



IT IS ORDERED as set forth below:

Date: February 16, 2014

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:

CAROLYN D. LAWTON,

Debtor.

**BANKRUPTCY CASE
NO. 08-71494-MGD**

Chapter 7

**NEIL C. GORDON, Chapter 7 Trustee
for the Estate of Carolyn D. Lawton,**

Plaintiff,

v.

**WELLS FARGO BANK, N.A.,
successor by merger to
Wachovia Bank, N.A.,
STATE OF GEORGIA AND FULTON
COUNTY,**

Defendants.

**Adversary Proceeding
No. 13-05261**

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

AGAINST WELLS FARGO

Chapter 7 Trustee, Neil C. Gordon (“Trustee”), brings this proceeding before the Court on a Motion for Default Judgment Against Wells Fargo Bank, N.A., (“Wells Fargo”) successor by merger to Wachovia Bank, N.A. (Docket No. 14). Trustee seeks an order establishing that two security deeds (the “Security Deeds”) conveyed to Wachovia Bank by Carolyn D. Lawton (“Debtor”) are unenforceable as an encumbrance on the real property generally known as 5250 Lakerock Way, Atlanta, Fulton County, Georgia 30331. According to the Amended Certificate of Service, it appears that Wells Fargo was properly served with an alias summons and complaint. Wells Fargo did not file an answer or otherwise respond to the summons, and entry of default was made against Wells Fargo. Trustee then filed this Motion for Default Judgment against Wells Fargo. To date, Wells Fargo has not responded to the complaint nor filed any pleading in defense of the motion for default judgment.

This Court has discretion to enter a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055. “A party's default does not by itself warrant the entry of a default judgment unless there is ‘a sufficient basis in the pleadings for the judgment entered.’” *Khufu El v. Platinum Home Mortgage Servs. Inc.*, 490 F. App'x 306, 307 (11th Cir. 2012)(quoting *Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir.1975)). Rule 8(b)(6) of the Federal Rules of Civil Procedure made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7008(b)(6) provides that any allegations in a complaint – other than damages – that are not denied are deemed admitted. FED. R. BANKR. P. 7008. Therefore, Wells Fargo admits the truth of any factual allegations in the Trustee’s complaint by failing to deny the allegations in responsive pleadings.

Trustee filed this adversary proceeding on July 26, 2013 pursuant to his “strong arm” powers under 11 U.S.C. § 544(a)(3). Under §544, the trustee of the debtor’s estate acquires all the rights and powers that a bona fide purchaser of real property from the debtor may exercise under applicable state law. 11 U.S.C. § 544 (a)(3). These powers include the power to avoid transfer of improperly attested deed to secure debt. *Hagler v. U.S. Bank, N.A.* (In re *Hagler*) 429 B.R. 42, 47 (Bankr. N.D. Ga. 2009).

The facts in the Trustee’s complaint are sufficient to support the entry of default judgment. According to Trustee’s complaint, the Security Deeds arrived in a loan package sent to the Debtor from Wachovia Bank via overnight mail. (Complaint ¶ 3). The Debtor completed the loan documents outside the presence of any witness and returned the documents to Wachovia Bank leaving the attestation lines blank. *Id.* Notwithstanding the missing signatures, the County Clerk recorded the Security Deeds in the land records of Fulton County where they continue to cloud title to the Debtor’s real property.

To be eligible for recordation under Georgia state law, a deed to secure debt must be attested in the same manner prescribed for mortgages. O.C.G.A. § 44-14-61. Under § 44-14-33 a deed to secure debt must be attested before an authorized officer, such as a notary public, and – in the case of real property – an additional witness. O.C.G.A. § 44-14-33. The statute further provides that “[i]n the absence of fraud, if a mortgage is duly filed, recorded, and indexed on the appropriate county land records, such recordation shall be deemed constructive notice to subsequent bona fide purchasers.” O.C.G.A. § 44-14-61. In 2011, the Georgia Supreme Court considered whether a deed to secure debt lacking proper attestation, but appearing of record in the county land records constituted sufficient constructive notice to bona fide purchasers. *U.S. Bank v. Gordon*, 709 S.E.2d

258, 261 (Ga. 2011). In *U.S. Bank v. Gordon*, the Court held a deed was “duly filed, recorded, and indexed” only if the clerk responsible for recording determined that the deed was in its proper form, attested or acknowledged by an officer and additional witness. *Id.* A deed lacking the proper attestation, but appearing on record, fails to provide adequate constructive notice. *Id.* As the subject Security Deeds lack the requisite signatures to constitute constructive notice under § 44-14-33, they are unenforceable against a subsequent bona fide purchaser and should be removed to clear title to the property.

Trustee also alleges that Wells Fargo and Wachovia Bank have cancelled the attendant debt related to these Security Deeds and no longer carry entries of these loans in their books. (Complaint ¶¶ 13-14). Trustee seeks to cancel these Security Deeds to clear title on the respective property. Based on the facts alleged in the Complaint, Trustee is entitled to an award of judgment. Accordingly, it is

ORDERED that Plaintiff’s Motion for Default Judgment Against Wells Fargo is **GRANTED**.

The Clerk is directed to serve a copy of this Order upon Plaintiff and Defendants.

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