

§ 362(b)(1) to

seek criminal indictment
and administrative remedies.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

GEORGE WALTER CROSBY, JR.
d/b/a Crosby Brothers Drugs
SS#257-90-0377

Debtor

AARON J. JOHNSON,
Commissioner State of Georgia
Department of Medical Assistance

CHARLIE SMITH and State of
Georgia Department of Medical
Assistance

Movants

v.

GEORGE WALTER CROSBY, JR.
d/b/a Crosby Brothers Drugs

Respondent

Chapter 11 Case

Number 485-00683

FILED

at 8 O'clock & 50 min A.M.

Date 5/27/87

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

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ORDER ON MOTION FOR RELIEF FROM STAY

The Commissioner of the State of Georgia, Department of Medical Assistance ("The Department"), filed its improperly captioned Motion Seeking Relief from Stay for cause under 11 U.S.C. § 362(d)(1). George Walter Crosby, Jr., d/b/a Crosby Brothers Drugs ("Crosby"), filed responsive pleadings alleging, in part, improper service under Bankruptcy Rules 7004(b)(9) and 9014. Before considering the merits of the

Motion, the Court heard evidence from both parties on these two points: As to the improper adversarial caption, the Court concludes that it is not fatal to this Motion, but that the pleading is in fact a Motion and the burden is on The Department in the manner set forth in 11 U.S.C. § 362. As to the question of inadequate service, the Court concludes that the Certificate of Service dated April 16, 1987, and filed with this Court on April 20, 1987, is prima facie evidence of adequate service. This prima facie presumption has not been successfully rebutted and the service is ruled sufficient.

The Court now turned to consideration of the Motion. After hearing opening statements from both parties, it appears that The Department is seeking relief as to two points:

(1) The Department is seeking to complete its investigation as to allegations of fraud in that improperly filed medicaid claims have been paid to Crosby, and to seek criminal indictment because of this.

(2) The Department seeks the right to institute proceedings to terminate Crosby's provider status.

As to the first point the Court concludes that The Department's right to continue its investigation and, in its discretion, seek criminal indictment is controlled by 11 U.S.C. §

362(b)(1) and is clearly an exception to the automatic stay. The Department is free to continue its investigation and seek criminal indictment if it is deemed appropriate.

As to the second point, The Department seeks relief from stay so that it might institute proceedings to terminate Crosby's status as a provider. It does not seek to have that status terminated in the hearing presently before this Court. Generally such proceedings are commenced by administrative hearings within The Department with full right of appeal to the appropriate state courts. Granting relief from stay for this purpose does not effect the rights of creditors in this case. Whether or not Crosby's status as a provider should be terminated is a question that must be inquired into before the proper forum and the stay must be lifted for that purpose. However, The Department shall not terminate Crosby's status as a provider until a final unappealed Order so directing is obtained.

SO ORDERED.


Herman W. Coolidge
United States Bankruptcy Judge

Dated at Savannah, Georgia
this 27 of May, 1987.