So Ordered.

Signed this 21 day of March, 2025.

Patrick G. Radel
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Daniel E. Madore, Jr.,

Debtor.

Ch. 7
Case No. 24-60611-6-pgr

Daniel E. Madore, Jr.

Plaintiff,

v.

AmeriCU Credit Union

Defendant,

Adv. Pro. No. 24-80015-6-pgr

APPEARANCES:

Law Office of Maxsen D. Champion
Counsel for Daniel E. Madore, Jr.
8578 East Genesee Street
Fayetteville, NY 13066

MAXSEN D. CHAMPION, ESQ.

Davidson Fink LLP
Counsel for AmeriCU Credit Union
400 Meridian Centre Blvd., Suite 200
Rochester, NY 14618

DANIEL S. GALAN, ESQ.

MARK W. SWIMELAR-TRUSTEE
Standing Chapter 13 Trustee
250 South Clinton Street, Suite 203
Syracuse, NY 13202

EDWARD J. FINTEL, ESQ.

DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

1. On July 29, 2024, Debtor-Plaintiff Daniel E. Madore, Jr. ("Plaintiff"), by and through his Counsel, filed a petition for relief under Chapter 13 of the Bankruptcy Code. (Case No. 24-60611, Docket No. 1, Pet.).
2. On August 5, 2024, AmeriCU Credit Union ("Defendant") filed a proof of claim asserting a $56,758 secured claim against Plaintiff. (Proof of Claim 8-1).
3. The proof of claim indicates that this debt derived from a "Home Improvement Loan" made by Defendant to Plaintiff. (*Id*. at 2).
4. The underlying loan agreement, entitled "Loan and Security Agreements and Disclosure Statement," which was attached to the proof of claim, does not identify the collateral that purportedly serves as security for the loan. (*Id*. at 8). Indeed, the section of the security agreement designated for the description/identification of the collateral is blank. (*Id*.).
5. The UCC-1 Financing Statement attached to the proof of claim indicates that (1) this is a fixture filing and (2) the collateral securing the loan is "Home Improvements." (*Id*. at 10).
6. On September 3, 2024, Plaintiff commenced this Adversary Proceeding by filing a Complaint. (AP Docket No. 1, Compl.).

7. In his Complaint, Plaintiff challenged Defendant's status as a secured creditor by arguing that there were material deficiencies within the Defendant's UCC-1 financing document, which served as a basis for its proof of claim. (*Id.*).
8. On October 4, 2024, Defendant interposed an Answer opposing the relief requested in Plaintiff's Complaint. (AP Docket No. 6, Answer).
9. A few weeks later, Plaintiff converted his Chapter 13 case to a case under Chapter 7 of the Bankruptcy Code. (Case No. 24-60611, Docket Nos. 27, 28).
10. This Court held a preliminary status conference in this adversary proceeding on November 19, 2024, at which counsel for the parties appeared, and at which the Court set deadlines for dispositive motion practice. (AP Docket No. 10, Audio file for 11/19/2024, AP Docket No. 11, Text Order).
11. On January 29, 2025, Plaintiff filed a motion for Summary Judgment (the "Motion"). (AP Docket No. 12, Summ. J.).
12. In his Motion, Plaintiff raises two arguments: (1) Defendant's UCC-1 financing statement does not fall under any of the three categories listed in N.Y. U.C.C. Law § 9-501 (a)(1)(A)-(C); and (2) Defendant's UCC-1 financing statement could not be considered a mortgage since the statement did not include certain mortgage formalities enumerated in N.Y. Real Prop. Law § 254(2)-(6). (*Id.*, Summ. J.).
13. In its response, Defendant asserts that because it filed its financing statement as a fixture filing, its security interest is appropriately perfected. (AP Docket No. 18, Def.'s Mem. in Opp'n). Defendant also argues that Plaintiff failed to

show that the financing statement was not a fixture filing; and therefore, Plaintiff did not establish that there was no genuine dispute with respect to Defendant's status as a secured creditor.[1] (*Id.*).

14. This Court heard oral argument on March 4, 2025, in Utica, New York, with counsel for the parties appearing and being heard. Decision was reserved.

15. For the following reasons, this Court grants Plaintiff's motion for Summary Judgment.

Legal Standard

16. Rule 56 of the Federal Rules of Civil Procedure, applicable here pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment will be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56*; see also Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011).

17. "Where the moving party demonstrates 'the absence of a genuine issue of material fact,' the opposing party must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact." *Brown*, 654

[1] Defendant also asserted that Plaintiff's motion for summary judgment was defective because the motion did not contain a separate statement of uncontested facts and because it was filed untimely. However, Local Bankruptcy Rule 7056-1 provides the Court with discretion over the consequences for filing defective summary judgment motions, and this Court has decided not to deny Plaintiff's motion. This would only result in an undue, punitive outcome for the Plaintiff. Moreover, the untimeliness of Plaintiff's motion was resolved during a §105(a) conference held on February 11, 2025, where the Court indicated that there would be no unfair prejudice towards the Defendant if it extended dispositive motion deadlines. (AP Docket No. 17, Audio file for 02/11/2025). Subsequently, the Court issued an amended scheduling order. (AP Docket No. 16, Text Order).

F.3d at 358 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), and citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

18. When adjudicating a summary judgment motion, the court must "resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Terry v. Ashcroft*, 336 F.3d 128, 137 (2d Cir. 2003) (citing *Stern v. Trustees of Columbia Univ.*, 131 F.3d 305, 312 (2d Cir. 1997)).

19. "The court must deny summary judgment where there is a genuine issue as to any material fact . . . , and grant it where there is no such issue and the movant is entitled to judgment as a matter of substantive law." *Lipshie v. Cablevision of Brookline (In re Geauga Trenching Corp.)*, 102 B.R. 304, 308 (Bankr. E.D.N.Y. 1989) (internal citations omitted).

Analysis

20. "It is well settled that while the extent of a debtor's bankruptcy estate is determined under federal law, property interests are defined by state law." *In re Adirondack Timber Enter., Inc.*, No. 08-12553, 2010 WL 1741378, at *3 (Bankr. N.D.N.Y. Apr. 28, 2010) (citing *Butner v. U.S.*, 440 U.S. 48, 55 (1979)).

21. Additionally, "[t]he doctrine of judicial notice applies to motions under the Rule 56. The Court may consider anything in support of, or in opposition to, summary judgment that it may judicially notice. Exhibits that have been properly made a part of an affidavit may be considered as well as any admission by the party opposing the motion made during discovery or in

briefs." *Lipshie v. Cablevision of Brookline (In re Geauga Trenching Corp.)*, 102 B.R. 309 (Bankr. E.D.N.Y. 1989); *Krisiak v. Trumark Financial Credit Union (In re Krisiak)*, 613 B.R. 606, 609-10 (Bankr. M.D. Pa. 2020) (stating "[j]udicially noticed items may include, but are not limited to, documents from the adversary docket, the docket of the underlying bankruptcy proceeding, and the claims register of the underlying bankruptcy proceeding."); *e.g.*, *Berman v. Empower FCU (In re Ling Wang)*, 556 B.R. 27, 31 (Bankr. N.D.N.Y. 2016) (taking judicial notice of bankruptcy proceedings).

22. Accordingly, the Court takes judicial notice of Defendant's Proof of Claim 8-1.

23. And within Defendant's proof of claim lie two fatal deficiencies.

Deficient Security Agreement

24. Defendant did not identify any collateral within the underlying loan and security agreement; and therefore, Defendant did not obtain a security interest with respect to any of Plaintiff's property.

25. New York's Uniform Commercial Code provides, in relevant part, that "[a] security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral . . . ." N.Y. U.C.C. Law § 9-203(a).

26. "[A] security interest is enforceable against the debtor and third parties with respect to the collateral only if: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) one of the following conditions is met: (A) the debtor has

authenticated a security agreement *that provides a description of the collateral . . . .*" N.Y. U.C.C. Law § 9-203(b) (emphasis added).

27. Applied here, Defendant attached the underlying loan and security agreement to proof of Claim 8-1. The agreement includes the finance amount charged, the number of scheduled payments, the applicable interest rate, and the parties' signatures; however, one crucial component is missing—a description of the collateral.

28. Therefore, because Defendant failed to satisfy this requirement, no enforceable security interest was created with respect to the debt owed by Plaintiff to Defendant.

Deficient Financing Statement

29. Additionally, Defendant did not adequately describe the collateral in the underlying financing statement, and therefore, failed to perfect its security interest.

30. Excluding a few exceptions inapplicable here, N.Y. U.C.C. Law § 9-310(a) states, in relevant part, that "a financing statement must be filed to perfect all security interests and agricultural liens." N.Y. U.C.C. Law § 9-310.

31. "[A] financing statement is sufficient only if it: (1) provides the name of the debtor; (2) provides the name of the secured party or a representative of the secured party; *(3) indicates the collateral covered by the financing statement*; and (4) in the case of a cooperative interest, indicates the number or other designation and the street address of the cooperative unit." N.Y. U.C.C. Law §

9-502(a) (emphasis added); *In re Adirondack Timber Enter., Inc.*, No. 08-12553, 2010 WL 1741378, at *4 (Bankr. N.D.N.Y. Apr. 28, 2010) ("[I]t is not unreasonable to insist that a creditor who seeks to obtain such a priority status over unsecured creditors in a bankruptcy case comply with these minimal requirements") (internal quotations and citations omitted).

32. N.Y. U.C.C. Law § 9-504 states that "[a] financing statement sufficiently indicates the collateral that it covers if the financing statement provides: (1) a description of the collateral pursuant to Section 9-108; or (2) an indication that the financing statement covers all assets or all personal property." N.Y. U.C.C. Law § 9-504.

33. N.Y. U.C.C. Law § 9-108 provides that "a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described." N.Y. U.C.C. Law § 9-108.

34. "A financing statement is sufficient if it indicates the types or describes the items of collateral." *Bank of Utica v. Smith Richfield Springs, Inc.*, 294 N.Y.S.2d 797, 799 (N.Y. Sup. Ct. 1968); *see Fernandez v. White Rose Food Co.*, 824 N.Y.S.2d 753 (N.Y. Sup. Ct. 2006) ("[T]here must be some designation in the UCC–1 financing statement even in the most general terms of the 'type' of collateral covered by the security agreement.").

35. The purpose of a financing statement is "to alert a prospective lender that there may be a conflicting security interest and give him the opportunity to investigate further." *Allis-Chalmers Credit Corp. v. Bank of Utica*, 441

N.Y.S.2d 852, 853 (N.Y. Sup. Ct. 1981) (citations omitted). "The financing statement is merely a notice that a security interest may exist." *Id.* at 853-54.

36. However, a vague description of collateral, without any "attempt to delineate any type of property in the financing statement," is inadequate. *Fernandez v. White Rose Food Co.*, 824 N.Y.S.2d 753 (N.Y. Sup. Ct. 2006).

37. In the present case, Defendant listed the collateral as "Home Improvements" without any additional context or description.

38. The Defendant's description of the collateral fails to fulfill the purpose of filing a finance statement. Rather than providing notice to prospective lenders, Defendant's description of "Home Improvements" draws more questions than answers. The first questions being—what exactly does AmeriCU have a security interest in? Which home improvements have there been, if any?

39. Because Defendant did not adequately describe the collateral in its financing statement, as a matter of law, Defendant failed to perfect any security interest it even arguably had.[2]

40. In sum, the Defendant failed to attach its security interest to any collateral due to its execution of a legally deficient security agreement. In addition, and in the alternative, Defendant failed to perfect any security interest due to its filing of a legally deficient financing statement.

[2] The Court notes that N.Y. U.C.C. Law § 9-502(b) provides a process for perfecting an interest by filing a financing statement as a fixture filing. However, this can only be accomplished if § 9-502(a) (which requires, among other things, the perfecting party to indicate the collateral covered by the party's financing statement) is satisfied. And because the Court holds that AmeriCU did not satisfy § 9-502(a), the Court will not discuss whether the financing statement was a fixture filing.

41. For the reasons set forth herein, this Court GRANTS Plaintiff's motion for Summary Judgment (AP Docket No. 12).

42. Defendant AmeriCU's proof of claim 8-1 is deemed unsecured.

43. Counsel for the Plaintiff shall submit a proposed Judgment within seven days from this Order being entered.

###