

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

MICHAEL W. WADE, SR.,

CASE NO. 97-11764-WSS

Debtor.

Chapter 13

ORDER GRANTING DEBTOR'S MOTION TO STAY FORECLOSURE

This matter came on for hearing on the Debtor's motion to stay foreclosure set for March 1, 2000. Michael B. Smith appeared for the Debtor, and William Poole appeared for Baptist Health Services Foundation, Inc. (hereinafter "Baptist Health"). 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 matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). On July 22, 1999, this Court entered an order conditionally denying Baptist Health's motion for relief from the automatic stay. In paragraph five of the order, the Debtor was required to "maintain insurance in accordance with the mortgage on the subject property and timely pay all property taxes." (Emphasis added). The following paragraph provides that if the Debtor fails to meet the obligations under the order, Baptist Health will give him written notice of default and ten days to cure the default. If the default is not cured after the ten day notice, the automatic stay would automatically lift. The Court takes judicial notice that property taxes in Mobile County are due on October 1st each year, and are delinquent after December 31st of each year. On December 8, 1999, a representative of Baptist Health notified the Debtor that the property tax assessment for the subject property was "due and payable before December 31, 1999" and that if the property taxes were not paid by the due date, Baptist Health would foreclose on the property. The Debtor did not pay the property taxes before December 31, 1999. On January 21, 2000, the Debtor

received a letter from Baptist Health's attorney informing him that he was in default for payments and taxes, and that the property was in foreclosure. Baptist Health maintains that the property taxes were due on October 1, 1999, and that the December 8th letter served as written notice of default as required by the Court's July 22, 1999 order. However, Baptist Health's December 8th letter states that the property taxes were due and payable before December 31, 1999. The Debtor did not receive written notice of the default, nor was he given ten days to cure the default after December 31, 1999. The Court finds that Baptist Health did not comply with the Court's order of July 22, 1999 by giving written notice of default and to cure after December 31, 1999. Therefore, the Court finds that the Debtor's motion to stay foreclosure is due to be granted. It is hereby

ORDERED that the Debtor's motion to stay foreclosure is **GRANTED**.

Dated: March ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE