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Contractual terms limits not tolled by operation of the stay.

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)
(Chapter 11 Case 485-00683))

Debtor)

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

Plaintiff)

v.)

AARON J. JOHNSON,)
Commissioner State of Georgia)
Department of Medical)
Assistance,)
CHARLIE SMITH)
and STATE OF GEORGIA)
DEPARTMENT OF MEDICAL)
ASSISTANCE)

Defendants)

Adversary Proceeding

Number 487-0021

FILED

at 11 O'clock & 32 min. AM

Date 9/8/88

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

MEMORANDUM AND ORDER

On June 22, 1988, a hearing was held on Debtor's Motion to Show Cause directing the Georgia Department of Medical Assistance to show cause why all valid claims submitted by the

Debtor should not be paid promptly. The Debtor alleges in his Motion that the State is in violation of the May 27, 1987, Order of this Court by failing and refusing to pay claims submitted and is further in violation of the automatic stay.

FINDINGS OF FACT

1) On May 8, 1978, George Walter Crosby, Sr., enrolled in the Georgia Medical Assistance Program by signing a statement of participation for the Department of Medical Assistance. Subsequently, George Walter Crosby, Jr., became enrolled in the program. The statement of participation establishes the means and terms of reimbursement between the Department and those enrolled in the program. Further, the statement of participation incorporates the Department's Policy and Procedures Manual. The Manual provides in Section 201.1 that claims can be processed by the Department only if they are received by the end of the sixth month following the month of service unless certain specified conditions beyond the control of the provider exists. Section 201.3 provides in relevant part that the commissioner has determined that "changes in office procedures such as computerization of claims processing" are within the control of the provider.

The Department's Policy and Procedures Manual in Section 205 establishes a Medicaid Direct Provider Input Program. This program allows the provider to submit claims for payment on a direct "tape to tape" method which speeds up payment of claims by eliminating the necessity to prepare a hard copy claim. By entering into a "provider agreement for electronic media billing for claims submission" a provider may submit claims to the Department on the more efficient tape to tape method. George Walter Crosby, Sr., executed a "tape to tape" agreement with the Department on April 28, 1978. George Walter Crosby, Jr., continued operating under the tape to tape agreement signed by his father. Although the tape to tape agreement does not appear in the record, it appears from the testimony of the parties from previous hearings that the state could unilaterally terminate the right of a provider to file by the tape to tape method upon thirty (30) days written notice to the same.

2) On December 16, 1985, the Debtor filed his Chapter 11 petition.

3) On or about December 8, 1986, the State sent written notice to the Debtor that after thirty (30) days he could no longer use the tape to tape method for filing claims. This termination letter, coupled with other alleged activities by the State gave rise to the March 6, 1987, complaint filed by the

Debtor in which he alleged that the State's actions constituted a violation of the automatic stay. The underlying complaint filed by the Debtor gave rise to a series of orders which to some extent form the basis of the Debtor's Motion to Show Cause. A brief chronological outline of these orders is helpful in understanding the basis of the Debtor's present Motion. On March 10, 1987, the Honorable Herman W. Coolidge entered a Temporary Restraining Order which required the State to restore the Debtor forthwith to the tape to tape method of claims reimbursement. The State subsequently filed a Motion to set aside the Temporary Restraining Order and after a hearing Judge Coolidge set aside the Temporary Restraining Order on April 6, 1987. In setting aside the Temporary Restraining Order, Judge Coolidge further ordered that "all claims submitted by [the Debtor] for Medicaid reimbursement prior to the final order of this Court shall be by the 'hard copy' method." The Debtor's Motion for Reconsideration of the April 6, 1987 Order setting aside the Temporary Restraining Order was denied on April 21, 1987, after a hearing on the same was held.

On May 27, 1987, Judge Coolidge entered two Orders, one in the adversary proceeding, and one in the underlying case. The Order entered in the adversary proceeding found that "the Department has the absolute right, under the circumstances that exist here, to take Crosby off the tape to

tape method." Moreover, the Court denied the Debtor's prayer for a permanent injunction against the State and ordered the Debtor to submit all Medicaid claims by paper or hard copy until further order of this Court.

The May 27, 1987, order entered in the underlying case was in response to the State's Motion for Relief from the Stay. Judge Coolidge found that the Department was free to continue its investigation as to allegations of fraud by the Debtor and to seek criminal indictment of him if it deemed appropriate. Further, the Court granted the State relief from the stay to allow it to commence proceedings to determine whether the Debtor's status as provider should be terminated. The Court ordered, however, that the Debtor's status as provider shall not be terminated "until a final unappealable order so directing is obtained".

CONCLUSIONS OF LAW

At the June 22, 1988, hearing the issue was narrowed to the question of whether the automatic stay tolls the six month period provided for in the Department's policy and procedures manual. There can be no doubt that the provider contract between the State and the Debtor became property of the

estate upon the filing of the Debtor's Chapter 11 petition. See 11 U.S.C. Section 541(a)(1). "Thus, whatever rights the debtor has in property at the commencement of the case continue in bankruptcy - no more, no less. Section 541 'is not intended to expand the debtor's rights against others more than they exist at the commencement of the case'." Moody v. Amoco Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984), cert. denied. 469 U.S. 982 (1984), quoting H.R.Rep.No. 595, 95th Cong., 1st Sess., reprinted in 1978 U.S.Code Cong. & Ad. News 5787 (emphasis added). Whatever legal or equitable interest the Debtor had in the provider contract as of the commencement of the case are defined therein. In particular, the Debtor had a right to file claims with the State by the end of the sixth month following the month of service, not more, not less. See In re Advent Corp., 24 B.R. 612, 614 (1st Cir. BAP 1982) ("The Bankruptcy Code neither enlarges the rights of a debtor under a contract nor prevents the termination of a contract by its own terms").

The protections afforded to the Debtor under 11 U.S.C. Section 362 do not operate to toll the six month contractual period. First, under 11 U.S.C. Section 362(a)(1) there has been no "commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . .". Whatever rights the State may

or may not have under the six month contractual provision vested, if at all, after, not before, the commencement of the case.

The Debtor's strongest argument for tolling the six month period is found in Matter of R.S. Pinellas Motel Partnership, 2 B.R. 113, 118 (Bankr. N.D.Fla. 1979) wherein the Court found that the granting of a preliminary injunction pending resolution of its underlying claim was justified in part because a post-petition attempt to cancel rights under a license agreement may come within the protection of Section 362(a)(3). Whatever merits this argument may have in the absolute, it has limited merits in the case at hand.¹ Judge Coolidge found in his April 6, 1987 Order that the facts in this case did not warrant the continuing imposition of the March 10, 1987 Temporary Restraining Order which otherwise would have operated to maintain the pre-notification status quo until a final resolution of the Debtor's claim. Moreover, although 11 U.S.C. Section 362(a)(3) appears on its face to provide some assistance to the Debtor, a closer analysis shows that this is not the case. Under 11 U.S.C. Section 362(a)(3) the stay enjoins "any act to obtain possession

¹ The Pinellas argument has merit only in the sense that the Temporary Restraining Order operated to return the parties to the pre-termination status quo. See discussion infra.

of property of the estate or property from the estate or to exercise control over property of the estate". The key phrase under subsection (a)(3) is "property of the estate". For the aforementioned reasons, it is evident that although the provider contract is property of the estate under 11 U.S.C. Section 541, that section does not expand the Debtor's rights against the State beyond what existed at the commencement of the case.

Finally, whatever other protections were afforded to the Debtor under 11 U.S.C. Section 362, they are not available to the Debtor for purposes of tolling the six month contractual period. See Moody, supra, 1213 ("The automatic stay does not toll the mere running of time under a contract"). Accordingly, I hold that the automatic stay does not operate to toll the six month contractual period. By so holding, I make no finding as to the merits or lack thereof of the other causes of action which the Debtor has brought.

The issue of whether the State is in violation of the May 27, 1987, Order of this Court by failing and refusing the pay claims as filed is not resolved by my holding that the automatic stay does not operate to toll the six month contractual period. In looking to the May 27, 1987, Order and construing it in light of the March 10, 1987, Temporary Restraining Order and the April 6, 1987, Order Lifting the Temporary Restraining Order,

I hold that the State is under an obligation to pay claims submitted by the Debtor prior to April 6, 1987, on the tape to tape method. The State's obligation to honor claims filed after April 6, 1987, is contingent on the requirement established by previous Order that the Debtor file by hard copy, subject to the terms and conditions of the statement of participation entered into between the Debtor and the State (which in turn incorporates the Department's Policy and Procedures Manual). If the Debtor believes that the State has denied payment of claims in contravention of the agreement entered into by the parties it may pursue whatever administrative avenues are granted to it pursuant to the agreement, or whatever legal action it deems appropriate including but not limited to a turnover action in a court of competent jurisdiction.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that:

- 1) The automatic stay does not toll the running of the six month contractual period under the provider's contract; and
- 2) The Department of Medical Assistance shall pay forthwith all

otherwise valid outstanding claims which were timely filed by
the tape to tape method prior to April 6, 1987.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 6th day of September, 1988.