts be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Plaintiffs conceded in their Proposed Findings of Fact and Conclusions of Law “that Counts IV - XI are rendered moot if judgment is entered in favor of Plaintiffs as to either Count I or Count III, or both.” Plaintiffs’ Proposed Findings at 18.
26. Since the Court is entering judgment in favor of Plaintiffs as to both Count I and Count III, Counts IV - XI are moot by Plaintiffs’ own admission. Therefore, the Court denies relief under these counts without prejudice should the Court’s judgment on both Count I and Count III be reversed or vacated on appeal or by reconsideration of this Court.

To the extent necessary, findings of fact shall be deemed conclusions of law, and conclusions of law shall be deemed findings of fact.

CONCLUSION

For the reasons stated above, Plaintiffs are granted relief on Counts I and III of the adversary

complaint. Plaintiffs' motion to withdraw Count II is granted. Plaintiffs are denied relief without prejudice on Counts IV - XI should the Court's judgment on both Count I and Count III be overturned or vacated on appeal or by reconsideration of this Court.. Debtors' discharge is denied under 11 U.S.C. § 727(a)(3) and § 727(a)(5).

ENTERED:

Date:

SUSAN PIERSON SONDERBY
United States Bankruptcy Judge