

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

IN RE:)
CYNTHIA A. BUTLER,)
)
DANIEL C. BRUTON, Trustee in)
Bankruptcy for Cynthia A. Butler)
Plaintiff-Appellant,)
)
v.) 1:21-CV-685
)
FIRST CITIZENS BANK AND)
TRUST CO. and MORTGAGE)
ELECTRONIC REGISTRATION)
SYSTEMS, INC.,)
)
Defendants-Appellees.)

ORDER AND JUDGMENT

This matter is before the court on appeal by the plaintiff-appellant, Daniel C. Bruton, trustee in Bankruptcy for Cynthia A. Butler, from an order entered by the United States Bankruptcy Court for the Middle District of North Carolina that granted the defendant’s motion to dismiss and denied the Trustee’s motion for summary judgment. After *de novo* review, the Court agrees with the Bankruptcy Court.

In September 2014, Ms. Butler, the debtor, borrowed money from the defendant First Citizens Bank & Trust Company and executed a deed of trust in favor of First Citizens. Doc. 9-3 at 5–19. Ms. Butler’s name is printed on the first page of the deed of trust, *id.* at 5, and again on a signature page, along with her signature. *Id.* at 17. Immediately after the signature page is a page with the notary’s acknowledgement, in which the notary affirms as follows:

I, Tammy H. Norton, a notary public, do hereby certify
that personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Id. at 18. The acknowledgement page bears the notary's signature and seal, the date of notarization, and the date her commission expires. *Id.* It does not contain Ms. Butler's name or signature.

The Trustee raises one issue on appeal: whether, as a matter of law, the omission of Ms. Butler's name from the notary's acknowledgement of the deed of trust results in an instrument that is effective for recordation and registration. Doc. 12 at 6. The Trustee contends that because Ms. Butler's name does not appear on the acknowledgement page, the certificate does not comply with North Carolina law and the Trustee can avoid the deed of trust. *Id.* at 9.

On appeal, a district court reviews a bankruptcy court's legal determinations *de novo* and reviews its factual findings, if any, for clear error. *See Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 299 (4th Cir. 2017); *In re White*, 487 F.3d 199, 204 (4th Cir. 2007); *In re Official Comm. of Unsecured Creditors for Dornier Aviation (N. Am.), Inc.*, 453 F.3d 225, 231 (4th Cir. 2006). The material facts are undisputed, and the issue raised here is a question of law.

As the Bankruptcy Court fully explained, the notary's acknowledgement substantially complies with applicable North Carolina law and the deed of trust is not avoidable. *See* Doc. 9-2. There is no need to repeat or rewrite that careful and thorough decision, with which the Court agrees on *de novo* review. The Court adopts and affirms

the August 19, 2021, order of the Bankruptcy Court, as supplemented here. The defendant's motion to dismiss was properly granted, and the plaintiff's motion for summary judgment was properly denied.

The Trustee's arguments do not undermine the analysis of the Bankruptcy Judge. He claims that the notarial certificate contains no language conveying that the signor of the underlying document acknowledged or subscribed to the instrument, Doc. 12 at 28, but the certificate does contain such language. Doc. 9-3 at 18. Ms. Butler signed on the previous page and the notary immediately thereafter attested to that fact. *Id.* at 17–18. North Carolina law gives a presumption of regularity to notarial acts, in the absence of evidence of fraud or a knowing violation by the notary, in order to facilitate transactions. N.C. Gen. Stat. § 10B-99 (2020). It does not require the court to ignore Ms. Butler's name and signature on the immediately preceding page. Doc. 9-3 at 17.

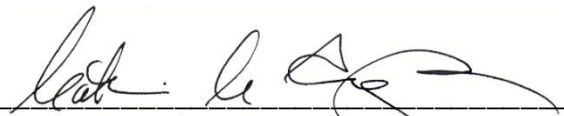
The Trustee implies that there is a contested factual issue as to whether the debtor appeared and signed the deed of trust in front of the notary, Doc. 12 at 20–23; *see also* Doc. 15 at 13, but he did not raise this issue or mention fraud or a knowing violation in the complaint, Doc. 9-2, nor does he point to any evidence of fraud or misconduct by the notary; he relies only on the presumptively-regular attestation itself. Doc. 12 at 20–23; Doc. 15 at 13–14. His argument is unpersuasive, and the record does not raise a disputed question of material fact.

The Trustee also disagrees with the Bankruptcy Court's analysis of cases from other jurisdictions, but he raises no new points requiring discussion. As the Trustee recognizes "decisions from other jurisdictions are not binding" on North Carolina courts

on an issue arising under North Carolina law, Doc. 15 at 5 n.2, though courts “may consider such decisions as persuasive authority.” *Brookline Residential, LLC v. City of Charlotte*, 251 N.C. App. 537, 545 n.4, 796 S.E.2d 369, 374 n.4 (2017). The Bankruptcy Court fully explained why the cases that support the Trustee’s view are of limited utility and persuasive value. Doc. 9-2 at 9 n.1.

It is **ORDERED AND ADJUDGED** that the August 19, 2021, Order of the Bankruptcy Court is **AFFIRMED**, the plaintiff’s motion for summary judgment is **DENIED**, and the defendant’s motion to dismiss is **GRANTED**.

This the 4th day of January, 2022.


UNITED STATES DISTRICT JUDGE