



SO ORDERED.

SIGNED this 18th day of November, 2015.



BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)	
)	
Juan Carlos Canuto and)	
Marie Isabel Canuto,)	Case No. 14-81076
)	
Debtors.)	
_____)	
)	
Juan Carlos Canuto and)	
Marie Isabel Canuto,)	
)	
Plaintiffs,)	
)	
v.)	Adversary No. 15-09036
)	
Public Service Company of North)	
Carolina Inc. d/b/a PSNC Energy,)	
)	
Defendant.)	
)	

ORDER AND NOTICE OF HEARING ON SUMMARY JUDGMENT

THIS CASE is before the Court on the Complaint [Doc. #1] filed by Juan Carlos Canuto and Maria Isabel Canuto (the "Plaintiffs") on September 9, 2015 against Public Service Company of North Carolina, Inc. d/b/a PSNC Energy (the "Defendant"). The Complaint requests that the Court determine that any lien held by Defendant is wholly unsecured based

upon the value of the real property as defined in paragraph 7 of the Complaint (the “Property”) and the outstanding balance of the Plaintiffs’ first mortgage. For the reasons stated herein, this Order shall serve as notice to the Plaintiffs that the Court is considering the entry of summary judgment in favor of the Defendant pursuant to Federal Rule of Civil Procedure 56(f)(3).

Rule 56(f), made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7056, provides: “After giving notice and a reasonable time to respond, the court may: . . . (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.”¹ Fed. R. Civ. P. 56(f). Based upon the record before the Court, the Court finds that the following facts do not appear to be in dispute:

1. The Plaintiffs financed the purchase of a Trane air conditioner and coil unit, serial nos. 111111WH3F and 11132KEC5G, respectively (the “HVAC unit”) with Defendant.
2. The Plaintiffs’ contract with the Defendant for the purchase of the HVAC unit is dated April 4, 2011, and grants the Defendant a purchase money security interest in the HVAC unit.
3. The HVAC unit was installed in the Debtor’s residence on the Property on April 4, 2011.
4. The Debtors owned the Property prior to April 4, 2011.
5. The Deed of Trust held by Nationstar Mortgage LLC (“Nationstar”) was recorded on March 18, 2009.
6. A UCC-1 fixture filing for the HVAC unit was recorded on April 18, 2011, within twenty (20) days of the installation of the HVAC unit.

¹ “A court is specifically authorized to consider summary judgment sua sponte, in the absence of any motion for summary judgment, subject to the requirements of notice and a reasonable time to respond. Although the explicit authorization to do so was added to Rule 56 by the 2010 amendments, most courts have long recognized the propriety of granting summary judgment sua sponte, at least in some cases and under appropriate circumstance.” 11 James WM. Moore et al., *Moore’s Federal Practice* ¶ 56.71[5] (3d ed. 2015) (footnotes omitted).

7. The HVAC unit is a fixture as contemplated by N.C. Gen. Stat. § 25-9-334(d).

8. Defendant's lien in the HVAC unit is a purchase money security interest as contemplated by N.C. Gen. Stat. § 25-9-334(d).

9. The Defendant filed a proof of claim in the underlying bankruptcy case on October 30, 2014, Claim No. 3-1, asserting an unpaid balance of \$ 5,667.18, and asserting a value of the HVAC unit at \$9,910.00.

10. No objection to the Defendant's proof of claim has been filed.

Based upon the foregoing facts, it appears that summary judgment should be entered in favor of the Defendant, pursuant to N.C. Gen. Stat. § 25-9-334(d), finding that Defendant has a first priority, perfected purchase money lien in the HVAC unit, securing an allowed secured claim in the amount of \$5,667.18.

IT IS THEREFORE ORDERED that the Court will conduct a hearing on December 17, 2015, at 11:00 AM in the United States Bankruptcy Courtroom, Durham, Venable Center, Dibrell Building, Suite 280, 302 East Pettigrew Street, Durham, NC, to consider the entry of summary judgment in favor of the Defendant pursuant to Rule 56(f)(3). Plaintiffs shall file any opposition to summary judgment within 21 days of the entry of this Order.

[END OF DOCUMENT]