

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

COMMERCIAL CREDIT GROUP INC.,

Plaintiff,

Case No. 1:19-cv-00558-KG-JHR

v.

PROTEGE EXCAVATION, INC.,

Defendant.

DEFAULT JUDGMENT AGAINST DEFENDANT PROTÉGÉ EXCAVATION, INC.

THIS MATTER having come before the Court upon Plaintiff Commercial Credit's Group Inc.'s ("Commercial Credit") Motion for Default Judgment against Defendant Protégé Excavation, Inc. ("Protégé"), and the Court having examined the pleadings on file herein, having heard arguments at the September 14, 2020 hearing regarding the same, Commercial Credit appearing by and through its attorneys Snell & Wilmer L.L.P. (Jeanne Y. Sohn), and Protégé not appearing, and having issued its Memorandum Opinion and Order on September 15, 2020, and being otherwise fully advised in the premises, FINDS:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. On or about May 10, 2017, Protégé executed a Promissory Note and Security Agreement (Account Number -1701) (the "First Contract") to finance the purchase of the following property: 2008 Tigercat M726E 4 wheeled fellerbuncher/mulcher; serial number 726M3561; value \$159,000 ("Collateral 1").
3. On or about April 25, 2018, Protégé executed a Promissory Note and Security Agreement (Account Number -1801) (the "Second Contract") (collectively, with First Contract, the "Contracts") to finance the purchase of the following property:

<u>Equipment Description</u>	<u>Serial Number</u>	<u>Value</u>
-2009 John Deere 770D Articulated frame grader	DW770DX623991	\$ 67,498
-2012 John Deere 350G LC Crawler mounted hydraulic excavator	1FF350GXCCE808440	\$109,000
-2015 John Deere 333E Skid steer	1T0333EKADE248035	\$ 54,900
-2014 Kobelco ED160-3 Crawler mounted hydraulic excavator	LH02-01538	\$121,900
-2008 Case 1150K Standard crawler dozer	N7DC00207	\$ 29,000
-1988 Mitsubishi MG100 Motor grader	1G500072	\$ 9,500
-2007 John Deere 310J Tractor loader backhoe	T0310JX143362	\$ 26,900
-2014 John Deere 60G Crawler mounted hydraulic excavator	1FF060GXVEJ285982	\$ 52,495
-1990 John Deere 670B Articulated frame grader	DW670BX527502	\$ 29,750

(“Collateral 2”) (collectively, with Collateral 1, the “Collateral”).

4. The First Contract has an original face amount of \$158,306.00.
5. The Second Contract has an original face amount of \$574,728.00.
6. Protégé, who is obligated to make monthly payments to repay the amount financed under both Contracts, failed to make the payments due in accordance with their agreed terms.
7. Commercial Credit has perfected its lien and security interest in the Collateral as listed on the UCC Financing Statement filed on April 27, 2018 (File #20180063738E) and the UCC Financing Statement filed on May 9, 2017 (File #20170052358J), as amended by the UCC Financing Statement filed on May 11, 2017 (File #20179726674B).
8. Commercial Credit has performed all conditions, covenants, and promises required by it on its part to be performed in accordance with the terms and conditions of the Contracts.

9. Despite proper notices of defaults, Protégé has failed to make monthly payments pursuant to the Contracts or cure its defaults. Protégé has not made any payment towards satisfaction of the amount financed since August 31, 2018 under Contract 1, and no payments were made under Contract 2, and as such, Protégé is in default under the Contracts.
10. As of May 24, 2019, there is a payoff amount of approximately \$106,848.05, which includes interest, late charges, and other charges allowed under Contract 1, and with interest accruing at the default rate of 18% under Contract 1, since November 27, 2017.
11. As of May 24, 2019, there is a payoff amount of approximately \$552,221.80, which includes interest, late charges, and other charges allowed under Contract 2, and with interest accruing at the default rate of 18% under Contract 2, since July 10, 2018.
12. Commercial Credit has been compelled to obtain the services of an attorney to bring this action and in accordance with the terms of the Contracts, Commercial Credit is entitled to recover its attorney's fees and costs incurred herein.
13. Protégé has wholly failed to respond to demands for payments and to deliver the Collateral, and continues to maintain wrongful possession and/or control of the Collateral, despite failing to make payments under the Contracts.
14. Protégé has no further right to retain the Collateral belonging to Commercial Credit. Commercial Credit has a perfected security interest in the Collateral and as a result of the Protégé's default under the Contracts, Commercial Credit is lawfully entitled to immediate and exclusive possession of the Collateral described herein.
15. Commercial Credit reserves the right to assert any additional claims against the Protégé and/or Guarantor, including but not limited to, a deficiency amount that results from the sale of the Collateral, in the applicable court of law or forum, once that information becomes

available.

16. Commercial Credit is further entitled to a Writ of Assistance in the event Protégé refuses to surrender the Collateral and to have the Court further order that the Writ direct the Sheriff of Taos County, or any other county where the Protégé and the Collateral may be located, to remove the Protégé from the premises such that a peaceful repossession of the Collateral may occur.

17. Except as expressly modified herein, each and every allegation contained in the Complaint is true and correct, are sustained by the evidence, and Commercial Credit is entitled to the relief demanded in the Complaint.


IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT COMMERCIAL CREDIT'S MOTION FOR DEFAULT JUDGMENT AGAINST PROTÉGÉ IS GRANTED, AS FOLLOWS:

A. Commercial Credit is awarded final and permanent possession of the Collateral, free and clear of any and all liens and/or encumbrances for immediate sale and application of the proceeds of the sale of the Collateral to the Protégé's outstanding indebtedness under the Contracts;

B. Commercial Credit has the right to pursue any deficiency amount against Protégé and/or Guarantor in the appropriate court or forum, once the Collateral is sold and the proceeds are applied to the indebtedness and the deficiency amount is determined;

C. A Writ of Assistance shall be issued, directing the Sheriff of Taos County, or any other county where the Collateral may be located, to enter the premises where Protégé may be located with the Collateral and remove Protégé from the premises such that a peaceful repossession of the Collateral may occur, using such force as is reasonably necessary, including the breaking of chains or locks, or forcing open doors or gates; and

D. As the prevailing party, Commercial Credit is entitled to and awarded its attorney's fees and costs, and Commercial Credit's request for attorneys' fees and costs is hereby granted.



UNITED STATES DISTRICT JUDGE

DATED: October 13, 2020

SUBMITTED BY:

/s/Jeanne Y. Sohn
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