

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES for use and benefit of
ARCOM SYSTEMS, INC.

PLAINTIFF

v.

No. 5:19-CV-05002

AEGIS SECURITY INSURANCE COMPANY and
BES DESIGN/BUILD, LLC

DEFENDANTS

OPINION AND ORDER

Before the Court is Plaintiff's motion (Doc. 8) for default judgment against both Defendants. Plaintiff filed a Miller Act (40 U.S.C. §§ 3131–34) claim against Defendants on January 2, 2019. Both Defendants were served by mail on January 4, 2019. (Docs. 10-1, 10-2). Neither Defendant has answered or responded to the complaint and the deadline to do so has passed. Entry of default is appropriate.

Plaintiff's complaint seeks \$38,673.72 in compensatory damages, plus prejudgment interest, postjudgment interest, attorney's fees, and costs.

Damages of \$38,673.72 are supported by the affidavit of David Watson, an authorized agent of ArCom Systems, Inc. (Doc. 8-3). That same affidavit supports the request for \$1,200 in combined court costs and attorney's fees. That amount of compensatory damages, fees, and costs will be awarded.

Federal law permits prejudgment interest to be awarded on a Miller Act claim if the appropriate state law would allow prejudgment interest. *See United States for use of Yonker Constr. Co. v. W. Contracting Corp.*, 935 F.2d 936, 941–42 (8th Cir. 1991) (adopting approach of looking to state law as a matter of convenience and practicality to determine whether prejudgment interest is due on Miller Act claims). ArCom Systems, Inc. is an Arkansas corporation that

provided materials and labor to BES Design/Build, LLC pursuant to a contract for construction of a VA Medical Center in Washington County, Arkansas. Aegis Security Insurance Company issued a surety bond to BES Design/Build, LLC for that project. Because this dispute arises out of performance of a contract in Arkansas, the Court will look to Arkansas law for convenience and practicality to determine whether prejudgment interest is due.

Arkansas law allows prejudgment interest on a contract. Ark. Code Ann. § 4-57-101. The total amount of loss caused by BES Design/Build, LLC's breach appears to have become clear on August 15, 2018, when a final demand for the outstanding balance of \$38,673.72 was sent by ArCom Systems, Inc. (Doc. 1-1). The record does not demonstrate that the parties specified a rate of prejudgment interest, so the rate is 6% per year. Ark. Code Ann. § 4-57-101(d). Following the calculations in Ark. Code Ann. § 4-57-101(a) and (b), the prejudgment interest period from August 15, 2018 to April 8, 2019 is seven months, twenty-four days. Twelve months of 6% prejudgment interest on \$38,673.72 would amount to \$2,320.42. The proportion of that amount owed for seven months, twenty-four days is \$1,508.29, and that amount will be awarded as prejudgment interest.

Postjudgment interest will accrue at a rate of 2.41% pursuant to 28 U.S.C. § 1961.

IT IS THEREFORE ORDERED that Plaintiff's motion (Doc. 8) is GRANTED. The Clerk is directed to enter default against Defendants. Judgment will be entered separately, consistent with this opinion and order.

IT IS SO ORDERED this 8th day of April, 2019.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE