

DOCKET NUMBER: 95-13093

ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Paul David Evans, Mary L. Evans

CHAPTER: 7

ATTORNEYS:

DATE: 2/7/96

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE

PAUL DAVID EVANS  
MARY L. EVANS  
Debtors

CASE NO. 95-13093

**ORDER**

This matter is before the Court on the Motion of Pan-American Life Insurance Company for relief from the automatic stay pursuant to 11 U.S.C. § 362(a). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is granting the Motion for relief from stay.

**FACTS**

Pan-American Life Insurance Company ("Pan-American") is an unsecured, non-priority creditor of the debtor, Paul David Evans ("Debtor"). Its claim arises out of a long-term disability policy ("Policy") written by Pan-American for the Debtor's employer, Louisiana Land & Exploration Company. In December of 1989, the Debtor suffered a mental breakdown rendering him unable to work. Pursuant to the terms of the Policy, the Debtor filed for disability benefits on May 21, 1990.

The provisions of the Policy included an Integration Clause which provides that the monthly benefit under the policy shall be reduced by disability benefits paid under the Social Security Act. On June 9, 1990, the Debtor signed an "Integration Acknowledgment" which acknowledged that the long-term disability policy written by Pan-American contained a feature allowing Pan-American to reduce benefits payable to the Debtor by certain amounts paid under the provisions of the Social Security Act. This document further acknowledged that Pan-

American would advance payments until such time as the Debtor received benefits under the Social Security Act and when such benefits were paid, an overpayment on the claim would occur, obligating the Debtor to reimburse Pan-American for the advanced indemnity.

The Debtor was in the hospital at the time he signed the Integration Acknowledgment, which was witnessed by his co-debtor wife. He admits signing the documents but claims that he did not know he was agreeing to repay any overpayment and that he would not have signed it had he known. He claimed that he was not competent to understand the document at that time.

On August 28, 1990, the Debtor signed a statement requesting Pan-American to pay full benefits until he received his Social Security benefits and agreeing to reimburse Pan-American for any overpayment of benefits which might occur. This document also acknowledged that the Debtor had applied for Social Security Disability Benefits on June 6, 1990 and authorized the Social Security Administration to send a copy of any award or disallowance notice to Pan-American. The debtor again admits filling out and signing the documents but not understanding that he would have to repay any resulting overpayment upon receipt of benefits from Social Security.

From July 4, 1990 through November 19, 1994, Pan-American paid benefits totalling \$92,554.28. On November 19, 1994, the Debtor was informed that he was entitled to monthly disability benefits from Social Security beginning July, 1990. On October 12, 1994, Pan-American wrote to the Debtor informing him that it was aware that he had been awarded Social Security Disability benefits and that the retroactive benefit check he would be receiving should be used to reimburse Pan-American under the integration clause. The Debtor acknowledges getting this letter and does not deny that he understood what it meant. He is not permanently mentally incompetent. He testified that he has gotten progressively better, mentally, over the

past three and one-half years. The Debtor subsequently was paid \$57,431.00 by Social Security for the period July, 1990 through November, 1994.

On December 6, 1994, Pan-American again wrote the Debtor advising that it had received verification that Social Security disability benefits had been awarded which resulted in an overpayment under their Policy. Pan-American requested reimbursement pursuant to the integration clause in the amount of \$52,904.75. It also advised him that his monthly payment from Pan-American would be reduced to \$753.83 per month due to the payment of Social Security benefits. The debtor denies having received this letter despite it having been sent by Certified Mail, Return Receipt Requested.

Upon receipt of the \$57,431.00 check from Social Security representing past due benefits, the Debtor purchased various items, paid off outstanding loans, and made loans to family members. He did not reimburse Pan-American as required under the integration clause.

On February 9, 1995, Pan-American received a letter and a check in the amount of \$5,000.00 from the Debtor as payment towards the amount owing. The Debtor stated that this was all he could afford at the time and instructed Pan-American to withhold the monthly benefit check he would otherwise receive and apply it to the overpayment until it was paid in full. As of December 19, 1995, the overpayment principal has been reduced to \$38,105.09. This amount does not include interest on the balance.

Pan-American seeks relief from the stay to continue applying the Debtor's benefits to the overpayment until it is repaid, i.e., to recoup the amount overpaid. The Debtor objects on equitable grounds, asserting the Debtor's mental incapacity at the time the integration clause was acknowledged.

#### **CONCLUSIONS OF LAW**

Under case law analyzing the right of recoupment in a bankruptcy case, Pan-American is clearly entitled to apply the Debtor's Policy benefits to the overpayment resulting from the receipt of Social Security disability benefits until the overpayment is repaid. See, Reiter v. Cooper, 113 S.Ct. 1213 (1993); Anthem Life Insurance v. Izaguirre, 16 B.R. 484 (Bankr.N.D.Ga.1994). The Debtor appears to concede this general principal but notes that the availability of recoupment rests on equitable grounds and that it would be inequitable to allow Pan-American to recoup the overpayment since the Debtor's mental condition prevented him from understanding that he would have to repay any overpayment.

While there is no proof other than the Debtor's self-serving statements that he did not understand that he would have to repay any overpayment, the Court will assume for purposes of this motion that he did not. Alabama law provides that the contracts of one permanently insane are void, and not merely voidable. However, where the mental incapacity to contract is merely temporary, the contract is merely voidable, and may be ratified or disaffirmed on the cessation of the temporary incapacity. Birmingham Ry., Light & Power Co. v. Hinton, 48 So. 546, 158 Ala. 470 (1908); *accord*, Gaston v. Copeland, 335 S.W.2d 406 (Tex.Civ.App.1960). Even if the Debtor did not understand the integration clause at the time he signed the acknowledgement, at a time when he testified he was better some three years later, he admits receiving the letter from Pan-American informing him that it was aware that he had been awarded Social Security disability benefits and that the retroactive benefit check he would be receiving should be used to reimburse Pan-American under the integration clause. There is no evidence that he objected at that time to the integration clause or that he questioned Pan-American about it. He does not deny that he understood what Pan-American was talking about in that letter. The Court construes this to mean that the Debtor was ratifying the contract with Pan-American. To hold

otherwise would mean that the Debtor was disaffirming the contract which would entitle Pan-American to a return of all payments made under the contract. "A party may not repudiate a contract, and at the same time hold onto and enjoy the benefits received under it." Hinton, 48 So., at 548 (citations omitted). The Debtor was aware of the need to repay the overpayment prior to receiving the lump sum check from Social Security. He was competent at that time and could have used the check to repay the overpayment and avoided the situation he now finds himself in. While the Debtor claims that he did not receive the certified letter from Pan-American computing the amount of the overpayment, it is clear from the language used in that letter and a later one written by the Debtor that he and Pan-American were in contact with each other by telephone. Further evidence that the Debtor had ratified the contract is found in the letter written by the Debtor offering to pay \$5,000.00 towards the overpayment and asking Pan-American to withhold his benefits and apply them to the overpayment until it was repaid in order to honor his agreement.

Based on the above stated facts and law, Pan-American's motion for relief from stay to recoup the overpayment by applying future benefit payments until it is paid in full is due to be granted. However, the Court notes that Pan-American referred to the principal amount due as of December 19, 1995 of \$38,105.09 as not including "interest on the balance at the prime rate." Pan-American's recoupment claim is not an oversecured claim entitled to interest under 11 U.S.C. § 506(b). Pan-American is scheduled as an unsecured, non-priority claimant and has not argued that it is entitled to a secured status. Accordingly, to the extent that the Policy provides for interest to accrue on overpayment, no interest is allowed after the date of the filing of the Debtor's Chapter 7 petition.

**ORDER**

ORDERED, that the Motion of Pan-American Life Insurance Company for relief from the automatic stay of 11 U.S.C. § 362(a) be, and it hereby is, GRANTED.

Dated: 2/7/96

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MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE