

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

INVACARE CREDIT CORPORATION, INC.

PLAINTIFF

VS.

CASE NO. 6:14-CV-6026

HEALTHCARE MEDICAL & RESPIRATORY
CARE, INC., KATHY ROSE, MICHAEL ROSE

DEFENDANTS

ORDER

Before the Court is Plaintiff's Motion for Summary Judgment filed on May 27, 2016 (ECF No. 23). Defendants have not filed a response to the motion, and the time to do so has passed. The Court finds this matter ripe for consideration. After reviewing the pleadings and other matters of proof before the Court, the Court finds:

1. Pursuant to Fed. R. Civ. P. 8(b)(6), the allegations of Plaintiff's Motion for Summary Judgment and Statement of Facts in Support of Motion for Summary Judgment are deemed true and admitted due to Defendants' lack of response.

2. Plaintiff leased to Defendant Healthcare Medical & Respiratory Care, Inc. certain products for which full payment has not been made as agreed by the parties and personally and unconditionally guaranteed by Defendants Kathy Rose and Michael Rose.

3. Defendant Healthcare Medical & Respiratory Care, Inc. failed to make the February 28, 2013 payment under the Extension Agreement (ECF. No. 23-3) and further ceased making payments under the Extension Agreement after the February 15, 2013 payment. Defendant has defaulted on the terms of the Extension Agreement and Promissory Note (ECF. No. 23-4) and has failed to pay the amounts due and owing to Plaintiff.

4. In In Re: Healthcare Respiratory Care, Inc., Debtor, W.D.Ark. Case No. 6:14-bk-71384, an Agreed Order was entered on September 10, 2014 between Defendant Healthcare Medical & Respiratory Care, Inc. and Plaintiff directing Defendant Healthcare Medical & Respiratory Care, Inc. to make five monthly payments in the amount of \$1,500 and monthly payments in the amount of \$3,000 until Healthcare Medical's Chapter 11 plan was approved. (ECF. No. 23-5).

5. Defendant Healthcare Medical & Respiratory Care, Inc. made eleven (11) payments of \$1,500 to Plaintiff from October 2014 to July 2015. No payments have been received by Plaintiff from Defendant Healthcare Medical & Respiratory Care, Inc. since July 2015.

6. Defendant Healthcare Medical and Separate Defendants, Kathy Rose and Michael Rose, Individually by virtue of the personal guarantees at issue (ECF. Nos. 23-2 and 23-3 at C-1 through C-8), are indebted to Plaintiff for the Open Account Balance account number 55627; Lease Nos. 25172651, 25161879, 25148857, 25138825 and 25121372.

7. No payments have been received by Plaintiff from Defendant Healthcare Medical & Respiratory Care, Inc. since July 2015 and the principal amount owed by Defendant Healthcare Medical & Respiratory Care, Inc. to Plaintiff exclusive of accrued interest and attorneys' fees is \$346,422.89.

8. Plaintiff is entitled to a judgment against Defendants Healthcare Medical & Respiratory Care, Inc. and Kathy Rose and Michael Rose, Individually, jointly and severally, in the amount of \$346,422.89 with prejudgment interest at the rate of 6.99%¹ per annum from August 1, 2015² until the entry of this Judgment.³

¹ The Promissory Note at issue (ECF No. No. 23-4) provides for 6.99% interest.

² Prejudgment interest accruing from this date because the last payment was made in July 2015.

³ $\$346,422.89 \times 6.99\% = \$24,214.96 / 365 \text{ days} = \66.34 accrued prejudgment interest per diem.

For the reasons stated above, the Court finds that Plaintiff's Motion for Summary Judgment (ECF No. 23) should be and hereby is **GRANTED**. Plaintiff Invacare Credit Corporation, Inc., is hereby awarded judgment against Defendants Healthcare Medical & Respiratory Care, Inc., Kathy Rose, Individually, and Michael Rose, Individually, jointly and severally, for \$346,422.89, together with accrued prejudgment interest at the rate of 6.99% per annum from August 1, 2015 to the date of judgment, post-judgment interest at the rate of 6.99% per annum from date of judgment until paid in full. Execution and garnishment may issue.

IT IS SO ORDERED, this 18th day of July, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge